

# Irish Probation Journal

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

Volume 10  
October 2013

  
THE  
PROBATION  
SERVICE  
An tSeirbhís Phromhaidh

 **PBNI**  
Probation Board For Northern Ireland

# Irish Probation Journal

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

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

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## Note

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*IPJ* is an annual publication distributed widely to criminal justice bodies, research and academic centres and interested individuals as a forum for knowledge exchange, critical debate and dialogue on criminal justice issues, in particular, community-based sanctions.

Volume 10 October 2013

ISSN 1649-639X

Publishing Consultants: Institute of Public Administration, 57–61 Lansdowne Road, Ballsbridge, Dublin 4  
+353 (0)1 240 3600. information@ipa.ie  
Typeset by Computertype, Dublin  
Printed in Ireland by Turner Print Group

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## Editorial

This year we have great pride in launching the tenth edition of *Irish Probation Journal*. When the journal was launched in 2004, the objective of the first editors was that it would be an annual record of issues facing probation staff in the two services and that it would contribute to the development of professional practice. It is fair to say that *Irish Probation Journal* has far surpassed those goals. It has become an established and acknowledged publication read by criminal justice practitioners, academics and policy-makers throughout the island of Ireland and beyond.

The Editorial Committee would like to thank all the contributors and committees over the years for their work in making *Irish Probation Journal* the important and valued forum for knowledge exchange and critical debate on criminal justice issues that it is today. We have an excellent and much-appreciated advisory panel which has provided high-quality advice and guidance. We wish to put on record our thanks to panel members.

In particular, we wish to acknowledge the contribution of Jean O'Neill from PBNI, a member of the editorial committee from its inception in 2004 until 2012 and joint editor of the journal from 2007 to 2012. Jean's work has been invaluable in building the quality and reputation of the journal over the years.

The support by the Department of Justice in Northern Ireland and the Department of Justice and Equality (Ireland) has been a critical factor in sustaining the development of *Irish Probation Journal*. Without the funding, active support and encouragement of the Probation Service, the Probation Board for Northern Ireland and the Departments it would be immeasurably more difficult to have an open, high-quality and authoritative journal.

In this edition the Honourable Mr Justice Peter Charleton, in his erudite and stimulating Martin Tansey Memorial Lecture, hosted by the

Association for Criminal Justice Research and Development, examines the public perceptions and challenges in the criminal justice sentencing process in Ireland. He explores sentencing in other jurisdictions, questions the role of compensation and highlights the importance of research in informed judicial decision-making. His thoughtful reflections highlight the many factors and interests clamouring to be reconciled in the sentencing process.

In *Irish Probation Journal* we have previously drawn attention to the importance of a critical criminological research community in Ireland and quality studies of criminal justice practice and outcomes. Nicola Carr with Deirdre Healy, Louise Kennefick and Niamh Maguire presents an important review of the current state of research on offender supervision in Ireland, North and South. To develop and support informed policy development and best practice it is essential that quality research be encouraged and supported. The authors make an important contribution in informing this task in their exploration of common themes and identification of avenues for future enquiry.

Following the theme of research on issues with particular relevance to the criminal justice system and wider society, this edition features significant findings by Dr Paula Mayock and Sarah Sheridan on imprisonment, homelessness and marginalisation among a sample of women who had experienced custody.

In the context of a substantial cohort of older prisoners in custody in Ireland, Jan Alvey explores, in a literature review and small-scale study, the specific needs and care issues arising in respect of older male prisoners. In a timely paper, given the previously limited research on reports to court in Ireland, Andrea Bourke examines quality and effectiveness in pre-sanction reports prepared by Probation Officers for courts.

Risk assessment instruments have become key resources for Probation Officers in managing offenders in the community in Ireland. Mary Walker and Margaret O'Rourke examine Probation Officers' experiences in using two risk assessment tools in managing sex offenders in the community. Louise Cooper and Ivor Whitten report on an independent review of the use of the ACE risk assessment tool in Northern Ireland.

The much-travelled Brian Stout, in a thoughtful paper, reflects on his experience as a Probation Officer with the Probation Board for Northern Ireland in the 1990s – before and after the ceasefires and Good Friday Agreement – and his work since in South Africa, England and Australia,

considering the place of restorative justice, occupational culture and community links along the way.

The criminal justice system and the media have had, at times, an uneasy relationship. Gail McGreevy, in her paper, asks if media and public relations are relevant to those working in criminal justice, and if Probation Services could benefit from managed media and public relations support.

EU Framework Decision 947 provides for mutual recognition of probation decisions across all EU member states and, with other EU-funded criminal justice projects, has contributed to increased engagement and sharing of knowledge among services across Europe. Elena Nichifor, a Probation Counsellor in Romania and contributor to EU probation projects, provides us with an introduction to the work of the developing Romanian Probation Service and how it is establishing itself as a vibrant and professional agency in its criminal justice system.

The increase in multi-agency working and partnerships in dealing with cross-cutting issues has been a welcome and effective development in recent years, with real benefits in community safety and in the reduction in reoffending. Mark Wilson, John McCann and Robert Templeton chart the development of the multi-agency model for Sex Offender Risk Assessment and Management (SORAM) in Ireland from its origins in co-working in the management of a small number of very high-risk cases to its establishment as a national action.

On a similar theme, Terry Doherty and Mark Dennison track the development in Northern Ireland of 'Reducing Offending in Partnership', an initiative that brings together criminal justice agencies and specialist services to target those at high risk of offending/reoffending and causing significant levels of harm.

Jane Mulcahy takes a critical look at conditions in Irish prisons in the context of human rights and the impact of increasing committals to prison over recent years. She advocates that policy makers, in reviewing criminal justice policy, should adopt a decarceration strategy as part of a creative approach in penal practice.

The developing engagement between the research and academic community, interest groups, policy-makers and practitioners in exploring issues in criminal justice is a real opportunity for constructive and purposeful partnership. The growing EU-funded promotion of co-operation in criminal matters, to create a genuine European area of justice based on mutual recognition and mutual confidence, is a most welcome

initiative with significant benefits for all partners and communities across Europe.

*Irish Probation Journal* has a role in supporting and encouraging this openness and co-operation as a forum for knowledge exchange, critical debate and dialogue. It recognises the wide-ranging interest in criminal justice issues and the diversity of views as well as concerns. It is solution-focused in the pursuit of principled and effective community sanctions and a fair criminal justice system.

As in this 10th anniversary edition, *Irish Probation Journal* welcomes work by practitioners, researchers, new writers and established authors. With the support of the readership, contributors and funders, *Irish Probation Journal* looks forward to future editions and continued constructive engagement, learning and dialogue.

Gail McGreevy  
The Probation Board for Northern Ireland

Gerry McNally  
The Probation Service

October 2013



## Throw Away the Key: Public and Judicial Approaches to Sentencing – Towards Reconciliation\*

**Peter Charleton and Lisa Scott<sup>†</sup>**

**Summary:** Irish sentencing practices are frequently criticised in the media. One might come to suspect that what the public wants is a kind of ‘revenge system’ of locking up offenders and throwing away the key; that for every vicious crime there should be a savage response. However, a number of criminology studies in other jurisdictions have analysed the gap between the public perception of a sentence and the reality of the task that a judge faces, and have found that this not the case. Approaches to sentencing in other jurisdictions (United States, Scotland, England and Wales) are critically analysed in an effort to improve sentencing policy. What becomes clear is that the gathering of information is crucial to any exercise in rationalising sentencing into patterns, and that this takes time, expertise, personnel and money. In Ireland, a number of sentencing analyses have been compiled by the Judicial Researchers’ Office and the Irish Sentencing Information System has been revived. Self-analysis carries a higher chance of improvement than being informed by mere opinion, and will make sentencing in serious crime more predictable and more consistent.

**Keywords:** Sentencing, sentencing policy, courts, crime, compensation, sentencing guidelines, Irish Sentencing Information System, criminological research.

\* This paper comprises the revised text of the 6th Annual Martin Tansey Memorial Lecture sponsored by the Association for Criminal Justice Research and Development (ACJRD) and delivered at the Criminal Courts Complex, Dublin on 10 April 2013.

<sup>†</sup> The Honourable Mr Justice Peter Charleton is a judge of the High Court. Lisa Scott is a researcher attached to the Judicial Researchers’ Office and assisted in the preparation of this paper. Email: [judicialresearchers@courts.ie](mailto:judicialresearchers@courts.ie)

## Introduction

Compared to politics, the courts are a quiet backwater where a lot happens and much of it makes the news, but very little of that achieves the level of teeth-grinding engagement with the public where everyone is affected and so everyone has an opinion. Except, you might say, when it comes to sentencing.

**Judges ‘need sentencing guidelines’ for sexual assault  
Killer driver sentence is a disgrace  
My son got 18 months and all he owed was €5000  
Serial rapist now back on the streets**

From what is reported, it might be thought that judges get sentencing consistently wrong. Of course, it is the headline-grabbing cases that get reported. But, even still, as Dr Niamh Maguire has pointed out in an article published in 2010, since the 1990s the ‘issue of inconsistency in Irish sentencing practices has been highlighted in the media on a regular basis’. The media habitually runs with the ball that judges are out of touch and inconsistent in how they deal with serious offenders. From a lifetime of observing the process of sentencing from the inside and from the outside, one might come to suspect that we are expected to believe that the public want a kind of revenge system of locking up offenders and throwing away the key; that for every vicious crime there should be a savage response.

Martin Tansey devoted his professional life, from 1965 to 2002 – much of that as head of the Probation Service – to disabusing the public of that attitude. Offenders, despite their crimes, are capable of being reformed. Supervision in the public sphere and alternatives to sentencing such as community service were developed under him.

Through the Whitaker Report on the penal system, it has come to be commonplace that before a prisoner is sentenced, a probation report must be presented. Through its detailed background on the convicted person, a balanced judicial response is informed. For those who have to be sent to jail, the Probation Service under Martin Tansey developed the idea of halfway house accommodation and, from the point of view of the judiciary, suspending part of a sentence under supervision so that there would be a real chance of moving an offender away from recidivism.

I am certain that Martin Tansey would have had strong views on currently commonplace extremist arguments: that the judiciary should have less power; that sentences should be made in Dáil Éireann and merely administered by the judges; and that legislation must determine what sentence a convict gets once he is found guilty of a crime. He would also have had a view on the mischievous proposition that judges are not to be trusted because the Irish judiciary lack a sentencing policy, lack clear guidance as to the appropriate principles and are left at large in remote courts to make up sentencing policy as they go along.

An occasion such as this challenges us all to move away from tossing around opinion ungrounded in fact and to address on a reasoned basis what is going on in judicial circles on the issue of sentencing in serious cases. As with any real view of human affairs, one might also ask where the problems are and how they might be addressed.

### **Problems in sentencing**

Sentencing is not at all easy. A judge, first of all, is caught between two families – that of the victim and that from which the offender comes. If the facts are allowed to dominate in determining the appropriate response, the result will tend towards what is objectively correct. Victims will have a chance to see their side of what has been done to them as a necessary counterbalance to the special pleading in mitigation allowed to the defence.

People call for consistency in sentencing but it must be remembered, secondly, that while a judge in Dublin may be one of three or more dealing with that kind of crime and stationed in the Criminal Courts of Justice, and so may consult with colleagues as to the ‘going rate’, all around the country there are judges who see no one from month to month and who are expected to make multiple decisions on any one day on a huge range of criminal offences. Up to 2012, there was no way of linking them together or supplying information on trends and on relevant factors. It may be an exaggeration to say that they might be like the first-time defence lawyer in Hitchcock’s film *The Wrong Man*,<sup>1</sup> but that is not a bad illustration of the way the system works.

A third problem is that there has been guidance from cases decided at Court of Criminal Appeal level, but the relevant cases are not necessarily

<sup>1</sup> *The Wrong Man*, produced and directed by Alfred Hitchcock, Warner Brothers, 1956.

cited by either side. In fact, the trend has been for no precedents to be cited in sentencing hearings and, with the exception of rape, for counsel for the prosecution not even to indicate a level of seriousness as to how the facts of the case compare with others. Hence, one may see that serious guidance on the proper approach to child pornography sentencing in the case of *The People (D.P.P.) v. Carl Loving* [2006] 3 I.R. 355 (sentence of five years' imprisonment (with two years suspended) in Circuit Court reduced to one year by Court of Criminal Appeal) has in the past not been routinely transmitted to every Circuit Court and District Court judge. There is no doubt as to how useful the guidance provided by Fennelly J. actually is.

1. Look to the basic mitigating factors:
  - Whether 'the accused accepts responsibility for the offence, including his plea of guilty'.
  - However, acceptance of responsibility is lessened as there is generally 'little scope for plausible denial'. Regardless, the accused had facilitated Garda enquiries and 'relieved them of the necessity to prove their case'.
  - His/her 'previous character ... with particular reference to the offence in question'. The applicant had previous convictions but they did not relate to the offence and dated back a number of years.
2. Consider the individual offence:
  - How serious and numerous are the images? At 175: the images were much fewer than in other cases where a shorter sentence had been imposed.
3. The circumstances and duration of the activity:
  - Images were downloaded during a 'comparatively short period' of two months.
  - Accessed a maximum of 15 times.
  - Not subscribed to, and the applicant ceased using them after tackling his dependence on alcohol.
4. Whether the images were shared/distributed/circulated:
  - The applicant had never shared/commissioned the material/had improper relations with children.

There can be no doubt that these principles would introduce consistency into sentencing in this area. However, a decision such as this can only work if it is consistently cited to judges and if counsel for the prosecution, while abiding by their responsible position that they should not call for

any particular sentence, offer guidance as to where the facts of the case of which the accused has been found guilty, or pleaded guilty, fit within that scheme.

A further difficulty, the fourth one I will touch on, is the issue of money. Those of you who have read *I Choose to Live*, the marvellous memoir of Sabine Dardenne, the girl kidnapped and held for years by a paedophile in Belgium, will know that when Marc Dutroux came to be sentenced, with the judge sat two assessors whose task it was to assess the civil damages to which she was entitled in Belgium in addition to whatever sentence the criminal judge imposed.

Other countries have had this approach to sentencing over many years. Here, the issue of compensation being paid in mitigation of a sentence has caused considerable disquiet; principally, I think, because the system, unlike in Belgium, was never set up for it. Further, it was not set up once the idea of compensation for crime became part of the judicial responsibility of a judge in sentencing. Nothing was done to integrate these two factors that in our system had been regarded as totally separate – so much so that if in the past a jury heard in a rape case that a complainant had also issued proceedings seeking compensation, her absolute entitlement as a victim of violence, the chances of a conviction were markedly lessened.

Under s.6 of the Criminal Justice Act 1993, a court may instead of or in addition to any other penalty, unless it sees any reason to the contrary, make a compensation order requiring the guilty party to pay compensation in respect of any personal injury or loss resulting from the offence of which he has been convicted.

### Compensation order

6.—(1) Subject to the provisions of this section, on conviction of any person of an offence, the court, instead of or in addition to dealing with him in any other way, may, unless it sees reason to the contrary, make (on application or otherwise) an order (in this Act referred to as a ‘*compensation order*’) requiring him to pay compensation in respect of any personal injury or loss resulting from that offence (or any other offence that is taken into consideration by the court in determining sentence) to any person (in this Act referred to as the ‘*injured party*’) who has suffered such injury or loss

(2) The compensation payable under a compensation order (including a compensation order made against a parent or guardian of the convicted person and notwithstanding, in such a case, any other statutory limitation as to amount) shall be of such amount ... as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the convicted person, the injured party or the prosecutor, and shall not exceed the amount of the damages that, in the opinion of the court, the injured party would be entitled to recover in a civil action against the convicted person in respect of the injury or loss concerned.

Why, I wonder, was the wording ‘instead of or in addition to’ [any other sentencing penalty] chosen? If the award of damages had been automatic, there would be no difficulty. It would be part of the responsibility of a judge to also assess civil compensation. By making the approach one of mitigation if money is paid, it is arguable that the legislature made a mistake. A victim of violence is entitled to civil compensation; every assault is a civil wrong, a tort, in law compensated for by damages just like a traffic or work accident. But the fact that the accused can pay, and sometimes offers to pay, on the basis suggested by this legislation, namely a reduction in sentence, adds a complicating factor because it is not standard, as in Belgium, but a matter of mitigation that can divert a judge from a proper approach to sentencing. Sometimes people go so far as to question whether by measuring a reduction in sentence by virtue of the payment of compensation the victim is being degraded. Is there any sense to this? Well, there is some guidance from the Court of Criminal Appeal on this issue. In *D.P.P. v. Mc Laughlin* [2005] 3 I.R. 198 the Court stated that no victim:

should ... be drawn into any form of proactive role in determining or negotiating the amount of any compensation which an accused person may offer with a view to mitigating his sentence. The extent of the involvement should be either to indicate a willingness to accept or refuse any sum of compensation that may be offered. Thereafter it is entirely a matter for the court to determine the appropriate sentence having regard to all the multiple considerations which must be borne in mind in this context, including any payment of compensation offered or made.

One might question whether this legislative structure has introduced an unnecessary and often inappropriate mitigating factor. The Oireachtas might consider the matter again.

Fifthly, the entitlement to suspend a sentence may be sometimes misplaced. Knowing that the general run of sentence for a particular offence of a particular gravity is a long period of imprisonment, a judge may be tempted to suspend the bulk of a sentence to reflect mitigating factors. In reality, truly difficult cases tend to be those in which this approach of suspending the large part of a long sentence in a serious case arises out of the terrible dilemmas in which judges sometimes find themselves.

Manslaughter carries no mandatory minimum sentence, unlike the life imprisonment that is automatic for murder. In murder cases, decisions over years of criminal trials that operate as precedents have established that excessive self-defence, subjective provocation and a requirement to prove intention and not just recklessness mean that only the very worst homicides can ever be called murder. But in manslaughter, the range of culpability can be from an attack akin to murder to accidental death.

A fairground operator who does not check the rust on his ride may face a judge who must sentence on the basis of culpability; a friend may kill another with a punch outside a pub while both are inebriated; or a discarded lover may mount an arson attack meaning to scare but not to harm. No one envies a judge the decisions in those cases. These are not extreme examples. Almost as challenging are cases where an object is thrown with no purpose of causing serious harm but the victim ends up with brain damage. Robbery and drug dealing, just two examples of several offences carrying a maximum sentence of life imprisonment, demand that so many factors as to participation, degrees of harm, planning and scale of seriousness be taken into account that no-one can reasonably say that sentencing is an easy issue.

Finally, I might mention that what seemed the appropriate sentence in 1993 may not be what is right in 2013: in other words, there is a current sentencing approach and the experience of a judge from practice does not always remain a sure guide. Let me give an example.

For the decade during which I practised before Neylon P., that wonderful man whom we called Tommy Neylon (but not to his face), the standard sentence for incest was three years' imprisonment.

In 1986 a particularly ghastly case of incest came before the Dublin Circuit Court. A girl had been abused by her father well into her 20s, the

abuse having started when she was barely over 10 years of age. The key point in this case was the willingness of the victim to give evidence. This was tested to the limit by the father, who abused her by threatening her with savage violence after she had gone to the Gardaí.

An application was made to revoke bail and this young lady had to get up in front of a crowded courtroom on a Friday in court 14 (now court 24), and describe the threats that she had been subjected to by her father. She did it in front of everyone, and everyone knew what had happened to her because *in camera* protection did not extend to bail hearings. After that, knowing that she would swear up, the father pleaded guilty. The sentence was three years' imprisonment. That was the going rate for such a case at that time.

Were that sentence to be imposed today it might be questioned. In fact, uproar happened only a few years later in 1993 in the Kilkenny incest case; there the sentence was seven years and the accused was released in 1998. The judiciary were at that time constrained by a maximum penalty of seven years for incest under the Punishment of Incest Act 1908. The legislature has since changed it.<sup>2</sup> Times do change, and with them attitudes.

## Supreme Court

It is only a personal view, but given the burdens involved in formulating a correct sentence, some kind of practical guidance is needed. Guidance in principle – legal guidance – is already there. The Supreme Court in *The People (D.P.P.) v. M.* [1994] 3 I.R. 306 through Denham J. pointed out that the 'nature of the crime, and the personal circumstances of the appellant, are the kernel issues to be considered and applied in accordance with the principles of sentencing'. This approach she described as 'the essence of the discretionary nature of sentencing'. Thereafter, these are the principles to be taken into account:

- the fundamental principle of proportionality; the sentence should be proportionate to the crime committed but also to the personal circumstances of the accused

<sup>2</sup> The maximum sentence was increased to 20 years' imprisonment under section 12 of the Criminal Justice Act 1993. Under section 5 of the Criminal law (Incest Proceedings) Act 1995, the maximum penalty for incest is now life imprisonment.



- the general impact on victims is a factor to be considered by the court in sentencing
- a grave offence should attract a severe sentence but attention must also be paid to individual factors such as remorse, which may in principle reduce the sentence
- in considering the sentence it is appropriate to consider the offence and the circumstances of the accused, but not in order to determine whether the accused should be incarcerated to prevent future offending.

Some may think that anyone can take these principles and come up with a fair sentence. Some may also think that they would do a better job. I wonder.

### **Public perception**

I might briefly mention that a number of criminology studies have analysed the gap between the public perception of a sentence and the reality of the task that a judge faces. In a way, the volunteers were asked to become a sentencing jury. As Groucho Marx said, 'I was married by a judge. I should have asked for a jury.' These studies fulfilled his wish.

In one such study conducted in the United States, a number of participants were chosen and given a basic outline of the facts of a case. These facts included mitigating factors and details as to the previous character of the accused. The participants were then asked to suggest a sentence. While previous researchers had found open-ended questions on the appropriate sentence for convicted offenders to result in sanctions that were overly punitive, this study found responses to be largely in line with the sentencing practice of the courts at that time.

The public surveyed largely concurred with sentencing decisions about incarceration and sentence length, with the exception of certain crimes, particularly drug offences, which those surveyed believed were dealt with too harshly, and certain white-collar crimes, which those surveyed believed were not dealt with harshly enough.

Similarly, the Sentencing Council of England and Wales has sought to gauge public attitude to sentencing for various crimes. In a recent study on public attitudes to the sentencing of drug offences, a number of participants were chosen and given a basic outline of the facts of a case. Each focus group discussion opened with a few questions about the

purposes of sentencing, and how the ‘seriousness’ of drug offences should be defined. The remainder of the discussion was devoted to consideration of six sentencing scenarios. These specified the details of six different offences, ranging from cannabis possession to large-scale importation of heroin.

Participants were then asked to suggest an appropriate penalty and to indicate the reasons behind their selection. They were asked to consider whether, how and why the penalty should change if the offence differed in some way; for example, if a different type of drug was involved, or if the offender’s role or circumstances differed. The study found that the sentences suggested by the sample group for certain low-level drug offences, having been informed of the sentencing process followed by judges, was largely in line with the sentencing practice of the courts, while the group adopted a more punitive attitude to large-scale importation and associated offences.

One scenario was consistently sentenced more leniently by participants than it would be by the courts. That case involved a single mother from Nigeria who had been recruited in her home country to bring a moderate amount of cocaine to the UK in order to pay off outstanding debts. Having been informed of these factors, very few participants in the study opted to sentence the Nigerian mother to the kind of eight- to ten-year custodial sentence that she would have been likely to receive in the courts at the time of the study.

This is not just about newspapers, since some reporting is responsible and the regular court reporters are highly respected. All I suggest is that sentencing is not at all easy – that judges are pulled in many directions, and picking out and demonstrating for public consumption the factors that justify a sentence are far from easy.

So, if sentencing is difficult, how can it be made easier? In particular, is there rhyme or reason to the sentencing approach of the Irish courts and would they be suited to improvement? Let’s look at the USA, England and Wales, and Scotland; and finally I want to tell you what we have been about in Ireland.

### **Plea bargaining and the USA**

The USA is the place to which to look if you want a structured model whereby whatever offence you plead guilty to determines the sentence precisely. Here we are grateful for the assistance of Professor Mike W.

Martin of Fordham University, but any errors that follow and any opinions are those of the authors. As with any large jurisdiction, there is much to admire and there are perhaps some aspects of their approach that might not be suitable elsewhere.

The USA has decided on a federal level that certain crimes should have mandatory minimum sentences – i.e., a court must give at least a certain number of years in certain cases. The category of cases for mandatory minimum sentencing includes drug distribution, firearms and terrorism.

- For drug cases, 21 U.S.C. § 841(b)(1)(A)–(B)) requires sentences of at least 10 years (21 U.S.C. § 841(b)(1)(A)) or 5 years (21 U.S.C. § 841(b)(1)(B)), depending on the drug quantity and substance. In addition, if the perpetrator has a previous conviction for drugs or violence, the mandatory minimum is doubled upon the prosecutor’s filing of a ‘prior felony information’ with the court.
- For firearms cases, 18 USC § 924(c): requires five-, 7- or 10-year *consecutive* sentences for possessing, brandishing or discharging, respectively, a firearm during a drug crime or crime of violence, and a 30-year *consecutive* sentence if it was a submachine gun or used a ‘silencer’. If the defendant has a previous firearm conviction under 18 USC § 924(c), then every subsequent conviction is an additional 25 years *added to the sentence*. An example:
  - If a defendant is picked up for robbing drug dealers of their drugs and drug proceeds while brandishing a weapon, and the government can prove during his trial five separate instances where the defendant committed this crime, as well as one instance where the defendant then resold a kilogram of heroin that had been stolen, then the defendant would be facing the following mandatory minimum sentence:
    - 10 years for the selling of the heroin, plus
    - seven years for the brandishing of the gun during robbery 1, plus
    - 25 years for the brandishing of the gun during robbery 2, plus
    - 25 years for the brandishing of the gun during robbery 3, plus
    - 25 years for the brandishing of the gun during robbery 4, plus
    - 25 years for the brandishing of the gun during robbery 5
    - for a total of 117 years. Remember: the Court must sentence him to no less than this term.

- Courts are allowed to go under the mandatory minimums in two instances:
  - Safety valve:
    - drug case
    - no violence
    - minimal participant
    - no prior criminal history
    - truthful and forthcoming about role in crime
  - Cooperation:
    - defendant and government enter into a cooperation agreement.

These mandatory minimum sentences certainly bring clarity but they can lead to scenarios such as this one: a 27-year-old gang member who robbed a few drug dealers and then sought to sell the drugs he stole; if he loses at trial, he will face a mandatory sentence of 40 years – 10 years for the drugs, plus five years for possessing a firearm during the first robbery, plus 25 years for possessing a firearm for the second robbery. The government has offered him a plea deal to just the first firearm charge – thus, if he takes the plea, he will have a mandatory minimum sentence of five years, while facing a guideline range of 10–12 years.

Then there is plea bargaining as to the formulation of the charge the defendant will plead to. This varies from state to state. Let us take an instance from the state of California. In 2008 Hans Reiser, a well-known software developer, was found guilty of the first-degree murder of his estranged wife, a crime that carries a sentence of 25 years to life imprisonment. Her body had not been found. Prior to sentencing, the Office of the State Attorney, having consulted the family of the victim, agreed to a deal whereby Reiser would reveal the location of his wife's body in exchange for pleading guilty to second-degree murder. The deal was made subject to the approval of the trial judge. Having revealed where he had hidden the victim's remains, Reiser received a 15-year sentence, the maximum sentence for a second-degree murder.

Another case, from the state of Utah, demonstrates the way in which the State Attorney's office can use the threat of the death penalty to secure a particular resolution to a murder charge. By pleading guilty to two counts of first-degree felony-aggravated murder, Donald Bret Richardson avoided the death penalty. As part of a plea deal, prosecutors agreed to recommend that Richardson serve life in prison without the possibility of parole. According to Richardson's defence counsel, prior to the plea

agreement the prosecutor was planning to recommend the death penalty if Richardson was found guilty at trial.

One of the criticisms of a system that has a large disparity depending on whether a plea offer is accepted or the accused takes a trial and is found guilty is that some people will later argue that they felt compelled to plead guilty to crimes they didn't commit; so opponents argue. Cases become controversial after disposal. Brian Banks, an aspiring sportsman who was convicted at the age of 17 of kidnapping and raping a school friend in the state of California, is probably the most prominent recent example. He spent five years in prison having pleaded 'no contest' to the charges following a plea agreement that yielded a sentence of five years' imprisonment followed by five years' probation.

Following his release, the alleged victim of the rape admitted she had fabricated the story, and Banks was subsequently exonerated in 2012. His attorneys had advised him that if he did not accept the plea bargain and the case went to trial, he could be sentenced to life imprisonment on the prosecutor's recommendation – a possible 41 years.

What happens if an accused person decides not to accept a plea bargain? Consider what recently happened in the state of Florida; we have these details from the *New York Times*. Shane Guthrie was accused of beating his girlfriend and threatening her with a knife. He was initially charged with aggravated battery on a pregnant woman and false imprisonment. The prosecutor offered him a deal of two years in prison plus probation. Guthrie rejected that, and also rejected a later offer of five years, because he believed that he was not guilty, according to his lawyer.

The prosecutor's response was severe. He filed a more serious charge of first-degree felony kidnapping, based on the girlfriend's accusation that he pulled her by the arm inside her home and then grabbed her hair and pulled her the distance of several parking spaces. Because of a state law that increased punishments for people who had recently been in prison, like Mr Guthrie, this charge could mean mandatory life imprisonment if Guthrie is convicted. This case is ongoing and obviously we have no view as to the innocence or otherwise of Mr Guthrie. It is the principle that counts.

On a federal level, sentencing is sophisticated and structured. Curiously, they have moved away from sentencing guidelines being mandatory. Instead these are merely advisory. The court must still determine the sentencing guideline range.

- Preliminary point:
  - The guidelines are no longer mandatory. *See United States v. Booker*, 543 U.S. 220 (2005) (6th Amendment of the US Constitution (right to trial by jury)) precludes a judge from making the factual findings required under the sentencing guidelines that increase the sentence beyond that supported by a plea or jury verdict; must be admitted by the defendant or proved to a jury beyond a reasonable doubt.
- How to determine the guideline range:
  - Calculate offense level.
  - Calculate criminal history.
  - Retrieve range from the chart.
- ‘Departures’ from the guidelines:
  - After determining the guideline range, the court must determine whether the guidelines themselves allow for departures from the guideline range.
- When the guidelines were mandatory (*pre-Booker*), the only way to get below the guidelines was to be eligible for one of the departures explicitly permitted under the guidelines. Two examples of such departures – and there are only a handful – are cooperation and diminished capacity.

According to *Booker*, after determining the guideline range and any applicable guideline ‘departures’, the court must determine if there are any circumstances pursuant to 18 U.S.C. § 3553(a) that would justify a ‘non-guideline’ sentence.

- 18 U.S.C. § 3553(a) states:  
The court shall impose a sentence sufficient, but not greater than necessary . . . . The court, in determining the particular sentence to be imposed, shall consider—
  - (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
  - (2) the need for the sentence imposed—
    - (A) to reflect the seriousness of the offense ...;
    - (B) to afford adequate deterrence ...;
    - (C) to protect the public from further crimes ...; and
    - (D) to provide defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for—
  - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines— (i) issued by the Sentencing Commission . . . ; and (ii) that . . . are in effect on the date the defendant is sentenced; or
  - (B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission ...;
- (5) any pertinent policy statement—
  - (A) issued by the Sentencing Commission ...; and
  - (B) ... is in effect on the date the defendant is sentenced.
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

Prior to *Booker*, Courts were forbidden to look at the factors set forth in 18 U.S.C. § 3553(a), and were limited to guidelines ‘departures’ if they wanted to give a sentence below the guideline range. Post-*Booker*, guideline departures are far less significant, because a court may consider a wide variety of issues under 18 U.S.C. § 3553(a)(1) (‘the nature and circumstances of the offense and the history and characteristics of the defendant’) in order to give a ‘non-guideline’ sentence. Indeed, in *Gall v. United States*, 552 U.S. 38 (2007), the Supreme Court held that ‘extraordinary’ circumstances are *not* required for non-guideline sentences. The appellate standard of review of District Court sentences is abuse of discretion, regardless of whether that sentence is inside or outside the guidelines range.

Thus, the sentencing guidelines are not mandatory, and in fact now act only as guidelines for what the sentence should be. During one recent US Supreme Court oral argument, Justice Alito noted that the judges in the Eastern District of New York (Brooklyn, Queens and Long Island) were sentencing only 30% of the defendants before them to guideline sentences. So guidelines are now being departed from in the United States regularly. Mandatory minimums and plea-bargaining issues remain. Some people here in Ireland see guidelines as the way forward. Let’s look at the approach of two jurisdictions close to here.

## **England and Wales**

Many of you attended the lecture given in February by Lord Justice Colman Treacy of the Court of Appeal of England and Wales, in which he outlined the approach of the Sentencing Council of England and Wales, which was established in 2010. Briefly, the Sentencing Council is responsible for the promotion of ‘a clear, fair and consistent approach to sentencing’ through the creation of sentencing guidelines. It also produces analysis and research on sentencing, and works to improve public confidence in sentencing.

This is an organisation with an annual budget approaching £2 million and 16 permanent civil servants. Lord Justice Treacy explained that before a guideline is set, huge volumes of data are collated from sentencing judges, interested groups such as victims and the general public. They also conduct interviews with focus groups to determine what factors, in their view, make a crime more serious or less serious. Judges are invited to ‘road test’ proposed guidelines during the consultation process, prior to the completion of the definitive guideline. Lord Justice Treacy has made it clear that sentencing guidelines are responsive, and are not shackling judicial discretion. Speaking on sentencing guidelines at the annual lecture of the Irish Penal Reform Trust last September, he said:

In all of these guidelines, the Council has returned to first principles of sentencing and opted to focus attention on the two determinates of seriousness as defined in statute by the Criminal Justice Act 2003, namely harm and culpability ... Of course we are not wedded to an exact and limiting structure – some guidelines will require slightly different structures, but the principles will remain the same which is important in encouraging a consistent approach.

For every sentence that a judge passes, there must be regard to the relevant sentencing guideline. An extract from the burglary sentencing guideline is shown in Figure 1.

For every sentence passed in the Crown Courts, the judge must complete a form (Figure 2). The form identifies the principal offence for which the sentence is being passed; what category it falls into in the relevant guideline; the aggravating and mitigating factors; the number of relevant previous convictions the offender had; the stage at which a guilty



**Figure 1.** Domestic burglary guideline

STEP ONE Determining the offence category	
The court should determine the offence category using the table below.	
Category 1	Greater harm <b>and</b> higher culpability
Category 2	Greater harm <b>and</b> lower culpability <b>or</b> lesser harm <b>and</b> higher culpability
Category 3	Lesser harm <b>and</b> lower culpability
The court should determine culpability and harm caused or intended, by reference <b>only</b> to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.	
<b>Factors indicating greater harm</b>	<b>Factors indicating higher culpability</b>
Theft of/damage to property causing a significant degree of loss to the victim (whether economic, sentimental or personal value)	Victim or premises deliberately targeted (for example, due to vulnerability or hostility based on disability, race, sexual orientation)
Soiling, ransacking or vandalism of property	A significant degree of planning or organisation
Occupier at home (or returns home) while offender present	Knife or other weapon carried (where not charged separately)
Trauma to the victim, beyond the normal inevitable consequence of intrusion and theft	Equipped for burglary (for example, implements carried and/or use of vehicle)
Violence used or threatened against victim	Member of a group or gang
Context of general public disorder	<b>Factors indicating lower culpability</b>
<b>Factors indicating lesser harm</b>	Offence committed on impulse, with limited intrusion into property
Nothing stolen or only property of very low value to the victim (whether economic, sentimental or personal)	Offender exploited by others
Limited damage or disturbance to property	Mental disorder or learning disability, where linked to the commission of the offence

Source:

[http://sentencingcouncil.judiciary.gov.uk/docs/Burglary\\_Definitive\\_Guideline\\_web\\_final.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Burglary_Definitive_Guideline_web_final.pdf)

plea was entered; and what percentage reduction was allowed for that plea. These forms are collected and collated on a monthly basis. They enable the Sentencing Council to measure departures from its guidelines.

I actually wonder if this is not just slightly too much of a straitjacket? I also wonder about the constitutional position. Sentencing is entrusted to the judiciary. How can it meet the requirement of justice when one of the most important functions of criminal justice is entrusted to a panel – of whom, exactly, and chosen by which method on the basis of what criteria?

Looking back, it seemed to me that the most easily imported era for sentencing guidelines in that jurisdiction occurred when these were first being set by the Court of Criminal Appeal of England and Wales, a practice that commenced in 1975. In those days, a decision was taken that the Court of Appeal should hear several appeals against sentence

**Figure 2.** Crown Courts sentencing form, England and Wales

Part B: To be completed by the sentencing Judge/Recorder for the **PRINCIPAL OFFENCE ONLY** SEE NOTES OVERLEAF

**1. Type of offence** (FOR AMAGCHS, SEE NOTES OVERLEAF)  
 Single offence  
 Multiple offences - ANSWER FOR THE **PRINCIPAL OFFENCE ONLY**  
 Aggravated Burglary  
 Domestic Burglary  
 Non-domestic Burglary  
 Other (specify in box below)

**2. Sentence outcome** (for the **PRINCIPAL OFFENCE ONLY**)  
 SEE NOTES OVERLEAF, TICK ALL THAT APPLY

(a) Custodial Sentence  
 Determinate Length  Indefinite Period   
 Extended Custodial Term  Indefinite Period   
 Life Minimum Term   
 Hospital Order

(b) Suspended Sentence Order or Community Order  
 SSO Length  Suggestion Period   
 Community Order Length

Requirements of Suspended Sentence Order or Community Order  
 TICK ALL ADULT REQUIREMENTS GIVEN OR NEAREST PRO EQUIVALENT

Supervision Length   
 Unpaid work Length   
 Curfew Period   
 Activity Days to complete

Prohibited activity  Mental health treatment  
 Exclusion  Drug rehabilitation  
 Residence  Alcohol treatment  
 Foreign travel prohibition  Alcohol abstinence and monitoring (see schemes)  
 Attendance centre  
 Programme(s) (specify in box below)

(c) Other outcome  
 Fine Amount £   
 Conditional discharge  
 Absolute discharge

**3. Definitive guideline - Step 1**

(a) Factors indicating greater harm  
 Theft/damage to property causing significant degree of loss  
 Sealing/smacking/vandalism of property  
 Victim on/return to premises while offender present  
 Significant physical/psychological injury or trauma  
 Violence used/ threatened particularly involving a weapon  
 Content of general public disorder

(b) Factors indicating lesser harm  
 No physical/psychological injury or trauma  
 No violence used/threatened and a weapon not produced  
 Nothing stolen or of very low value  
 Limited damage/disturbance to property

(c) Factors indicating higher culpability  
 Deliberately targeted  
 Significant degree of planning  
 Equipped for burglary  
 Weapon present on entry or carried  
 Member of group or gang

(d) Factors indicating lower culpability  
 Offender exploited by others  
 Offence committed on impulse and without premeditation  
 Mental disorder/learning disability which led to the commission of the offence

**4. Offence seriousness** (SEE NOTES OVERLEAF, INCLUDING GUIDANCE ON OFFENCES THAT CAN BE ENTERED IN TWO CATEGORIES)  
 Category 1  Category 2  Category 3  No guideline  
 Must answer  Must answer  Must answer

**5. Definitive guideline - Step 2**

(a) Factors reducing seriousness  
 Previous relevant convictions:  1-3  4-9  10+  
 Offence committed on bail  
 Other aggravating factors include  
 Child at home/returns  
 Committed at night  
 Abuse of power/trust  
 Gratification degradation  
 Steps taken to prevent reporting/assisting prosecution  
 Victim compelled to leave home (domestic violence in particular)  
 Established evidence of community impact  
 Offender was under the influence of alcohol/drugs  
 Failure to comply with current court orders  
 On licence  
 TKS  
 Other factors (specify in box below)

(b) Factors reducing seriousness or reflecting personal mitigation  
 Subordinate role in group or gang  
 Injuries caused recklessly  
 Nothing stolen or of very low value  
 Made voluntary repayment  
 No previous relevant convictions  
 Remorse  
 Good character/exemplary conduct  
 Determination/demonstration to address addiction/behaviour  
 Serious medical conditions  
 Age/lack of maturity affecting responsibility  
 Lapse of time not fault of offender  
 Mental disorder/learning disability where not linked to the commission of the offence  
 Sole/primary carer for dependent relatives  
 Other factors (specify in box below)

**6. Indication of guilty/guilty plea** (SEE NOTES OVERLEAF)  
 Was guilty indicated at police station?  
 Yes  No  Don't know  
 Was a guilty plea entered for the principal offence?  
 Yes  No  
 Where was guilty plea entered?  
 At Magistrates' court  After PCMH/prior to day of trial  
 At early guilty plea hearing  At/after day of trial  
 Prior to PCMH  At PCMH  
 Was the guilty plea entered at the first reasonable opportunity?  
 Yes  No  
 Approximately what guilty plea discount was given? %

**7. Additional factors**  
 Were any of the following other factors present or stated to have influenced the sentence imposed?  
 DO NOT INCLUDE ANYTHING THAT IS COVERED ELSEWHERE ON THIS FORM  
 Fatality principle  Compensation Order  
 Concurrent sentence  Confiscation Order  
 Concurrent sentence  Costs  
 Multiple defendants  Serving another sentence  
 Ancillary Order  
 Other factors that you stated and are relevant to the sentencing decision, for example, S.118 Return to Custody (specify in box below)

RECORD COMPENSATION, CONFISCATION & COSTS IN SECTION 7

Source:

[http://sentencingcouncil.judiciary.gov.uk/docs/Burglary\\_Offences\\_-\\_December\\_2012.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Burglary_Offences_-_December_2012.pdf)

together. The judges considered the various circumstances and set down very broad, but transparent, guidelines as to how they considered sentences ought to be approached.

This was well before the formality of the Sentencing Council had ever been thought of. The Sentencing Guidelines Council, the predecessor to the current Sentencing Council of England and Wales, was formed in 2003. Between 2003 and 2010 the courts were required to 'have regard' to relevant guidelines. Since the establishment of the Sentencing Council in 2010, the courts in that jurisdiction 'must follow' guidelines of that body, unless it is in the interests of justice not to do so. Before 2003, guideline-type judgments by the Court of Appeal were intended to be guidelines only, and judges were not obliged to follow them.

Let's look at one of the early examples now. In *R v. Billam* (1986) 8 Cr. App. R. (S) 48, the Lord Chief Justice provided quite detailed guidelines on sentencing those convicted of rape. Having considered the starting point for rape sentences in contested cases, the court addressed aggravating factors that should be considered in such cases:

The crime should in any event be treated as aggravated by any of the following factors: (1) violence is used over and above the force necessary to commit the rape; (2) a weapon is used to frighten or wound the victim; (3) the rape is repeated; (4) the rape has been carefully planned; (5) the defendant has previous convictions for rape or other serious offences of a violent or sexual kind; (6) the victim is subjected to further sexual indignities or perversions; (7) the victim is either very old or very young; (8) the effect upon the victim, whether physical or mental, is of special seriousness. Where any one or more of these aggravating features are present, the sentence should be substantially higher than the figure suggested as the starting point.

A later example of how well this can work is *R v. Afonso and ors* [2005] 1 Cr. App. R. 99. In that case, the Court of Appeal heard three appeals against sentence together in order to take the opportunity to give guidance in relation to the sentencing of a particular group of offenders, namely low-level suppliers of Class A drugs. The defendants were unemployed drug addicts. They had sold the drugs to undercover police officers but did not hold a stock of drugs. The Court of Appeal felt that the level of sentence that it would usually impose in a case involving sale of Class A drugs would be disproportionate in the circumstances. After an analysis, this is the kind of guidance that was offered to sentencing judges:

There will be some such adult and young offenders for whom a drug treatment and testing order will be appropriate in the circumstances indicated in Attorney General's Reference No.64 of 2003 ... Where such an order is not appropriate, generally speaking, adult offenders in the category we have identified, if it is their first drugs supply offence, should, following a trial, be short-term prisoners, and, following a plea of guilty at the first reasonable opportunity, should be sentenced to a term of the order of two to two-and-a-half years' imprisonment. For young offenders, the custodial term is likely to be less.

## Scotland

Sheriff Tom Welsh QC has as usual been most generous with assistance on Scottish law. As with the USA, any errors and opinions are our own. Sentencing guidelines were unknown in Scotland and until the year 2000 were rarely discussed. They are now brought in as a matter of law through the Criminal Justice and Licensing (Sentencing) Act 2010. As I understand the current position, the implementation of the legislation through the Scottish government is stalled. A major issue is cost, with start-up expenditure estimated at £900,000 or more, and an annual cost of £400,000 that is thought by many to be unrealistic.

The Act follows a familiar pattern of setting up a council of 11 people, judges in the minority, which collates information and issues guidance. The Criminal Procedure (Scotland) Act 1995, which is a code in all but name, was amended in 2003 to allow the Appeal Court to issue sentencing guidelines. It has done so on occasion. One case about child pornography offers general parameters, but in the absence of an actual information-gathering body for Scotland, it relies very heavily on the equivalent approach for England and Wales; *Her Majesty's Advocate v. Graham* [2010] HCJAC 50, May 27th, 2010.

### **Her Majesty's Advocate v. Graham [2010] HCJAC 50**

'This appeal demonstrates how too rigid an adherence to guidelines can distort the sentencing exercise and produce an unjust result. If one looked no further than the Definitive Guideline (of the Sentencing Council of England and Wales), a sentence in the range of two to five years' imprisonment would seem appropriate. The sentence must, however, reflect the culpability of the respondent ... I consider that a cumulo sentence of seven years' imprisonment should be the starting point on the charges with which we are concerned.'

Another closely reasoned decision relates to the cultivation of cannabis plants and again bases its reasoning largely on the same source; *Her Majesty's Advocate v. Zhi Pen Lin* [2007] HCJAC 62, November 2nd, 2007. Reading these impressive decisions, it is clear what has been clear to humanity since the construction industry began: you can't make bricks without straw. And in Scotland in the absence of expenditure on the nuts

and bolts of gathering information, there has been a need to refer to the information gathered in the neighbouring jurisdiction.

## **Ireland**

The gathering of information is crucial to any exercise in rationalising sentencing into patterns. This takes time, expertise, personnel and money. That is clear from the Scottish situation, the early efforts in England and Wales and the current approach of that jurisdiction through the work of the Sentencing Council. It is equally clear in respect of any progress in this country towards the coordination of sentencing. In the meantime, it behoves the judiciary to do the best that they can to serve the country.

The work of Judge David Riordan was pioneering in this respect. As early as 2005 Judge Riordan, then a judge of the District Court, surveyed the typical penalties attached to a number of continually recurring charges in the District Court. The survey, conducted by Judge Riordan with Ms Andrea Ryan, was not based on actual outcomes in decided cases but on a survey of likely penalties that would be imposed by his colleagues.

The survey examined situations in which the Probation of Offenders Act would be applied, and when a custodial sentence might be considered appropriate. It also gauged the severity of the penalty on a first, second or third conviction for a similar offence. Judge Riordan's subsequent completion of his doctorate on the use of Community Service Orders and the suspended sentences in 2009 was an outstanding contribution to the area of sentencing in Ireland.

In recent years it has become clear that additional research is needed in this area. Early last year the Chief Justice asked me to take on the role of supervising the Judicial Researchers' Office.

This, as the name implies, is the body that engages in research on behalf of the judiciary, but it consisted of only two people at the time, for 148 judges. The Chief Justice and the President of the High Court set about bringing the office up to strength. There are now six people with serious ability in legal research.

One of the priorities of the Chief Justice was the gathering of information as to sentencing in serious cases, and that task was taken up by the researchers. The Chief Justice was aware that the review of rape sentencing in the Central Criminal Court decision of *The People (D.P.P.) v. W.D.* had been a collaborative effort between me and Aoife Marie

Farrelly, who then worked for the Judicial Researchers' Office. That is stated in the judgment. The draft of that judgment was also critiqued in a most positive way as to the relevant patterns of sentencing in rape by O'Higgins J., my senior colleague on the High Court and now a judge of the General Court of the European Union, who also supplied additional transcripts central to the decision.

In that decision, with the help of Ms Farrelly, dozens of rape sentences were examined and classified towards showing the circumstances that might guide a mild response, an ordinary response, an exceptional response and, finally, a sentence tending towards life imprisonment.

The Chief Justice was interested as to whether a similar exercise could be conducted to bring that decision up to date and what could be done to explore the patterns that precedent had laid down for other types of crime. Other judges, Sheehan J. in particular, had started giving written sentencing decisions.

The Chief Justice was also intent that the Irish Sentencing Information System (ISIS) should be revived, but funding was needed for that. While we had the researchers, work could begin straight away on this new project. The practice of guardedly gathering information from diverse sources had been approved by the Court of Criminal Appeal in *The People (D.P.P.) v. Adam Keane* [2008] 3 I.R. 177, with caution. This is what Murray C.J. said:

Nonetheless, with that qualification in mind, [cases in the media] did provide some useful indicators for the purpose of the broad exercise involved in that case. The judgment did not purport to set standard sentences or tariffs but is a valuable reference point in ascertaining the wide variety of factors ... which can influence sentencing in rape cases.

In this work, the President of the High Court, Kearns P., has been very supportive and encouraging, as have the President of the Circuit Court and the President of the District Court.

As a result of decisions taken at this level, we have been in a much stronger position to gather information in 2012 and 2013. Until recently, decisions relied on the availability of court transcripts and newspaper reports, or a detailed survey in the case of the pioneering study by Judge Riordan. Some limited information was also available on ISIS.

For the past two years, the majority of courts have been equipped with a digital audio recording system that allows judges and researchers to

listen to sentencing hearings. This tool is now being used. It enables the researchers to hear the arguments made on each side and to listen to the reasoning of the judge in giving sentence. This is slow and painstaking work.

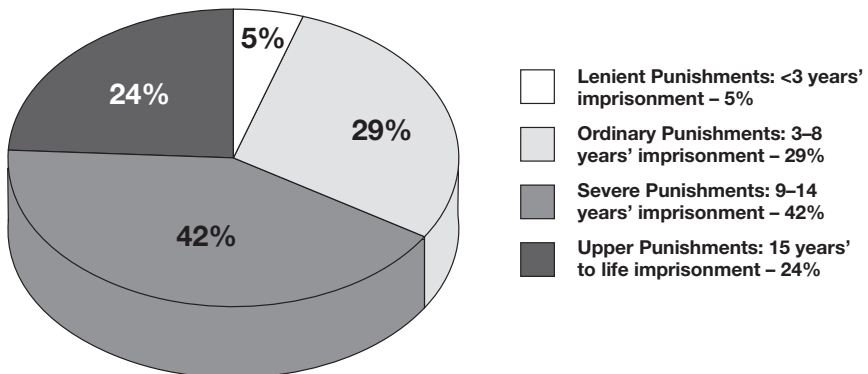
In addition, at the National Judicial Conference in November, the Chief Justice inaugurated the judges' intranet. This is a private information service containing years of research, and a section of it is specifically designed to retain sentencing analysis information. Only the judges and the senior researcher and her deputy can access it, for data protection reasons. A number of sentencing studies have been conducted by the Judicial Researchers' Office since the launch of the intranet:

- rape
- manslaughter
- robbery and tiger kidnapping
- sexual assault
- child pornography.

The Judicial Researchers' Office completed the first study into rape sentencing in November 2012 and made it available on the judges' intranet. Figure 3 shows the total sample and the results.

As you can see, lenient punishments for rape are very rare indeed. There are no cases in the current analysis where the accused 'walked

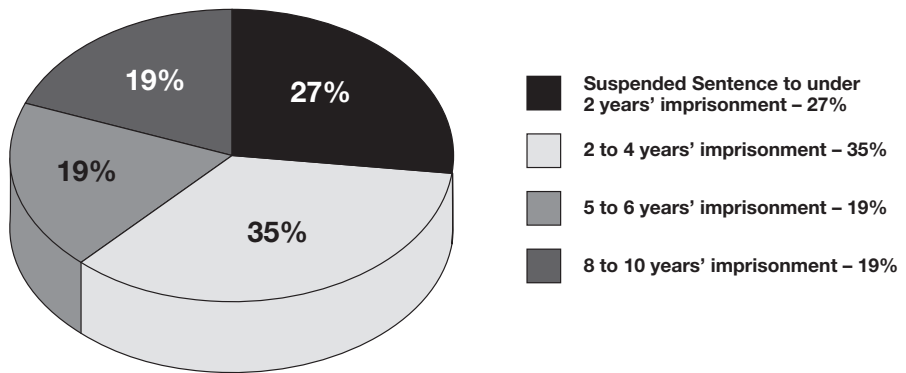
**Figure 3.** Rape sentencing



free'. There is a norm of a sentence of around five to six years' imprisonment for those who plead guilty at an early opportunity, thus admitting their wrong and not contesting what is a more than difficult event to speak about for a victim. Lesser sentences are accounted for by exceptional factors. More condign responses are accounted for by exceptional violence or sadistic humiliation, or by a victim being subjected to multiple assailants.

Figure 4 represents graphically the results of the robbery sentencing analysis of the Circuit Court.

**Figure 4.** Robbery sentencing



Studies now being conducted are attempting an analysis of:

- section 15A Misuse of Drugs Act 1977 cases where the high value of the drugs requires a presumptive mandatory minimum sentence of 10 years
- drug sentencing generally
- dangerous driving.

In an address in 2012 to the Irish Penal Reform Trust, the Minister for Justice, Alan Shatter, mentioned that one of the key examples of mandatory sentencing we have in Ireland, namely sentences imposed on those convicted under s.15A of the Misuse of Drugs Act 1977 (as amended), did not appear to be working.



15A.—(1) A person shall be guilty of an offence under this section where—

- (a) the person has in his possession, whether lawfully or not, one or more controlled drugs for the purpose of selling or otherwise supplying the drug or drugs to another in contravention of regulations under section 5 of this Act, and
- (b) at any time while the drug or drugs are in the person's possession the market value of the controlled drug or the aggregate of the market values of the controlled drugs, as the case may be, amounts to €13,000 or more.

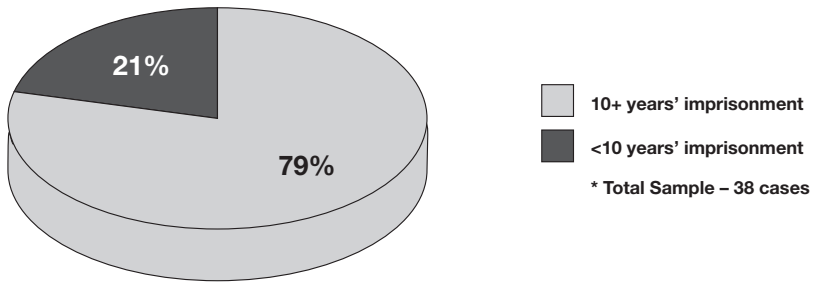
S.27 of the Misuse of Drugs Act introduced a minimum sentence of 10 years for those convicted under s.15A of possessing drugs for sale or supply where the value exceeds €13,000. According to s.27, a person convicted of the offence must receive a sentence of 10 years unless there are 'exceptional and specific circumstances' that make it unjust to impose that sentence.

s.27 (3C) Where a person (other than a person under the age of 18 years) is convicted of an offence under section 15A or 15B of this Act, the court shall, in imposing sentence, specify a term of not less than 10 years as the minimum term of imprisonment to be served by the person.

A draft of our drug sentencing report, currently in preparation, indicates that just under 21% of those sentenced in relation to offences under s.15A in the period 2010–2012 actually received a sentence of 10 or more years' imprisonment (Figure 5).

The Judicial Researchers' Office has made a ground-breaking start in rationalising sentencing policy. This exercise is not its only work, however, and we are close to having made as much progress as we can for this legal year. By seeking out and analysing information, sentencing policy can be improved: in other words, finding out what it is or is not is the foundation of where the courts might go on this issue.

Perhaps, as well, it is essential to pursue that exercise for the most important offences that come up before the courts again and again. The

**Figure 5.** S.15A sentencing in the Court of Criminal Appeal 2010–2012

advantage of that kind of approach is that it lays out what other judges have done without being judgemental about it, and preserves independence since it can be taken or left. It is not rigid, like a sentencing guideline is supposed to be, but is not like making it up as you go along – the accusation often thrown at the judiciary. Above all, the judges' intranet project has lessened the problems that arise from isolation and lack of information.

Sentencing in the most commonly occurring and serious offences has now become precedent- and information-based. The work takes a lot of time. By reviving the ISIS project, the Chief Justice has ensured that this work can be taken up and can be used as a foundation for the gathering of information.

In order for these projects to inform sentencing, an argument can be made that they must be available to practitioners on the worldwide web. Data protection issues have arisen, however. We cannot use names publicly on the internet of cases we have stored – even of reported cases, even of cases not heard *in camera* – though identification on the judges' intranet is acceptable. A lot of work is needed before any of these studies can be made available to the public on ISIS.

So far, we have the rape, manslaughter and robbery including tiger kidnapping studies prepared, and two of these have been released by the ISIS committee. All of this is run by the judges, but has been helped by the Courts Service, which has backed this project in a most efficient way with administrative computer assistance. Nuala McLoughlin and Ger Coughlan deserve our thanks for that.

Two questions: do we now have guidelines, and are there problems shown up by the study? Again, I'll attempt to answer the second question first.

## The problem

Two of the issues that I identified earlier in this lecture are causing problems in sentencing in child pornography and in sexual assault. In child pornography, the absence of citation by practitioners before District Court and Circuit Court judges of the decision in *The People (D.P.P.) v. Carl Loving* has not assisted the sentencing process in these most difficult cases. That should change. It is a matter for practitioners, particularly the prosecution, but judges have a role too.

I note that Carney J. demanded in a recent hearing that all relevant precedents be opened. He is right to insist on that. Furthermore, Carney J. and other judges in this area now have the benefit of the sentencing studies on the judges' intranet. That is a change very much for the better, one would hope. There have been issues in the past, where judges have not had relevant decisions cited to them. Here are two extracts from child pornography analysis. Firstly, here are the facts that attracted a suspended sentence in one court:

- downloaded 13,845 images of children
- children aged between one and six
- over a three-year period
- according to a Garda, the worst content he had ever seen
- judge questioned the value of a custodial sentence.

Now, here are the facts of the case that attracted a one-year sentence:

- downloaded 22 child pornography files for personal use only
- over three weeks
- children aged between six and 12 and engaged in full sex with adults
- assessed as posing a low risk of reoffending.

This absence of pattern is capable of simple correction. The approach of Carney J. of requiring precedent to be cited and the availability to all judges at all times of the child pornography study on the judges' intranet will offer assistance that, as I will shortly demonstrate, is shown to move sentencing in that direction.

Having been closely involved in the analysis by the Judicial Researchers' Office of sentences handed down for sexual assault, I have been concerned by another of the factors mentioned earlier, i.e. money.

Either compensation might reasonably be left out altogether from criminal cases and put into the realm of a simple civil claim for which the Circuit Court would have jurisdiction, or compensation should be an automatic part of a sentence.

As previously mentioned, compensation is tied in by legislation as a mitigating factor in sentencing. The sexual assault study questions very seriously how this can be wise. If money can be raised by the accused the legislation says that it can be a mitigating factor, but if it cannot be raised because the accused and his family are poor, where reasonably does justice stand? Money has had a definite tendency to yield inconsistent results in sexual assault sentencing.

People will have strong views on this issue, particularly those who are advocates on behalf of victims' groups. While I respect those views, I am unable to do anything other than point up the problem and to indicate that encapsulating it in the legislation referred to is an issue for others. Surely there are better models?

### **Sentencing guidelines**

The Judicial Researchers' Office has not formulated sentencing guidelines through these studies, and nor will it. The ISIS project will continue this work over the next year or so and will build on what we have done. The rape sentencing study clearly demonstrates that a consistent sentencing pattern has emerged in rape sentencing and has been closely followed in the five years since the collation of information and its classification in the *WD*. decision. It is not expecting too much to imagine that as other studies are done and become publicly available, we will have the same result.

Some people argue that the Supreme Court decision in *The People (D.P.P.) v. Tiernan* [1988] I.R. 250 forbids the Court of Criminal Appeal from laying down sentencing guidelines. That is not so. The decision of the Court of Criminal Appeal in the *Adam Keane* case approves the collation and classification of sentencing information by judicial decision. That is the very exercise that we have been engaged in through 2012–2013, and more of these studies will in due course be released publicly by the ISIS committee. Meanwhile, the completed studies are a current guide to Irish sentencing practice through the judges' intranet.

There may be further developments by way of judicial decision on sentencing. Now that much information has been gathered, the first steps

have been taken that will enable guidance at Court of Criminal Appeal level.

I feel compelled to make the point that such information as is released publicly deserves to be treated with the deference that is due to hard work. Neither the Judicial Researchers' Office nor the ISIS committee is looking for empty respect. The ISIS website has the task designated by the Chief Justice of informing the public and will not be diverted from that aim. Over time the ISIS website will enable a structured approach by practitioners in referencing relevant precedents. The addition of a regular sentencing bulletin by Tom O'Malley to the website will alert practitioners to recent developments in sentencing.

On the release of the rape sentencing analysis on ISIS, it was notable that some newspapers, such as the *Sunday Times*, gave a concise summary of what has been demonstrated over the years since the *W.D.* decision, which is that rape sentencing is both tough and consistent. It was also notable that on the release of another sentencing analysis, the response of others did not appear to meet the standard of informing the public on a matter of public importance, which sentencing undoubtedly is. Here, might one be tempted towards perhaps unreasonable thoughts?

In the 1946 play by Terence Rattigan *The Winslow Boy*, the boy of the title is wrongly thrown out of naval cadet school for stealing. It is based on an actual case brought by Edward Carson QC prior to the First World War. The boy is defended publicly by his father Arthur Winslow who, when he gets nowhere with the Royal Navy authorities, takes the extreme step of bringing judicial review proceedings. Naturally there is public interest and newspaper interest, in particular, with which Arthur Winslow cannot cope. When the press descend, the boy's father asks his barrister what he ought to say to them. The reply of the barrister is a coolly dismissive: 'I hardly think it matters. Whatever you say will have little bearing on what they write.'

We as a nation are entitled to demand the best from our judges. From our perspective, self-analysis carries a higher chance of improvement than being informed by mere opinion. That self-analysis is substantially under way. From the perspective of an ordinary judge, the right attitude is to do one's best to gather the materials and do the studies that will make sentencing in serious crime more predictable and more consistent.

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## **Probation Practice at the End of the Troubles: Reflections from a Distance**

**Brian Stout\***

**Summary:** This paper reflects on the author's experience as a Probation Officer with the Probation Board for Northern Ireland in the 1990s, before and after the ceasefires and Good Friday Agreement, with reference to his varied experiences since then as a social work and criminal justice academic in South Africa, England and, now, Australia. It argues that although the practice setting was atypical and quite distinct from the lived experience of current students and practitioners in other places, observations from practising probation work in a civil conflict context have a lot to contribute to the learning of current students, practitioners and organisations. The paper considers the themes of restorative justice and desistance as well as occupational culture and community links. It suggests that reflections on practice in Northern Ireland might make a wider contribution to debates about the nature of probation practice and work with offenders.

**Keywords:** Northern Ireland, probation, offenders, supervision, probation practice, occupational culture, integration, desistance, social work, restorative justice, community, edgework.

### **Introduction**

Probation practice in Northern Ireland during the Troubles had distinctive characteristics in an unusual context, and this paper reflects on whether there are insights to be gained from that experience that could have wider application. Social work academics in Australia, where I now work, teaching on accredited social work programmes, are required by the accrediting body, the Australian Association of Social Workers (AASW), to have a social work qualification and 'experience in a range of practice

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areas' (AASW, 2012, p. 3). I meet the requirement by way of my MSW from Queen's University, Belfast and my practice as a Probation Officer in the Armagh/South Down team of Probation Board for Northern Ireland (PBNI) from 1995 to 2000. As I work with my students, some of whom will work in criminal justice with adults or young people, I reflect on how my particular experience informs my understanding of social work and my teaching.

I worked with offenders in the community in Armagh and Down immediately before and after the 1998 ceasefires and with young people in Portadown and Newry during the time of the Drumcree riots. What relevance does that experience have to contemporary Australian practice? The same question could have been asked about my work in South Africa from 2000 to 2003 and in England from 2003 to 2012. This paper will discuss the wider relevance of probation practice in Northern Ireland in the 1990s to social work and probation practice beyond that time and place. It will focus firstly on PBNI's introduction of restorative justice with offenders and then on the distinct occupational culture that developed at that time.

### **Restorative justice and desistance: Supervising offenders in the community**

Restorative justice is now so established throughout the world (Sullivan and Tiftt, 2007) and so strongly associated with transitional justice, particularly in Northern Ireland and South Africa (Clamp and Doak, 2012; McEvoy and Eriksson, 2007; O'Mahony *et al.*, 2012), that it is worth recalling that in the 1990s it was considered new and innovative and was mainly associated with indigenous, aboriginal communities (McCold, 2007).

The story of restorative justice in Northern Ireland is well known and has been researched and recorded (see, for example, Campbell *et al.*, 2005; O'Mahony and Doak, 2004, 2011), but in the focus on the Youth Justice Agency, the Police Service for Northern Ireland (PSNI), the Community Justice groups and even subconscious memories of Brehon law (Fulton, 2008), it is seldom noted that a primary initiative to import restorative justice to Northern Ireland was led by PBNI and was instigated before the Criminal Justice Review in 2000.

In the 1990s, PBNI, which at that time was responsible for supervising young offenders in the community, invited New Zealand practitioners to



train probation staff in restorative justice. This particular restorative justice model was an intervention that gave a central role to the police, and it was adapted for probation purposes and incorporated into the Watershed programme for high-risk (i.e. serious and/or persistent) young offenders as a post-sentence intervention and an integral part of a probation order. Early restorative justice conferences in Northern Ireland were organised by PBNI and targeted at high-risk offenders and building links to the community. They were fully integrated into formal criminal justice processes and created an expectation that restorative justice could be made available to all young offenders.

My own experience of organising these conferences, including for a very serious property offender dealt with by the Crown Court and a persistent offender who had most recently assaulted and robbed an elderly woman, suggested that restorative justice was a powerful intervention with even the most serious offenders and that conferences provided greater satisfaction to victims than traditional court processes. However, the conference and the action plan were not sufficient on their own to deal with all the offender's needs, and nor were they expected to be; conferences were important, but the desistance process did not stop and start with a restorative conference. The fact that restorative principles informed all aspects of youth justice work was more important than the actual process of the conference.

These first experiences of restorative justice shaped the development of restorative practices in Northern Ireland and continue to influence the criminal justice system. The Northern Ireland Youth Conferencing Service was instituted as part of the new Youth Justice Agency in 2003 and had very strong roots in PBNI. Practitioners and managers were recruited from PBNI, and the PBNI experience of delivering restorative justice significantly informed the work of this new agency. This form of restorative justice is integrated in the community, linked to the wider criminal justice system and targeted not just at first time offenders but at some serious and persistent offenders too (Campbell *et al.*, 2005, found that over 20% of young people undergoing conferences in Northern Ireland had three or more previous convictions).

Restorative justice is now widely used throughout the world but its conceptual simplicity and popularity mean there is a risk of it being adopted as a technique with little consideration of underlying values (see Braithwaite, 2003, for a discussion of the underlying social justice values of restorative justice). The fact that restorative justice in Northern Ireland

had its origins both in community justice and in a statutory agency with strong community links meant that it was not disassociated from wider conceptions of justice.

Restorative justice was far from the only influence on probation practice in the 1990s: much of the offender management practice of PBNI was influenced by the burgeoning ‘What Works’ movement and there was a focus on the delivery of programmes for both adult and young offenders (Fulton, 2008; O’Mahony and Chapman, 2007). Two-thirds of the population of Northern Ireland lives in or near Belfast, and the main venue for programme delivery to adult offenders was the Probation Day Centre in Belfast, but these or similar programmes were also delivered to young offenders and in more rural areas.

As so often in Northern Ireland, however, the ‘What Works’ or effective practice initiative was implemented in a slightly different way than in England and Wales. There was less central control, less emphasis on measurement as opposed to action, and the work of probation was less likely to attract political comment or interference. Importantly, the strong link between PBNI and local communities extended to the delivery of programmes. In my experience, programmes were often co-facilitated by a Probation Officer and a worker from a community or voluntary organisation (such as the Northern Ireland Association for the Care and Resettlement of Offenders, NIACRO) and were more likely to be run in a church hall, health centre or community centre than a probation office. The use of local volunteers to transport clients to and from these sessions again reinforced the roots in the community and the impression that these programmes were a community-based resource rather than a criminal justice intervention.

Subsequent desistance research has shown that it is unrealistic to expect a programmatic intervention to end offending behaviour but that such approaches need to be offered alongside support in maintaining relationships, seeking employment and building community links (McNeill, 2006; Farrall and Calverley, 2006). Even at the height of the ‘What Works’ movement, the practice of PBNI maintained that important community element.

The maintenance of a community link, even when effective practice was a primary concern, could have contributed to the effectiveness of interventions but it might also provide a partial explanation as to why probation in Northern Ireland has taken such a different organisational trajectory to probation in England and Wales in the subsequent two

decades. In the 1990s, the work carried out by Probation Officers in Northern Ireland was essentially similar to that carried out in England and Wales (albeit in a very different context). Now, the policy and organisational context is almost unrecognisably different, to the extent that it is actually not permissible for a qualified and employed English Probation Officer to practise in Northern Ireland without further training.

In England and Wales the emphasis on effective practice contributed to the trajectory that led to the end of social work training as the pathway into probation practice, and then on to the creation of the National Offender Management Service (NOMS) and ultimately to the plans of the coalition government in 2013 to facilitate the widespread use of private providers to deliver probation services. In Northern Ireland, where effective practice research was interpreted in a community context, probation remains a public sector organisation, probation officers are still required to hold a social work qualification and PBNI focuses on building community links, rather than creating frameworks to facilitate private provision.

### **Probation culture, edgework and relationship to the community**

Probation Officers in Northern Ireland in the 1990s worked in a distinct legislative, policy and community context, both prior to and following the ceasefires and the Good Friday Agreement of 1998. There were two major determinants of this distinct approach. Firstly, in the 1970s probation staff decided that they would not work with politically motivated offenders and would only assess and supervise non-political offenders. The process of this determination was as significant as the decision itself, as it was a rare example of a decision made initially by probation staff (under the auspices of NAPO) and later agreed to by management and by the courts (Carr and Maruna, 2012). Secondly, the Black Report of 1979 set the framework for probation policy for the two decades to follow. Juvenile justice was to be managed within the criminal justice system and probation practice was to be managed by a Probation Board, not directly by the civil service.

As Fulton (2008, p. 730) describes, a 'paradoxical' aspect of working in a civil conflict situation was that Probation Officers spent more time in communities and worked more closely with community groups. Almost 20% of PBNI's total budget was spent on community development, purchasing services such as hostels, training workshops and support for

prisoners' families, and Probation Officers spent as much time engaging with community groups as they did engaging with other criminal justice agencies (O'Mahony and Chapman, 2007).

Probation Officers in the 1990s, therefore, benefited hugely from the courage and foresight of their predecessors and had achieved a neutral position and a professional status that gained respect from both the community and the criminal justice system. But what was it like to work in that way, in that context? It is common for people who lived in Northern Ireland during the Troubles firstly to speak modestly and reticently about their experience of violence, and secondly not to come to a full appreciation of the impact of living through civil conflict until they have left that environment. It is suggested that this is particularly true of probation staff.

PBNI was, and is, a relatively closed organisation – it is a small organisation with a limited turnover of specialist staff and a senior management group that is largely promoted from within – so perhaps it has not fully appreciated how unusual a context it has been operating in. In addition, Probation Officers have always been acutely conscious of the fact that any threat or inconvenience that we endured paled in comparison to the impact that the Troubles had on the offenders, victims and families we worked with and our professional colleagues in the police, prison service, judiciary and wider legal profession.

Considered from a distance – both in time and in geography – the Troubles were ever present in the day-to-day work of probation. To take my personal experience, I worked in a rural area team, Armagh and South Down, covering four courthouses and four probation offices, and within the space of a few years two of the courthouses (Newry and Armagh) and two of the offices (Banbridge and Portadown) were destroyed or seriously damaged in bomb explosions. Probation Officers worked alongside criminal justice professionals who were targeted by paramilitary organisations, at the same time as working in communities with close ties to paramilitary groups. The riots associated with the Drumcree parade disputes dominated the atmosphere of all areas for weeks every summer, and Probation Officers could find themselves running activities with a group of young probationers some of whom had been throwing stones at each other a few nights previously. It is worth noting that at no point did PBNI or any of its community partners run 'single identity' groups but always expected offenders from both Northern Ireland communities to interact. All Probation Officers and youth justice workers work with

young people who have difficult and dangerous lives, but the impact of the Troubles brought an extra dimension of risk to those young people.

Probation Officers, and their community partners, worked with young people who were threatened and assaulted by paramilitary groups and sometimes excluded from the areas where they lived. A number of those young people were later killed in violence related to the civil conflict, and some died in the most horrific circumstances. The practice of Probation Officers to work in the community and to visit clients in their homes made the impact of this violence more present and relevant: I have a vivid memory of visiting a young man in his home the day after he had received a paramilitary ‘punishment beating’ and being able to observe not just his injuries but his blood still drying on the walls.

My experience of working in probation at that time was not in any way unusual or extreme but, rather, ordinary and unremarkable. Stories similar to mine could be told by any Probation Officer who worked in Northern Ireland at that time. Understandably, this context had a considerable impact on probation practice and the culture of the organisation. Mawby and Worrall (2013) recently carried out research into probation culture, and many aspects of their analysis of occupational culture in England in the 21st century shed light on the culture of PBNI in the 1990s. Their concept of probation as ‘edgework’ has particular relevance to probation practice in that context. The authors describe edgework in probation practice as comprising voluntary risk-taking and working close to the boundary between control and chaos.

In recent years the practice of Probation Officers of spending much of their working lives in offices in front of computers has taken them away from this edge, but the nature of Northern Irish society and the role played by Probation Officers in the 1990s meant that their practice could be more commonly described as edgework. One aspect of edgework is the ‘bridging’ role played by probation, exemplified by officers who can sit with judges and shake hands with offenders (respondent to Mawby and Worrall, 2013). In Northern Ireland during the Troubles, the division between offenders on one hand and police and judiciary on the other was greatly exacerbated by the civil conflict, and the bridging role of Probation Officers extended to visiting homes in areas where police officers would not venture without armed support. The bridging role extended across the community; officers could visit communities a few miles apart on the same morning, visiting individuals who would never feel safe to venture to the other estate.

As discussed above, it was PBNI's neutral role and its decision not to work with politically motivated offenders that gave the organisation, and the individuals within it, the legitimacy to work across the community (Carr and Maruna, 2012). However, as Carr and Maruna (2012) rightly state, the line between politically and non-politically motivated offences was not always an easy one to draw. By the 1990s, this division was becoming increasingly blurred due to two main factors. Firstly, new legislation, led by the Criminal Justice (Northern Ireland) Order 1996, meant that Probation Officers were expected to write reports on all offenders, including those convicted of serious offences, and that brought a larger group of more serious offenders into PBNI's ambit (Fulton, 2008). Secondly, the substantial overlap between offenders involved in paramilitary activity and those involved in the drug trade, particularly young men from loyalist communities, meant that many paramilitary offenders could also be brought into contact with the criminal justice system for offences of drugs and violence.

It is important to make the distinction that although PBNI continued to refuse to work with paramilitary offences, it did still work with many offenders connected with paramilitary groups. It was this work that most closely fits the definition of edgework, not just because of the intensity and element of danger but also because of the creativity required to work effectively with these clients – to find a way to challenge offending behaviour while steering away from any discussion that might be considered political.

An important aspect of PBNI's community partnership and its occupational culture was its partnership policy and its deliberate blurring of the boundaries between the statutory and voluntary sectors and even between workers and clients. As previously discussed, groupwork was often run jointly with community and voluntary groups, and community leaders and representatives also played a role in other sentences and interventions, particularly community service. Community service has always contained elements of punishment, reparation and rehabilitation (Mair and Canton, 2007), but managing the order within a context of links between PBNI and the community meant that reintegration was a primary goal. Community service placements were just one aspect of the relationship between probation and community groups.

I worked with a young woman who carried out her community service at a local church and was introduced by the priest as a 'volunteer helper'. When her hours were completed, the young woman was given a box of chocolates by some grateful women from the congregation. When she

later related the story to me she was visibly moved, and described it as the first time in her life anyone had ever thanked her for anything. The contrast between this experience and the recent English political rhetoric of ‘visible punishment’ could not be greater, and should not simply be explained away as one positive experience, created by one kindly priest. The legislative, policy and relational context ensured that community service was conceptualised as someone carrying out a service for the community that they belonged to, so it was much more common for those who underwent community service to experience it as reintegrative. Crucially, community service was often hosted by agencies that had other associations with PBNI as well, through either the receipt of funding or other partnership work.

One final policy from that time that facilitated community links, promoted neutrality and reflected the unusual context of the work was the ‘new careerist’ scheme to employ ex-offenders, including ex-paramilitary offenders. The employment of ‘ex-combatants’ to facilitate the move to a post-conflict state is an important aspect of transitional justice (McEvoy and Eriksson, 2007), but this initiative also had an impact on PBNI’s occupational culture. Unlike other plans to mentor or to employ ex-offenders, the new careerist scheme was based on a full integration of those employed in that way into the organisation. They had desks and offices, co-worked cases, attended team meetings, led residential workshops and participated in the organisation’s social and sporting activities. PBNI facilitated those who wished to achieve social work or other qualifications to do so. This approach was entirely congruent with the values of PBNI and the porous boundaries between the organisation and the community. Its significance can now be seen in insights from the desistance research; important though it is for ex-offenders to be given training and employment opportunities, it is vital that this be facilitated in a manner that also allows them to move beyond the label of an ‘ex-offender’ (Maruna, 2012).

### **The wider application of Northern Irish probation practice**

This concluding section will suggest that there are insights from the 1990s Northern Ireland probation experience that have wider relevance and that speak to the nature of work with offenders in the community. These insights particularly relate to restorative justice, desistance and links to the community.

The important aspect of introducing restorative justice to a criminal justice jurisdiction is the promotion of restorative values, not merely the adoption of conferencing techniques. The focus on these values from the very introduction of restorative justice to the criminal justice sector by PBNI in the 1990s has carried through into the Youth Justice Agency, and the values of that agency have significantly influenced the positive evaluations that its restorative justice work has received.

The integrated approach to restorative justice in Northern Ireland contrasts with some of the patterns elsewhere, such as in South Africa, where restorative justice is targeted primarily at young, low-risk, first-time offenders and processes can become separated from wider debates about justice and social equality (Clamp and Doak, 2012). In England and Wales, the Labour government adopted restorative justice as a technique or process without real engagement with its values (Stout and Goodman, 2008) and the coalition government is now able to consider restorative conferencing in isolation from its wider social values and to introduce restorative conferences for some offenders while simultaneously advocating greater punitiveness in community sentences and dismantling the Probation Service (Ministry of Justice, 2012).

The long Australian tradition of restorative justice has provided a greater connection between those processes and wider debates and social justice concerns as well as a greater ambition as to which offenders and offences are considered appropriate for restorative justice. However, recent research by the New South Wales Bureau of Crime Statistics and Research (BOCSAR) has posed challenges to Australian restorative justice advocates, finding that Youth Justice Conferences were no more effective in reducing reoffending than the Children's Court (BOCSAR, 2012a). In the accompanying press release, the researchers suggested that simply using conferences, without addressing the underlying causes of offending, led to this absence of significant impact (BOCSAR, 2012b). The practice of PBNI in the 1990s demonstrates that it is possible to promote restorative justice values in a way that includes all offenders and builds links both to the wider criminal justice system and to the local community.

The values of an organisation are also demonstrated through its occupational culture. Mawby and Worrall (2013) introduce their research by describing probation occupational culture as less well understood than in other criminal justice occupations, and this remains the case – there is little published on the subject beyond Mawby and Worrall's own work.



Working for PBNI in the 1990s very clearly fitted the definition of edgework, in that it was exciting, sometimes risky and it encouraged creativity. In a similar way to social workers in Northern Ireland (see Heenan and Birrell, 2011), Probation Officers became very skilled practitioners in working with violence and trauma. It led to the creation of an occupational culture that was characterised by a strong professional identity, personal commitment to the work and a high level of peer support. Further research on the occupational culture of various probation organisations, particularly in widely different policy contexts, would be highly beneficial to a wider understanding of probation practice. In both South Africa and Australia, corrections and probation agencies are made up of a wide range of staff with varying backgrounds and training, who practise in settings ranging from busy urban centres to dispersed rural communities. Research into the occupational culture in those organisations could bring fascinating insights into how probation culture varies in different contexts.

Finally, it is the community-based nature of probation services in 1990s Northern Ireland that now appears most striking and so different from current probation practice, particularly in England and Wales. The very location of probation conversations – in homes, cars or community locations as opposed to behind security barricades in distant offices – creates a context and an atmosphere in which to engage with individuals. The move to increase the use of private providers in delivering probation services in England only serves to increase the distance between workers and the community that they serve. The experience of PBNI demonstrates that building community links and trust can be a long and painstaking process but, unfortunately, experiences elsewhere demonstrate that those links can be broken easily and quickly.

A strong link with the community is vitally important to the process of reintegration. Ex-offenders must be provided with a pathway that takes them away from being labelled as offenders or as ex-offenders. In both Northern Ireland and South Africa, the transition from conflict into a peaceful, democratic state provided a model for offenders moving into playing a full role in society. As ex-combatants could be seen to take on high-profile leadership positions, it was easier to see how those with offending backgrounds could be fully integrated into society. Unfortunately, the reverse is also true: a discourse that emphasises risk and treats any attempt to change with caution, or even scepticism, makes it difficult for those who have offended to forge a new identity.

Probation services are a product of their time and their culture. Although there is much to be gained by studying probation practice in different times and different jurisdictions, a probation service reflects the society within which it exists, so it would be wrong to suggest that the work of PBNI in the 1990s could simply be translated to another time and place, but it is still worth paying particular attention to the organisation's relationship with the community. Over the past two decades, across the world a more punitive approach has been taken to offenders and a greater distance established between state organisations and the communities they serve.

In his novel *The Truth Commissioner*, Northern Irish novelist David Park (2008) uses the analogy of shark cage divers in the ocean to characterise the relationship between his fictional commission and the community: within it, but separate and protected. Modern probation practice, existing in 'security conscious ... anonymous public sector offices ... on industrial estates or technology parks and away from where offenders live' (Mawby and Worrall, 2013, p. 14) is now separated by this metaphorical cage. My experience of probation work in Northern Ireland was of practice in the community without barriers.

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## **A Review of the Research on Offender Supervision in the Republic of Ireland and Northern Ireland**

**Nicola Carr, Deirdre Healy, Louise Kennefick and Niamh Maguire\***

**Summary:** This paper reviews existing research on offender supervision in the Republic of Ireland and Northern Ireland. Three distinct areas are considered: practising offender supervision, experiencing supervision and decision-making in this sphere. The material presented draws on findings from a European-wide research action under the Cooperation in Science and Technology (COST) initiative. The review highlights some of the gaps in knowledge and the need to focus research attention in this area. This need is underlined by the expansion in probation's role, both North and South. In common with other countries there has been a growth in referrals to probation and in the numbers of people subject to supervision, whether on a community sentence or under post-custodial licence conditions. This review highlights some of the relevant factors including the increased emphasis placed on public protection and attempts to reduce the prison population. The circulation of people through systems and the experiences, processes and decision-making involved are all areas that we argue are worthy of further research attention.

**Keywords:** Offender supervision, experiencing supervision, practising supervision, decision-making and supervision, sentencing, probation, community sanctions, Ireland, Northern Ireland, COST, criminology.

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## **Context and background**

The practice of offender supervision is often overlooked by penology scholars, policy-makers and practitioners. To address this relative neglect, offender supervision is the subject of a Europe-wide research action under the Cooperation in Science and Technology (COST) initiative. The COST action, which commenced in March 2012 and runs for four years, involves a network of researchers from 20 European countries. The action comprises four working groups, of which the authors participate in the first three: practising supervision, experiencing supervision, decision-making and supervision, and European policy and practice. In the first year of the action each working group has been tasked with evaluating empirical research in the area, analysing the methodologies employed and determining areas that require further study.<sup>1</sup> The last of these is particularly pertinent due to the lack of data available in Ireland (North and South).

This paper provides a brief context of probation practice North and South before addressing the available research evidence from both jurisdictions in the areas of the practices and experiences of offender supervision and the context of decision-making in this expanding sphere. Our intention is to provide not a critique of practice but a brief overview of the findings gleaned from a review of research in both jurisdictions, to draw out some common themes and to identify potential avenues for future enquiry.

### **Context of probation, North and South**

Probation on the island of Ireland, while sharing common antecedents, operates under two separate administrative and legal jurisdictions. Traditionally the Republic of Ireland has had, and it continues to have, a strong orientation towards imprisonment: committals rose from 12,127 in 2001 to 17,026 in 2012.<sup>2</sup> However, since the 1980s, the use of non-custodial sanctions has expanded. The number of Probation Orders,

<sup>1</sup> Further information on the Offender Supervision in Europe COST Action (IS1106), which is chaired by Professor Fergus McNeill and Professor Kristel Beyens, is available at [www.offendersupervision.eu](http://www.offendersupervision.eu). This paper draws on material prepared by the respective authors for the COST Action Working Groups. The section on 'Practising offender supervision in Northern Ireland' draws on material from the UK Report co-written with Dr Gwen Robinson, while 'Experiencing offender supervision in the Republic of Ireland' draws on material from a more detailed report, both of which are available from the web address above.

Community Service Orders (CSOs) and Adjourment Supervision Orders peaked in 2006 at 8,651, levelling off to 6,994 by 2012 (Probation Service, Annual Reports 1998–2012). The development of community sanctions is due largely to increased efficiencies in the Probation Service (McNally, 2007) and recent legislative reforms. Overall, however, such alternatives have been under-utilised (Irish Penal Reform Trust, 2003; Healy and O'Donnell, 2005, 2010).

Similarly to the Republic of Ireland, the statutory responsibility for probation supervision in Northern Ireland is placed with one agency – the Probation Board for Northern Ireland (PBNI). Since the signing of the 'Good Friday Agreement' in 1998, there has been a process of 'normalisation' within the criminal justice system whereby attention has been increasingly refocused towards more everyday matters of crime and criminal justice.<sup>3</sup> Within this context a range of legislation has been introduced, leading to an expansion of the numbers of people coming under the remit of probation. PBNI prepares approximately 10,000 reports annually and supervises 4,000 offenders at any given time (PBNI Annual Report 2011–2012).

### **Practising offender supervision in the Republic of Ireland**

Notwithstanding a wealth of research in other jurisdictions highlighting the importance of the supervisory relationship in helping offenders to desist from crime (Rex, 1999; Trotter, 1996, 2000, 2006; Burnett, 2000; Farrall, 2002; Burnett and McNeill, 2005), we know very little about the roles, characteristics, recruitment or training of key actors who deliver offender supervision in Ireland. Few studies specifically examine the recruitment of Probation Officers or other probation staff. Information on the recruitment of Community Service Supervisors (CSSs) and Probation Officers can be gleaned from studies carried out by McGagh (2007) and Bracken (2010) respectively. While CSSs are not required to

<sup>2</sup> Irish Prison Service: [www.irishprisons.ie/index.php/information-centre/statistics](http://www.irishprisons.ie/index.php/information-centre/statistics) (accessed 30 July 2013).

<sup>3</sup> This is not to suggest a straightforward process. Indeed, matters concerning the criminal justice system and its constituent agencies have been among the most contentious areas of public policy in Northern Ireland in recent years. For example, the continued legacy of the past is played out in the attempts to reform the prison system (Owers *et al.*, 2011) and in debates over aspects of policing, most recently evident in the Policing Board's declaration of 'no confidence' in the PSNI's Historical Enquiries Team ([www.nipolicingboard.org.uk/news/article.htm?id=14330](http://www.nipolicingboard.org.uk/news/article.htm?id=14330), accessed 8 July 2013).

have a social work or indeed any degree qualification (most had trade or DIY skills), Probation Officers were predominantly recruited from the ranks of three third-level educational institutions, where they attained their Master's in Social Work degrees.<sup>4</sup> The contrast in training and qualifications is striking given that CSSs are ideally situated to engage in rehabilitative work with offenders and currently perceive this to be part of their work (McGagh, 2007).

Indeed, many CSSs recognised the importance of their relationships with offenders and indicated that they would welcome interpersonal skills training to enhance the supportive role they play (McGagh, 2007). The lack of training provision suggests that the Probation Service perceives CSOs as being primarily about 'community payback' rather than rehabilitation. This view is echoed in the motivation behind recent policy developments, which support the expansion in use of CSOs based on its relative cost-effectiveness when compared with prison. This may be a lost opportunity when we consider that research at the interface of desistance and probation practice shows that it is not just programmes that work, but also workers' skills and techniques (McNeill, 2003). As Burnett (2000, p. 15) writes, 'for influence to be exerted in interventions, good communication built on empathy and the establishment of trust are needed'.

Examination of training arrangements for Probation Officers has similarly received little attention. Two studies stand out in this regard: Richardson's (2008) study which examined the attitude of Dublin-based probation officers to the use of risk assessment tools and Fernée and Burke's (2010) research on diversity training in the Probation Service.<sup>5</sup> An interesting point to emerge from both studies is that respondents expressed a desire for more training (see also McGagh, 2007). Whereas in Richardson's (2008) study Probation Officers were critical of the training they received in the use of risk assessment tools, Fernée and Burke's (2010) respondents were satisfied with the delivery and content of the diversity training. A point of contrast between the studies is that while Richardson (2008) did not evaluate the training given to Probation Officers, Fernée and Burke (2010) did. The dearth of research on training within the Probation Service is surprising bearing in mind that it has a

<sup>4</sup> University College Cork (UCC), University College Dublin (UCD) and Trinity College Dublin (TCD).

<sup>5</sup> Richardson's (2008) study is also reported in Fitzgibbon *et al.* (2010).

dedicated Training and Development Unit. Fernée and Burke's (2010) study raises interesting questions about how the Probation Service interacts with offenders from ethnic minority backgrounds. The authors note the strikingly low number of offenders from ethnic minority backgrounds on probation. They question whether this is due to lower levels of criminality among ethnic minority communities or to a possible misunderstanding on the part of the judiciary about the Probation Service's capacity to supervise ethnic minority offenders effectively.

Few studies focus specifically on the delivery, practice and performance of offender supervision. One exception, Wilson's (2004) research, examined both the experience of life-sentenced prisoners on supervised temporary release and the experiences of the Probation Officers who supervised them. Other studies that have provided important insights into offender supervision in Ireland include Healy's (2012a) analysis of Probation Officers' reports and probationers' experiences of probation, Bracken's (2010) study on risk assessment and Seymour's (2004) study of the impact of homelessness on offender supervision. Two important themes emerge from these studies. Firstly, probation practice is oriented towards welfare rather than surveillance (Wilson, 2004; Seymour, 2004; Healy, 2012a), and secondly, Probation Officers (Seymour, 2004; Healy, 2012a) prioritised the need to help offenders address their social and personal problems.

The role of tools and technologies in the delivery of offender supervision has received more research attention than any other issue in probation practice to date. This no doubt reflects a degree of consternation surrounding the introduction of risk assessment tools in 2004. The first risk assessment tool to be introduced in Ireland was the Level of Service Inventory-Revised (LSI-R), which was intended to inform the sentence recommendation as well as the supervision plan (Richardson, 2008). A number of studies (Richardson, 2008; Bracken, 2010) explore the extent to which the introduction of risk assessment tools has led to the prioritisation of risk. The findings are encouraging insofar as they illustrate a degree of resilience on the part of Irish Probation Officers in terms of negotiating the tension between clinical and actuarial assessment and ultimately erring on the side of professional judgement. However, these studies rely primarily on the attitudes and views of Probation Officers. No attempt is made to verify these views and attitudes independently by examining actual practice or by comparing clinical and actuarial risk assessments. Examples of more methodologic-



ally innovative and robust studies can be found in O'Dwyer's (2008) study on risk assessment of sex offenders and O'Leary and Halton's (2009) study evaluating inter-rater reliability in Probation Officers' use of risk assessment tools for young persons.

A number of publications address the issue of the management, supervision and regulation of probation practice, but few are based on empirical studies. While some studies highlight aspects of management practice such as the lack of quality control and adequate training in relation to risk assessment tools (Richardson, 2008; Bracken, 2010), O'Connell's (2006) study appears to be the only empirically based examination of the practice of professional staff supervision in the Probation Service to focus on the perception of professional supervision among Probation Officers. The majority of participants believed that supervision benefited them and the organisation, increased accountability levels, assisted with professional development and benefited their clients. Some participants had experienced very little effective supervision and others expressed negative views about supervision. One of the most striking findings was the lack of policy on supervision, as well as the lack of knowledge about policy on supervision. Overall the findings suggest that while supervision does happen, there is no training, consistency or standardisation in supervision methods within the Probation Service (O'Connell, 2006).

With the exception of Phillips's (2002) and Hollway *et al.*'s (2007) work, little research attention has been paid to the various rehabilitative programmes run by or on behalf of the Probation Service (Healy, 2009). Similarly, the role of the 'third sector' in offender supervision in Ireland is almost invisible. Apart from court-ordered supervisory sanctions, such as probation, CSOs and deferment of sentence orders, offenders are supervised in programmes delivered by a range of community, religious and voluntary organisations that are part-funded by the Probation Service. As yet, few studies have explored the backgrounds, qualifications or recruitment and training of those engaged in offender supervision in these projects (although see Petrus Consulting, 2008). Exceptions include an evaluation of the work of the Bedford Row Family Project (2007).

### **Practising offender supervision in Northern Ireland**

Similarly to the Republic of Ireland, there has been relatively limited empirical research on the practices or experiences of offender supervision

in Northern Ireland. The relative neglect of probation work in this jurisdiction is made starker by the fact that other areas of the criminal justice system have garnered considerable research attention. Under the broad theme of *transitional justice* a range of literature has explored the processes of transition of the criminal justice system and its constituent agencies to a post-conflict dispensation (McEvoy and Newburn, 2003). Here the focus has been on policing, prisons and imprisonment and community-based restorative justice (see for example Ellison and Smyth, 2000; McEvoy, 2001; Mulcahy, 2006; Moore and Scraton, 2009; Eriksson, 2009). However, perspectives on probation's role and work both during the political conflict and in the current era are notably lacking.

Exceptions to this overall trend include a historical account of probation in Northern Ireland published to mark the centenary of the Probation Act 1907 (Fulton and Parkhill, 2009). Also O'Mahony and Chapman's (2007) overview of the interrelationship between probation, community and the State points to the tensions inherent in probation work during the 'Troubles'. Carr and Maruna's (2012) ongoing oral-history project explores some of these tensions and the adoption of a 'neutrality' stance by probation, which, remarkably, enabled it to continue to work in communities that became off-limits for other criminal justice agencies. This study is based on interviews with probation staff who worked in the service between 1960 and the present, and explores the question of 'negotiated legitimacy'.

Other areas of practice that have been investigated include partnership-based working (Kremer, 2004; Murphy and Sweet, 2004), practice innovations (McCourt, 2005; Bailie, 2006; O'Neill, 2011) and offending behaviour programmes (Shevlin *et al.*, 2005; Jordan and O'Hare, 2007; McClinton, 2009). It is evident that in Northern Ireland there has been a shift from a long-standing emphasis on bespoke group-work programmes addressing specific aspects of offending – e.g. car crime (Muldoon and Devine, 2004) or sectarianism (Lindsay and Quinn, 2001) – towards the implementation of evidence-based programmes. This has undoubtedly been influenced by the wider 'effective practice' agenda (Chapman and Hough, 1998), which was particularly prominent in England and Wales in the 1990s. Broadly speaking, 'effective' or 'evidence-based' practice draws on research findings which suggest that particular approaches (predominantly cognitive behavioural) targeted towards risks of reoffending and delivered in certain conditions show

increased effectiveness (Lipsey *et al.*, 2007). While service delivery in Northern Ireland has clearly been influenced by these approaches, they have never been adopted in the same wholesale manner as in England and Wales.

Reports on the implementation of a range of programmes are provided by Shevlin *et al.* (2005), Jordan and O'Hare (2007) and McClinton (2009). Shevlin *et al.* (2005) report psychometric test results for men who successfully completed a domestic violence programme, while Jordan and O'Hare (2007) provide an account of a pilot implementation of the Cognitive Self-Change Programme introduced in Maghaberry prison in 2005. Participants began the programme in prison and continued as they transitioned to the community. Issues with programme attrition, particularly given the intensity of the requirements, are noted by the authors and are consistent with findings from research in other jurisdictions (Mair, 2004).

The introduction of assessment tools to measure risk of reoffending and risk of harm was prompted by changes to the legislative mandate of probation and the development of managerial frameworks within the service (Best, 2007). The Criminal Justice Act (NI) 1996 emphasised probation's public protection role alongside the more traditional rehabilitative ethos. Subsequent legislation, in particular the Criminal Justice (NI) Order, 2008, which introduced a range of public protection sentences (indeterminate and extended custodial sentences), has further accentuated probation's role in assessing risk of harm at the pre-sentence and parole application stages. The Assessment, Case Management and Evaluation (ACE) tool is a generic assessment tool and is supplemented by specialist tools based on the nature of the offences and initial assessed level of risk (Best, 2007)

The development of a specialist service for women subject to probation supervision has also garnered attention. The Inspire project based in central Belfast was established on a pilot basis following the publication of the *Draft Strategy for the Management of Female Offenders* (NIO, 2009).<sup>6</sup> As in other countries, women are a minority group in the criminal justice system: in Northern Ireland in 2006 they accounted for approximately 13% of all court appearances and 3% of prisoners (Easton and Matthews,

<sup>6</sup> The Draft Strategy was followed in 2010 by *Women's Offending Behaviour in Northern Ireland: A Strategy to Manage Women Offenders and Those Vulnerable to Offending Behaviour 2010–2013*, Belfast: Department of Justice.

2011). Recognising the specific needs of women in the criminal justice system, including their differential pathways towards offending and experiences of multiple disadvantage, Inspire aims to provide specialist assessments and link women with wider community resources (Baillie, 2006; O'Neill, 2011). A government-commissioned independent evaluation of the project reported positively on levels of engagement with women and attested to improvements in attitudes to offending and self-esteem (Easton and Matthews, 2011).

The question of the effectiveness of probation interventions has been explored in comparative analyses of reconviction data of offenders sentenced to prison and community sentences. Reconviction data are collected from the PSNI's Integrated Crime Information Service and analysed by the Northern Ireland Statistics and Research Agency (NISRA). These data have consistently demonstrated a significantly lower reconviction rate for offenders sentenced to community penalties compared to those sentenced to prison (Cooper, 2005). Data on people convicted of offences in 2002 showed that 36% of those subject to a community sentence were reconvicted within a two-year period, compared to 47% of those sentenced to custody (Ruddy and McMullan, 2007). Also, those made subject to a Custody Probation Order (requiring a period of post-custodial supervision) had a lower reconviction rate than those subject to custody only (36% compared to 51%) (Cooper, 2007). Further analysis of these data, in line with desistance maturation theories (Laub and Sampson, 2001), demonstrates that overall conviction rates reduce with age (Cooper, 2007).

### **Experiencing offender supervision in the Republic of Ireland**

The majority of people on probation express high levels of satisfaction with the supervision experience. A recent customer satisfaction survey conducted by the Probation Service (2011) revealed that around 80% were satisfied with the quality of the service. Healy's (2012a) in-depth study of attitudes to supervision found that probationers valued the practical assistance they received from their probation officers in the areas of employment, addiction and housing. Probationers who were currently offending were less positive, as were probationers who perceived supervision to be oriented towards surveillance rather than welfare. Their main complaints were that probation appointments were inconvenient, that officers had too much control over their lives and that they received

limited practical help (see also Durnescu, 2011 on the pains of probation). In a follow-up study conducted four years after the initial interviews, Healy (2012b) noted that probationers largely retained their favourable attitudes to supervision. In particular, they positively recalled being provided with opportunities to exercise agency, participate in strong therapeutic relationships, and engage in meaningful rehabilitation programmes. Just 27% were reimprisoned by the end of the follow-up period.

The popularity of the welfare model has waned in many Anglophone countries, where it has been superseded by a more punitive, risk-centred approach (Feeley and Simon, 1992). Although these trends are less evident in Ireland, there are signs that similar philosophies and practices are beginning to infiltrate probation work (see Bracken, 2010; Healy, 2012b). This is of concern since probationers do not appear to respond well to the new model. In England, where probation supervision consists primarily of monitoring and enforcement activities, Shapland *et al.* (2012) found that few probationers regarded their supervising officers as potential sources of assistance with personal problems, and almost half stated that they did not find the supervision experience helpful in any way.

Probationers' experiences with partner agencies are even less encouraging. Seymour and Costello (2005) found that many homeless offenders preferred to sleep rough rather than stay in hostels, which they described as having poor living conditions, overly strict rules and widespread drug use. Clients of methadone maintenance programmes have also expressed dissatisfaction with treatment services due to their perception that staff were unsupportive (Long, 2004). Despite claiming that methadone maintenance is critical for desistance, many long-term methadone users feel that they are unable to move on with their lives until their treatment ends (Healy, 2012b).

In general, reconviction rates among people under probation supervision are relatively low but tend not to differ significantly from prisoner reconviction rates once other factors are controlled (e.g. Kershaw *et al.*, 1999). Until recently, little was known about reoffending rates among Irish probationers. The Probation Service (2012a) recently published information about national reconviction rates for the first time. Of the 3,576 individuals who served either a Probation Order or a CSO in 2007, 37% were reconvicted within two years of sentencing. Reconviction rates were lowest among offenders who were older, female or under supervision for drugs or road traffic offences. Offenders on

probation (39.3%) had a higher rate of reconviction than offenders on CSOs (33.5%). Equivalent figures have not been published for the prison population, so it is not possible to directly compare outcomes across sentences. International evidence shows that probationers typically display high levels of compliance with their orders, along with significant reductions in criminal attitudes and personal difficulties (Rex *et al.*, 2003). In addition, offenders on community sanctions generally report more positive attitudes to the criminal justice system than prisoners (Killias *et al.*, 2000).

Although it is well established that desistance is facilitated by high-quality social bonds in work, family and community life, people under probation supervision often possess limited social resources (Laub and Sampson, 2003; Healy, 2012a). For example, the typical person on community service is 'a young, single male who is unemployed (or under-employed) with poor educational qualifications and vocational skills and is living in the parental home' (Walsh and Sexton, 1999, p. 97). In addition, Seymour and Costello (2005) reported that 9% of around 400 individuals referred to the Probation Service over a six-week period in 2003 were homeless. A Probation Service (2012b) survey of 2,963 adult probation case files revealed that 89% of probationers were classed by their supervising officers as engaging in problematic substance use. Given their social work qualifications, Probation Officers may be best placed to assist putative desisters with such problems (Healy, 2012b; Shapland *et al.*, 2012). Effective probation practice may ease the transition to a non-criminal lifestyle by helping probationers to resolve personal problems and overcome barriers to change (Healy, 2012a; see Farrall (2002) for similar findings in England and Wales).

While the work of the Probation Service can support the change process, it is important to remember that desistance also requires the (re)integration of ex-offenders into social and community life (Healy, 2012b). Surveys suggest that 60% of the Irish population would not like to live next door to an offender (Halman, 2001), indicating that putative desisters may not always be received positively by their communities. Since social recognition of a desistance attempt is believed to promote long-term change, stigmatisation and a negative social reaction may impede desistance (Maruna and Roy, 2007).

In addition, ex-offenders often find it difficult to obtain meaningful employment and, even when they do find work, tend to earn lower salaries than their non-convicted counterparts (Uggen *et al.*, 2006). Little is

known about Irish probationers' experiences with employment, although one survey found that just half of a non-random sample of 200 Irish employers would be willing to employ an ex-offender, and then only in low-level positions (Lawlor and McDonald, 2001). This finding is particularly worrying because the study was conducted at a time of economic prosperity in Ireland. In the economic recession the unemployment rate has risen rapidly, and it is likely that ex-offenders are experiencing even greater difficulties in finding work (see Healy, 2012b). On a more positive note, employers appear willing to consider employing ex-offenders when appropriate supports are provided by criminal justice agencies (Lawlor and McDonald, 2001). This suggests that there may be scope for increasing the levels of cooperation between employers, ex-offenders and criminal justice agencies.

Furthermore, the majority of probationers describe having satisfactory relationships with their families and children (Healy, 2012a). This is an important finding since strong family bonds are known to aid desistance from crime (Farrall, 2002). Evidence shows that imprisonment has a detrimental effect on the parent-child relationship as well as on family finances, behaviour and emotional wellbeing (King, 2002). There has been no comparable research with the families of probationers, but it is likely that such difficulties would be less pronounced among offenders who are supervised in the community.

### **Experiencing offender supervision in Northern Ireland**

Consistent with many jurisdictions, there is limited research on the *experiences* of offender supervision in Northern Ireland. Findings from a survey conducted by an independent consultancy (Rooke, 2005) showed that a high number of those surveyed (92%) were satisfied with the level of contact with their Probation Officer and the services provided by a range of specialist community-based organisations (76%). In line with findings from research on desistance and Trotter's (2006) work on engagement with 'involuntary' service users, the survey identified some important characteristics of supervising officers – e.g. 'being a good listener' and being 'reliable'. Interestingly, respondents to this survey noted that 'few users identified Probation interventions as the main influences on their likelihood to reoffend' (Rooke, 2005, p. 99). Family and the 'fear of prison' were cited as more important factors.

The PBNI carried out a further service user survey in 2009. A random sample of 193 people currently subject to probation supervision, selected from a total population of approximately 2,500, was interviewed (Doran *et al.*, 2010). The research replicated the previous survey in order to enable comparisons. Overall the findings reflect positively on the perceived quality of offender supervision. However, those who experienced a change in their supervising officer reported negatively on the experience, again suggesting the importance of relationship-based practice (Doran *et al.*, 2010).

Jordan and O'Hare's (2007) account of the pilot implementation of an offending behaviour programme notes difficulties with attrition, particularly in the community setting, attributable partly to the intensive nature of the programme. Critically, these authors also note the difficulties experienced by participants in implementing behavioural change in unchanged structural contexts.

As part of the evaluation of the pilot of the Inspire project, Easton and Matthews (2011) conducted 37 in-depth interviews with women who had been subject to probation supervision.<sup>7</sup> Consistent with international literature, the women on this project had life-time experiences of a range of mental health difficulties and problematic substance misuse. They had also experienced significant trauma in their lives, including childhood abuse and intimate partner violence (Carlen, 2002; Chesney-Lind and Pasko, 2004; Celinska and Siegal, 2010; Barry and McIvor, 2010; van Wormer, 2010). The tailored service was found to be appropriate to their needs, and the women in the main reported positively on the experience of service provision. Women also reported positive changes in attitudes to offending and improvements in self-esteem; however, the evaluation noted the need for further longitudinal research to explore the impact and effectiveness of the service over time.

The paucity of research on experiences of offender supervision is not unique to Ireland (North and South). However, given that probation services on the island have resisted some of the more punitive currents evident in other jurisdictions, this presents something of a missed opportunity since the retention of social work as the core qualification for Probation Officers reflects an ethos that is congruent with some of the

<sup>7</sup> A total of 309 women had been referred to the project in the period 27 October 2008 to 31 July 2010 (Easton and Matthews, 2011, p. 18).



findings from desistance-based research (Doran and Cooper, 2008; McNeill and Weaver, 2010).

## **Decision making and offender supervision in the Republic of Ireland**

Little attention has been paid to offender supervision in the context of decision-making processes at the sentencing and release stages of the criminal justice system. In its absence, it is useful to draw on studies that examine the operation of CSOs more generally, and those that examine judicial decision-making. Judicial sentencing practices are largely discretionary and widely inconsistent, particularly in the case of District Court judges (Hamilton, 2005; Maguire, 2010). Unsurprisingly, this approach also applies to the imposition of CSOs: for example, Walsh and Sexton (1999) reported a marked lack of consistency of approach across District Courts in their national survey.

Walsh and Sexton's report is the most extensive empirical study conducted on the operation of CSOs. One objective was to provide comprehensive data on the factors influencing the decision to impose a CSO, in addition to assessing the factors and procedure applicable to the court's decision-making. Though it is a valuable study, the factors influencing judicial decisions were not explored significantly. The most relevant finding for present purposes was that the decision by judges whether to impose a CSO was dealt with in a matter of minutes.

In 2003 the Irish Penal Reform Trust commissioned a study to identify how judges use sentencing options (IPRT, 2003). It revealed a lack of consistency in sentencing, which some solicitors admitted gave rise to 'judge-shopping' on behalf of clients. This research also found that the judges rarely provided an explanation for their decision, and when they did, they seldom made explicit connections between sentences and rationales. When rationales were presented no coherent policy was identifiable, leading the researchers to conclude that District Court judges do not share a common understanding of the purpose of imprisonment. Similar findings emerged from Maguire's (2008, 2010) research on levels of punitiveness and consistency in judicial sentencing practices. While high levels of inconsistency were found, Maguire (2010) noted that judges shared certain approaches when it came to sentencing drug-addicted and persistent offenders. While judges were willing to give the former a chance to rehabilitate, they took a retributive approach to persistent offenders

who in their opinion deserved imprisonment. The study also revealed considerable disagreement among District Court judges regarding the circumstances in which non-custodial penalties, including CSOs, should be imposed.

Healy and O'Donnell's (2010) empirical analysis, though geographically limited, provides insight into judicial decision-making at District Court level, where most decisions regarding CSOs are made. The study revealed the following factors as influential in the decision-making process – previous convictions, presence of intent and seriousness of the crime, together with the quality of the evidence. Furthermore, there was some evidence to suggest the influence of factors such as age, gender and perceived level of 'respectability' on judicial decision-making.

In terms of punishment rationales, the researchers found that rehabilitation and individual deterrence were predominant among the judges. Furthermore, there was evidence that the judges made full use of their discretion in order to impose disposals that aligned with their individualised theories of sentencing. Notwithstanding the prominence of the rehabilitative model, the study found that judges rarely imposed community-based supervision sentences. The researchers suggest several potential reasons for this, including: lack of faith in the utility of probation; the inappropriate nature of intensive intervention for minor or first-time offenders; lack of availability of suitable programmes at local level; or the idea that meaningful change cannot be imposed on an individual, but must come from within.

Under the Criminal Justice (Community Service) (Amendment) Act 2011, the decision of the judiciary in imposing a CSO must be informed by pre-trial assessment reports by the Probation Service, and for the most part, judges act on the basis of such reports (Walsh and Sexton, 1999). There is no format prescribed by legislation for a pre-sanction report, which gives a degree of discretion to the Probation Officer. This leads to a consideration of not just how decisions are made, but how professionals interact with one another in the delivery of offender supervision. Though there is a palpable lack of research in this area, the issue has arisen incidentally in a number of research studies.

Walsh and Sexton's research suggested that the styles of community service reports differed depending on the geographical location and the directions of the judge for whom the report was written. Probation Officers explained that some judges only wanted to know about the

suitability of the offender for a CSO and were not interested in detailed backgrounds. Although this study was on a very small scale, it suggests that interactions between the Probation Officers and members of the judiciary may have more influence on sentencing outcomes than previously considered. This is further demonstrated by Maguire's (2008, 2010) study, wherein District Court judges stated that they would seek guidance on sentencing from Probation Officers in the form of probation reports sooner than from case law.

In Seymour's (2005) study, it emerged that interagency cooperation, or the lack thereof, was a serious challenge faced by Probation Officers when working with homeless offenders. Bracken's (2010) study echoed these findings in more general terms, noting that Probation Officers experienced difficulties in getting accurate information from other key statutory agencies in a timely fashion, which meant that when carrying out risk assessments they often had to rely on information obtained from self-reports. Similarly, it emerged from McGagh's (2007) study that the relationship between Probation Officers and Community Service Supervisors could be improved, with the latter feeling that they should be accorded more respect and have more regular interaction with Probation Officers.

In the context of decision-making and interactions at the release stage of the criminal justice system, most recent developments have come in the form of legislative measures. Given the novelty of the measures, it is not surprising that little empirical research exists as to their impact. The key developments include a Restriction on Movement Order as an alternative to imprisonment, where a person is convicted of certain offences (mainly public order and assault offences) and is sentenced to imprisonment for three months or more. The order comes into force after the convicted person has served a custodial sentence, and compliance may be electronically monitored.<sup>8</sup> Furthermore, the court has the power to make a Monitoring Order or Protection of Persons Order while passing sentence on an offender convicted on indictment, which takes effect after release from prison.<sup>9</sup>

The post-imprisonment nature of Restriction on Movement Orders and Monitoring Orders suggests a risk management and crime control

<sup>8</sup> Criminal Justice Act 2006, s.101.

<sup>9</sup> Criminal Justice Act 2007, s.26.

ethos to offender supervision.<sup>10</sup> Further research is required into the decision-making processes underlying the operation of such orders in practice, particularly given their discretionary nature. Further research is also required into the decision-making processes surrounding the practice of electronic monitoring. Section 112 allows for such monitoring of offenders on either temporary release or release, and may be arranged by the Minister for Justice. No additional information is provided on the considerations to be taken into account. In addition, as Murphy (2008) points out, the section envisages the process being operated by the private sector, which would have implications for access to decision-making processes in this regard.

In addition to legislative developments, areas that warrant further research are the Drug Treatment Court Programme and the Community Return Scheme, the latter having never been the subject of empirical analysis.<sup>11</sup> The Community Return Scheme is an incentivised release programme allowing for the temporary release of prisoners serving between one and eight years in return for work on community service projects. This scheme, a joint initiative between the Prison and Probation Services, was introduced in response to a rise in prison numbers and followed from a recommendation made by a departmental review group (Department of Justice and Equality, 2011). The Probation Service's role in this programme is critical, assessing the suitability of eligible prisoners for release, including their potential risk and supervision and oversight of the community service placements.

## **Decision making and offender supervision in Northern Ireland**

Empirical research on *decision-making* pertaining to offender supervision is limited in Northern Ireland. However, some relevant insights into this area can be gleaned from PBNI's (2011a) *Best Practice Framework Incorporating Northern Ireland Standards*, which sets out key elements of practice and decision-making. These standards outline the parameters of

<sup>10</sup> For example, section 101(2) of the 2006 Act provides that an order may restrict the offender's movements to such extent as the court thinks fit, and goes on to include suggested conditions.

<sup>11</sup> The Drug Treatment Court programme has been the subject of two extensive reviews: one by the Court Service in 2002 (Farrell Grant Sparks Consulting, 2002), and the other by the Department of Justice, Equality and Law Reform in 2010. The latter study, in particular, calls for further analysis of the workings of the court in the present context.

probation roles and interfaces with other agencies including the Prosecution Service, courts and Parole Commissioners.

Recent legislative changes in Northern Ireland have expanded the role of probation within the criminal justice system. The Criminal Justice (NI) Order 2008 introduced provisions allowing for electronic monitoring of offenders and ‘public protection’ sentences, whereby extended or indeterminate custodial sentences can be imposed following a determination of ‘dangerousness’ by the court. In both cases the assessments provided by probation play an important role in the court’s decision making. In a further significant development, under the provisions of the Justice (NI) Act 2011, probation has been given a role at the pre-trial stage in assisting the Public Prosecution Service (PPS) to determine whether a conditional caution should be given and what conditions should attach. Under Article 78 of this legislation, PBNI may have a role in supervising and rehabilitating persons subject to conditional cautions. Tackling unnecessary delay within the criminal justice process has formed part of the impetus for the introduction of these diversionary measures, but as yet there is no publicly available research on their impact or effect.

The traditional role of the Probation Officer in providing assessments to the court at pre-sentence stage and prior to custodial release is critical in informing the decision-making processes of the relevant bodies. In line with the increased emphasis on public protection, greater attention has been placed on the evidence base informing assessments, particularly in relation to risk of serious harm (Criminal Justice Inspection Northern Ireland (CJINI), 2011; PBNI, 2011a; Fulton and Carr, 2013).

The ACE assessment tool provides a structured method to assess criminogenic needs and encompasses three domains: offending, personal and social. The standardised tool originally devised by Oxford University and Warwickshire Probation Service has been adapted for use in Northern Ireland (Best, 2007). Further assessment tools are used to assess risk of serious harm and, where relevant in the context of the Public Protection Arrangements for Northern Ireland (PPANI), are used across disciplines.

Alongside the use of structured assessment tools, the PBNI standards (2011a) provide clear guidance on the structure, format and expected content of a pre-sentence report (PSR). The main areas that the report should address include: relevant information on the offender’s background; an analysis of the offence(s) before the court and any patterns of previous offending; an assessment of the likelihood of reoffending and an

assessment of the risk of serious harm. PBNI (2011a) states that the conclusion of the PSR should be informed by assessed risk of reoffending and risk of serious harm, and where appropriate should set out a plan of intervention to address these areas.

There has been no published empirical research on the interface between sentencers and probation and the contribution that PSRs make to the sentencing process. The CJINI inspection commented positively on the overall quality of reports, but noted the increase in volume of reports requested by the courts and the 'widening net of PSR users' (CJINI, 2011, p. 9).

The sentencer surveys exploring perceptions of the utility of PSRs have pointed towards their important role in informing the sentencing decision-making process (CJINI, 2011; PBNI, 2011b). In 2010 65% of sentencers surveyed found PSRs of 'overall value of reaching a sentencing decision'; 83% were satisfied with the analysis of offender risk of reoffending and 62% with the analysis of the offender's risk to the public.<sup>12</sup> Noting the findings of this survey, the Criminal Justice Inspectorate (2011, p. 15) recommended that PBNI 'should survey other users of Pre-Sentence Reports in conjunction with the Sentencer survey'. In addition to their contribution at the pre-sentence stage, it is important to note that PSRs are used as baseline assessments to inform sentence plans, to measure subsequent progress and to inform post-custodial licence conditions (CJINI, 2011).

Enforcement of community sentences and licence conditions is a further important decision-making interface that has not been subject to research. The PBNI (2011a) practice standards note: 'A core element of PBNI's organisational purpose is to ensure offender compliance with the sentence of the court and to ensure the integrity of the Order or Licence' (Section 5.3). The standards set out a system of 'graduated sanctions' in relation to non-compliance. The types of action that can be taken by the supervising officer include: issuing a warning; making an application to insert additional requirements or conditions; increasing the level of contact; or initiating a breach or recall request. The importance of this element of decision-making is brought into sharper focus by the fact that the recent review of the prison system highlighted an increase in recalls to prison and the attendant impact on the custodial population as an area of concern (Owers *et al.*, 2011).

<sup>12</sup> This is based on the views of 19 respondents (a 38% response rate).

## **Conclusion**

This overview of research in the area of offender supervision in the Republic of Ireland and Northern Ireland provides a map of the territory of research in this area in recent years. Both jurisdictions, albeit for different reasons, have seen stagnation in criminal justice and penal policy. In this context probation has often been overlooked, and this is reflected by the comparative dearth of research in this area. This journal has provided a forum for the dissemination of information on practice developments in both the Republic of Ireland and Northern Ireland. Often accounts of practice provide rich detail on the context and practice of offender supervision that would not otherwise be publicly available. The range of contributions could be considered a 'shop-front' for probation practice that elsewhere has been frequently critiqued for not providing a fuller public account of its work (Maruna and King, 2008). While expositions of practice are important, many of the contributions on offender supervision tend towards descriptive accounts of practice rather than empirically based research.

The need for further empirical research is underlined by the expansion in probation's role, both North and South. In common with other countries there has been a growth in referrals to probation and in the numbers of people subject to supervision, whether as a result of a community-based penalty or under post-custodial licence conditions. This review has highlighted some of the varying impulses at play here, including the increased emphasis on public protection and attempts to reduce the prison population. The circulation of people through systems and the experiences, processes and decision-making involved are all areas that are worthy of further research attention.

The foregrounding of risk assessment and management follows similar trends in other jurisdictions. It is important to note, however, that probation in both the Republic of Ireland and Northern Ireland has to date resisted some of the more punitive trends seen further afield. For example, the same emphasis has not been placed on managerial approaches. Furthermore, probation remains grounded in a social-work orientation. This adds support to the case that the unique contours of these terrains deserve further exposition.

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## Pre-Sanction Reports in Ireland: An Exploration of Quality and Effectiveness

**Andrea Bourke\***

**Summary:** This study explores issues of quality and effectiveness in relation to pre-sanction reports in Ireland. It reviews the literature available in three jurisdictions, England and Wales, Scotland, and the Republic of Ireland, and questions if quality is important in pre-sanction reports. There has been a lack of research on pre-sanction reports in Ireland to date. Little is known about how these reports are perceived by the courts, how they influence sentencing and if they adhere to best practice guidelines for effective report writing. This research attempts to address some of the gaps in knowledge by examining the influence of pre-sanction reports on sentencing and whether they are written in accordance with evidence-based Probation Service guidelines. From the data, a very high take-up rate by judges of recommendations made in pre-sanction reports emerged. The findings also reveal good adherence by probation staff to the guidelines for preparing high-quality pre-sanction reports. However, some sections of the reports adhered more closely to the guidelines than others. The study concludes that there was some evidence of inconsistency and unevenness in the quality and effectiveness of pre-sanction reports in Ireland. The implications for probation practice are discussed and a number of recommendations made to develop effective pre-sanction reports practices, including the need for a more robust quality assurance system.

**Keywords:** Probation, courts, sentencing, community sanctions, alternatives to custody, pre-sanction reports, take-up rate, adherence to guidelines, offence, judges' views, effectiveness, quality assurance.

### Introduction

The Probation Service is the lead agency in the management of offenders in the community and plays an important role in helping to reduce the

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level of crime, by working with offenders to change their behaviour. Assessment is fundamental to the work of the Probation Service, and in 2010 the service completed a total of 13,107 pre-sanction reports to the courts (Probation Service, 2011, p. 13).

The demand for pre-sanction reports by the courts means that judges are among the main customers of the Irish Probation Service, and Probation Officers have sole responsibility for providing these reports to courts. The origins of court reporting have historically been associated with steering courts towards leniency, and the writing of court reports is linked to the notion of rehabilitation (Pease, 1999, p. 6).

In recent years, probation work has undergone a process of modernisation. Throughout England, Wales and Scotland in the early 1980s and Ireland in the 1990s, the ethos and organisation of the service moved away from social work values and towards a 'new penology', preoccupied with the management of crime and risk. The result in probation practice is that the focus of court reports has moved from the offender to the offence and likelihood of reoffending. Feely and Simon (1994, p. 173) suggest that 'Old penology is essentially about individuals, their culpability, their guilt, the diagnosis of their deviance, discovering and applying the proper treatment. The new penology in contrast focuses on groups and is concerned with techniques for identifying, clarifying and managing groups assorted by levels of dangerousness.'

The Probation of Offenders Act 1907 provides the legislative framework for the statutory supervision of offenders. Unfortunately, this act does not cover the provision of reports to courts and, as a result, most reports to court in Ireland are provided on a non-statutory basis. Only reports under the Misuse of Drugs Act 1977, Criminal Justice (Community Service) Act 1983 and Children Act 2001 have a legislative basis.

### **Aims of the study**

The research set out to gather information on pre-sanction reports and to establish a baseline in respect of quality and effectiveness. By collecting and analysing service data, the aim was to establish, firstly, whether or not reports influenced judges in their decision-making and whether or not the content of the reports adhered to Probation Service guidelines for the production of a high-quality report. Based on the evidence uncovered, this study aimed to determine what improvements in practice are

needed in the area of effective report writing and to make recommendations that will enhance the performance of the Probation Service in this area.

### **Method of data collection**

The research methods selected in this study were two-fold. They included a review of the literature on pre-sanction reports in three neighbouring jurisdictions: England and Wales, Scotland, and Ireland. These jurisdictions were chosen because of their close proximity to each other and the fact that they have common antecedents and operate under the common law system. The second method of data collection involved quantitative research in relation to pre-sanction reports, drawing on data 'mined' from the Irish Probation Service, a process known as clinical data mining (Epstein and Blumenfield, 2001, p. 16).

### **Research design**

A quality appraisal instrument was designed by the researcher in order to measure the pre-sanction reports. The design was informed by the Probation Service guidelines, *Service Practice for the Preparation and Presentation of Pre-sanction Reports* (1999) and the *Revised Content of Reports* (2005). These practice guidelines were developed by senior management and became part of the core training, delivered by staff development, on the preparation of pre-sanction reports. It is through these guidelines and training that the Irish Probation Service lays down the criteria for good practice in effective report writing.

From these guidelines, a checklist was devised by the researcher, which identified 31 pieces of information to be covered in the pre-sanction reports. Each report was then analysed to check if it contained each of the variables outlined in the service guidelines. The variables are grouped under the following headings: offence(s) current and previous, victim issues, relevant offender background and conclusion. It is important to highlight the limitations of this research, in that reports were only analysed to check if they covered the 31 variables, and did not examine the depth or the nature of how these topics were covered. Authors' names were deleted from the pre-sanction reports prior to the researcher receiving them, to ensure that knowledge of the author did not influence the assessment process.

## **Does quality matter when writing pre-sanction reports?**

### *Effects in the courtroom*

A review of the literature provides evidence that quality matters when writing pre-sanction reports, mainly due to the effects such reports have in the courtroom. Throughout the 1970s and 1980s, several studies were published in England and Wales that examined how court reports influenced judges' sentencing. Thorpe and Pease (1976) examined the take-up rate by judges of sentence recommendations made in pre-sanction reports in Nottingham and Kent, and found it to be high (78%). Hine *et al.* (1978, p. 95) found 'Evidence of not just an influence, but of a two way influence with recommendations for probation helping to divert offenders from custody and custodial recommendations diverting offenders into custody who would not otherwise have been sent inside'.

As these studies emerged, consolidating the evidence that report recommendations were widely influencing judges' decision-making, the issue of quality and its importance in report writing came to the fore. Perry (1974) examined a sample of 200 Crown Court reports and questioned the reliability and comprehensiveness of many of the pre-sanction reports: apart from name of client, address and date of birth, there were no facts that were universally present in the sample. He also questioned the relevance of some of the information in the reports to the court sentencing function, stating that 'in 80% of the reports there was no risk assessment and in 87% of reports no mention of the client's capacity to change' (Perry, 1974, p. 18). Other studies to examine various aspects of the quality of reports include Horsley (1984), who focused on language and style, and Bottoms and Stelman (1988), who focused on the theoretical underpinnings of reports.

More recently, in 1995 the Home Office commissioned a study conducted by Gelsthorpe and Raynor to assess the impact of introducing pre-sanction reports in a wider range of cases. The study examined the effects of reports on sentencing, the content of the reports and what sentencers think about reports. It found that higher-quality reports were more successful in enabling sentencers to pass community sentences (Gelsthorpe and Raynor, 1995, p. 195).

However, Gelsthorpe and Raynor's study also drew attention to the fact that reports often failed to provide comprehensive and reliable



information for the court. For example, it found that a majority of reports contained spelling, grammar or punctuation errors.

Similar studies were emanating from Scotland at the time, regarding sentencers' views of pre-sanction reports and issues of quality. Curran and Chambers (1982, p. 3) undertook one of the main studies and sought to examine how reports influence judges. They found favourable views of reports, citing 69% for the take-up rate of what they call 'firm' recommendations, but also highlighted issues relating to reliability and comprehensiveness.

More recent studies have gone further than just analysing take-up rates by judges, and have specifically set out to examine the relationship between the quality of reports and the use of custody. Creamer (2000, p. 5) analysed the relationship between the quality of reports and final court outcomes; her findings suggested that as the quality of reports decreased, the custody rate increased.

However, another study argues that what constitutes a good report in any individual case is more complex and problematic than previous studies have suggested. Tata *et al.* (2008) undertook a four-year qualitative study and assert that 'The expectation that report writers should know what judicial sentencers really mean by a report of "good quality" in any specific case is perpetually thwarted because the definition and meaning of quality shift between one sentencer and another; and writers cannot generally predict which sentencers will be on the bench. Even the same sentencer can seem to want conflicting things in the same report' (p. 849).

While the above studies conflate quality with whether judges follow recommendations in pre-sanction reports, further studies tease out how we define quality in reports and raise the issue of 'quality from whose perspective?'. Research conducted by Downing and Lynch (1997) suggests that pre-sentence reports have become synonymous with compliance-based minimum standards of report writing, which are assessed by quantitative performance indicators. They highlight concerns regarding the emphasis on quantitative measures, and propose that 'quality should be related to the expressive good of fulfilling clients' needs, reducing harm to the individual and society and excellence in practice' (p. 185). Downing and Lynch further note that other stakeholders do not necessarily have the same perception of quality. They recommend a greater input from those who write and use the report. They believe that sentencers have a potential to enhance the quality of reports. 'By exploring their needs, function and role a dynamic communication could

take place which influences the content of the reports' (p. 186). Furthermore, they recommend the input of clients for improving the quality of reports. 'Client surveys on the usefulness of assessment interviews, the nature of the report and the formulation of sentencing proposals would ensure that an important source of feedback on "quality" was obtained' (p. 186).

In defining the issue of quality, it is important to mention the importance of anti-discriminatory practice in report writing. Literature continues to emerge that explores differential quality in pre-sentence reports on the basis of defendants' characteristics. NACRO highlighted research indicating widespread discrimination against people from ethnic minority communities and women in pre-sentence reports (1992). It suggested that there were differences in how women were portrayed in reports, where stress, psychological considerations and depression were often mentioned. Similarly, Hudson and Bramhall (2005) examined the differences in content of reports on white and ethnic minority offenders. Their study was concerned with Probation Officers' perceptions of the characteristics of offenders. The study suggested that pre-sentence reports on minority ethnic offenders were likely to be 'thinner', with weak, unclear or negative recommendations. They argue that risk assessment procedures for report writing that are believed to be objective 'actually leave more room for discretion and unwitting discrimination' (p. 725). Although this research examines the notion of quality from the perspective of judges taking up recommendations in reports, it must be acknowledged that the issue of defining quality in reports needs to be more critically examined.

#### *The cost of providing pre-sanction reports to court*

Any discussion of the importance of providing high-quality pre-sanction reports to court needs to address the issue of cost and cost-effectiveness. This has arisen in the literature in each of the jurisdictions examined: England and Wales, Scotland, and Ireland.

In England and Wales in the mid-1990s, efficiency in the public service became a characteristic feature of government policy, and bureaucratic and efficiency-oriented policies became the philosophy of the modernising of the English Probation Service (Christie, 1993, p. 143).

In a similar climate of efficiency and effectiveness, in 2004, Irish Probation Service expenditure was analysed to provide estimates of the cost of its main functional areas. The analysis indicated that reports to

court by the Probation Service accounted for 20% of its total expenditure that year (Comptroller and Auditor General, 2004, p. 5). The service itself developed a costing model to calculate the unit cost of an assessment report, and found that ‘based on 2008 data the unit cost of a pre-sanction report to the District Court is €746 while for the Circuit Court the cost is €1056’ (Probation Service, 2011, p. 25). In view of the high cost of reports to court and the current economic situation, with its emphasis on ‘value for money’, it is more important than ever that judges and ultimately the public receive timely, appropriate and high-quality services in terms of pre-sanction reports.

### **How to benchmark quality?**

Evidence has been provided to support the notion that quality matters when writing pre-sanction reports. This raises the issue of how quality is measured and whether mechanisms are in place for benchmarking quality. A review of the literature indicates that National Standards are the key institutional mechanism used to benchmark and drive up the quality of reports in England and Wales, and Scotland.

Ireland does not appear to have any formal mechanisms in place to monitor standards and performance in the production of reports, although a brief review of the various internal and external documents produced over the past 15 years indicates that the issue of monitoring quality and performance, to enhance service delivery, has been on the agenda on several occasions (Expert Group on the Probation and Welfare Service, 1998; Comptroller and Auditor General, 2004).

### **Research findings and discussion**

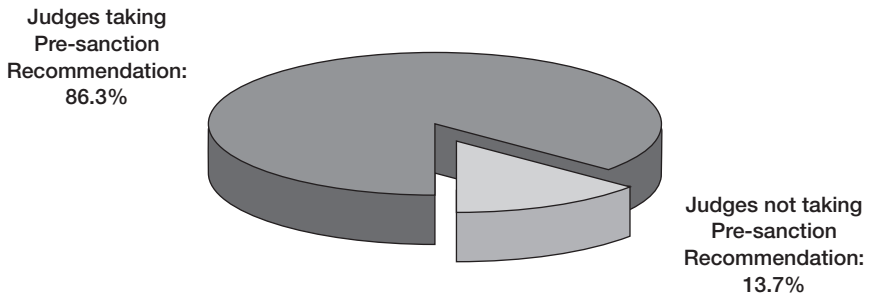
As mentioned above, in 2010 the Probation Service provided approximately 13,107 pre-sanction reports to courts (Probation Service, 2011, p. 13). However, given the limited nature of this research, a random sample of 30 pre-sanction reports was requested from Probation Service management for analysis. Twenty-three pre-sanction reports were provided and 22 of these fulfilled the criteria for inclusion, i.e. that they be reports on adult offenders, post-2005 (when LSI-R was introduced), and include both men and women. Therefore, 22 reports were analysed for this research. These included 15 District Court reports and seven Circuit Court reports, corresponding to 68% and 32% of the sample.

Probation Officers wrote these reports following a request from the judge for a pre-sanction report once a finding of guilt had been established on the offender. These reports covered a two-year period from 2010 to 2012 and included reports on six women and 16 men. They were drawn from a range of teams and were submitted to nine different courts across four counties in the Republic of Ireland. The reports analysed were prepared by five different Probation Officers and included a broad range of offences such as theft, violent disorder, assault, public order, and possession of drugs for sale and supply. It is important to note the size of this study and that the sample represents a very small number of reports; therefore, the findings and interpretations drawn may not be representative of the service as a whole.

### Take-up rate by judges

The take-up rate by judges of recommendations made in pre-sanction reports was found to be 86.3% (Figure 1). That is, of the 22 reports, the judges took up the recommendations proposed by the Probation Officer in 19 reports. There was little difference in the take-up rate between the reports submitted to the District Court and Circuit Court.

**Figure 1.** Take-up rate by judges



These findings of high take-up rates are consistent with other jurisdictions, such as England and Wales, and Scotland, as revealed by the empirical studies. On the surface, this high take-up rate suggests that judges in Ireland are highly influenced by the recommendations made by Probation Officers in pre-sanction reports.

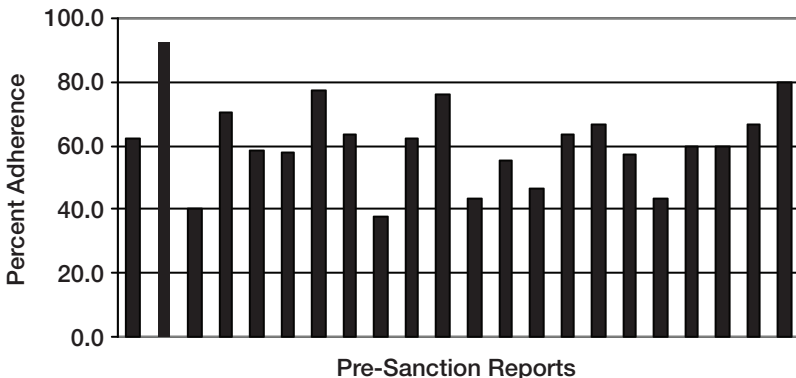
However, the evidence found in the literature review cautions us to be wary of assuming that high take-up rates provide evidence of direct influence on sentencing. Tata *et al.* (2008) state that high take-up rates by judges in Scotland should not be assumed to be direct evidence of influencing sentences. They pointed out that social workers could be trying to second-guess, or that they get used to, the sentencing practices of a particular judge.

While this may be a possible explanation, Tata *et al.*'s argument is somewhat diluted as they also reveal some limitations of engaging with judges through reports. Here they recommend the regular presence of a social worker in court to build professional trust and so overcome some of these limitations. Therefore, while on one hand the high take-up rate by judges in Ireland of recommendations in pre-sanction reports could be explained by report writers second-guessing judges, an equally valid explanation is that a level of professional trust has been built up between the Irish Probation Service and the judiciary.

### Adherence to service guidelines

The Probation Service has provided clear guidelines on how pre-sanction reports in Ireland should be written. As outlined above, a checklist was derived from the service guidelines, which contained 31 variables, and each of the 22 reports was examined for these variables. This provided the researcher with a measure of how closely each report adhered to the guidelines. Figure 2 illustrates an average adherence rate of 61% by

**Figure 2.** Adherence to guidelines in the 22 reports



Probation Officers to the service guidelines for preparing pre-sanction reports, i.e. the reports analysed contained on average 61% of the variables required for the production of a high-quality pre-sanction report as set down by the Probation Service.

However, the data also revealed a wide variety in adherence to the guidelines, from a low of 38% to a high of 92%, thus indicating some unevenness in the quality of pre-sanction reports. While the offence section and conclusion section adhered closely to the guidelines, victim issues and offender background were less well covered. The sections will now be analysed under the following headings: offence(s) current and previous, victim issues, relevant offender background and circumstances, and conclusion.

#### *Offence(s) current and previous*

The findings demonstrate an adherence rate of 70% in the offence sections of pre-sanction reports. This means of the 22 reports analysed, the offence sections contained an average of 70% of the variables outlined by Probation Service guidelines. This section had the highest adherence by Probation Officers to the service guidelines for writing reports. All reports analysed included some reference to the offender's criminal record or knowledge of previous convictions; 86% of the pre-sanction reports included an exploration of the offender's attitude to the offence while 95% covered the degree of acceptance or denial of the facts by the offender.

It is no surprise that the offence section of reports had the highest adherence to Probation Service guidelines. Raynor (1980, p. 82) emphasised the importance of the offence section, arguing that it is highly relevant in judgements of seriousness.

However, despite the overall high adherence to the guidelines by Probation Officers in this section, the findings revealed that some important information was missing. In 59% of pre-sanction reports there was no reference in the offence section to the risk factors that were linked to the committing of the offence. In 53% of pre-sanction reports submitted to the District Court, there was no reference in this section to the view of the prosecuting Garda. This finding is significant, as it raises questions about the verification of data and the reliability of the information provided. A review of the literature highlights this issue when judges were asked for their view on reports; in England and Wales it was found that reports were considered 'good' if they moved beyond the

defendant's version of events (Gelsthorpe and Raynor, 1995, p. 195), and in Scotland judges 'slammed report writers for accepting offender accounts without sufficient challenging of them. They put this down to report writers' bias or sloppy practice' (Tata *et al.*, 2008, p. 843).

Surprisingly, the findings also revealed that the offender's previous response to probation supervision was missing in many reports: 40% of reports contained no reference to the offender's previous progress on probation. Given that this information should be readily available to Probation Officers and lends itself to making informed assessments, it is difficult to understand its omission.

### *Victim issues*

The adherence rate in this section of reports averaged 31%, and was by far the lowest adherence by Probation Officers to the guidelines for writing pre-sanction reports. In 38% of the reports there was no mention of victim issues in this section or anywhere else. While some of the offences were of a minor nature, such as public order, theft and criminal damage, others were not, and included possession of drugs for sale and supply, burglary, and possession of firearms.

A review of the literature reveals how the needs of both society and the offender must be met in pre-sanction reports. Does omission of victim issues in many of the reports confirm the view of some judges in other jurisdictions of report writers' bias and sloppy practice? Furthermore, could the lack of information relating to victims be linked to failing to speak to the prosecuting Garda, which means the Probation Officer only has the offender account of the offence and doesn't have the full picture?

### *Relevant offender background and circumstances*

Overall the average rate of adherence to service guidelines was 57%, but the findings reveal that some aspects of the information were well covered while others were not. For instance, all of the 22 pre-sanction reports covered relevant offender background to some degree; however, 72% of the reports did not link the relevant offender background and circumstances to the risk of reoffending.

One explanation for such variation is that in many cases the purpose of this section appears unclear. Is it to justify leniency for offenders, as was the case in the traditional social work reports, or is it to link background and circumstances to risk of reoffending, as per the evidence-based risk assessments?

Research shows that judges have strong views in relation to this section of reports. According to Tata *et al.* (2008, p. 85), studies revealed that judges tended to skim over the personal and social circumstances; Gelsthorpe and Raynor (1995) found that inclusion of social and background information that was not entirely relevant to the offence worked against the defendant in the courtroom. While they may be thought of as less important than the offending sections or conclusion sections of reports, Raynor (1980, p. 83) argues that these sections of reports are highly important, as it is through analysing the areas in an offender's life where there are difficulties that an assessment can be made of how much someone is prepared to change.

### *Conclusion*

The average adherence rate to the service guidelines in the conclusion section of reports was found to be 62%. Second only to the offending section, the conclusion section had the highest adherence to Probation Service guidelines for Probation Officers writing pre-sanction reports.

As the concluding sections are often the last opportunity to influence the judge before sentencing and the last opportunity for Probation Officers to get their point across, as the findings indicate, they tended to be strong. The majority contained the attitude of the offender, risk factors linked to offending and risk assessments specifying category of risk.

None the less, despite the high adherence to the guidelines, the findings suggest that there is room for improvement in the quality of the concluding sections: 68% of pre-sanction reports contained a risk assessment in this section; however, of the 32% that did not contain a risk assessment in the conclusion section, all had mentioned in the introduction that they had in fact applied the risk assessment tool. It would appear that the risk assessment tool was used but was not referred to in the concluding section of the report – a clear oversight by the Probation Officer.

### **Summary of findings**

The high take-up rate by judges of recommendations in pre-sanction reports in the Republic of Ireland suggests that these reports do influence sentencing in both the District and Circuit Courts. However, the generalisability of these results is not known. In other words, given the



small scale of this study, it is difficult to know whether another sample of reports would produce noticeable regional variations, wide differences across report writers or differences among judges.

The study found that in the main, Probation Officers in Ireland do adhere to the guidelines for writing pre-sanction reports, but there was clear evidence of some unevenness in quality. While some sections of the reports adhered closely to the guidelines, such as the offence and conclusion sections, others, such as the section on victim issues, did not. The findings also indicate that further clarification is needed in relation to the purpose of the relevant offender background and circumstances section of the report.

The findings reveal inconsistencies in the preparation of pre-sanction reports and highlight the importance of checking reports for issues of quality and consistency. This supports the need for a more robust quality assurance mechanism within the Irish Probation Service to ensure that reports cover all relevant material and are as comprehensive as possible.

While this small-scale study suggests room for improvement in the quality and effectiveness of pre-sanction reports, findings must be interpreted cautiously.

### **Implications for probation practice**

As the analysis has shown, the quality and effectiveness of pre-sanction reports in Ireland could be enhanced. A number of recommendations may help improve the quality and effectiveness of pre-sanction reports, as follows.

1. The Probation Service could gather more formal feedback from judges regarding their views on pre-sanction reports and what would be useful for them in terms of sentencing.
2. The Probation Service needs to maintain its commitment to providing pre-sanction report writing workshops for Probation Officers. This is particularly important in the present climate of cutbacks and limited resources.
3. The service needs to develop a system of quality assurance that encourages good professional practice. Practices from neighbouring jurisdictions, such as selecting 10% of reports for analysis or team monitoring of reports, could be used.

4. The Probation Service needs to ensure appropriate management support and oversight to implement the current guidelines for writing pre-sanction reports.
5. The Probation Service could revisit the LSI-R guidelines on how to incorporate risk assessment into reports. It needs to focus especially on how the risk factors should be incorporated into the report and how they relate to the risk of reoffending.
6. The Probation Service could further explore its own ideological underpinnings in terms of how best to present people's lives to court through pre-sanction reports. These explorations could focus on the balance between offenders' needs and society's needs, especially in relation to victims.

## Conclusion

While acknowledging the limitations of this study, it is hoped that the research findings will go some way towards raising the standard of pre-sanction reports in the Irish Probation Service. While pre-sanction reports in Ireland do appear to influence sentencing and there is good adherence to service guidelines, it is clear that work could be done to achieve better practice standards in pre-sanction report writing, thereby enhancing service effectiveness in this area. Of course more research needs to be done in this area, and the relationship between pre-sanction report quality and effectiveness needs to be developed further.

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## Probation and the Role of Public Relations

Gail McGreevy\*

**Summary:** Are the media and public relations of any relevance to those working in criminal justice? Does the wider public understand what probation is about? Can Probation Officers benefit in any way from good media and public relations handling? In light of the controversies in England around the relationship between the police and the media, is engaging with the press the road to ruin for probation? Should Probation Officers just get on with the business of working to challenge and change offenders' behaviour and leave media and public relations to the PR industry? This paper seeks to address some of those issues.

**Keywords:** Media, criminal justice, Northern Ireland, public perceptions of probation, influencing policy.

### Introduction

Much has been written about the relationship between the police service and the media following the phone-hacking scandal in England. Most of the focus has been on the Metropolitan Police Service, and in particular its relationship with the now defunct *News of the World*. Scotland Yard's Head of Communications, Dick Fedorcio, resigned in 2012 immediately after the force opened disciplinary proceedings against him in the wake of allegations about his relationship with a former *News of the World* executive. Some high-profile police officers were also embroiled in the scandal, which led to the resignation of Assistant Commissioner John Yates and Commissioner Sir Paul Stephenson.

In the wake of these revelations and the establishment of the Leveson Inquiry, questions have been asked about how the media operates and

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how it interacts with the police, one of the largest organisations within criminal justice. Concerns have been raised about press intrusion and harassment and, in particular, the media's treatment of victims of crime. The Dowler family, whose daughter Millie was abducted and murdered in 2002, appeared before the Leveson Inquiry, which was a judicial public inquiry established to investigate the culture, practices and ethics of the British press, as did Gerry and Kate McCann, whose daughter Madeleine was abducted in Portugal in 2007. Both families gave powerful testimonies of the impact of press intrusion at a time of profound shock and grief.

Against this backdrop of mistrust and corruption, it is easy to forget the importance of good communications and public relations in helping to reduce crime, reduce the fear of crime and assist in making communities safer.

Good media relations have been essential over the years in assisting police services to apprehend offenders, deter would-be criminals and protect victims of crime. Appeals for information, public warnings and crime prevention advice have all been disseminated by the media and have undoubtedly saved lives and prevented crimes.

Sir Hugh Orde, President of the Association of Chief Police Officers (ACPO) and former Chief Constable of the Police Service of Northern Ireland (PSNI), said in his witness statement to the Leveson Inquiry:

The media play an important role in holding the police to account, and the police have a duty and in my judgment an obligation, to inform and engage with the media as representatives of the communities we serve. At a local level the media have a role in helping disseminate information about crime, while at a more strategic level we need the media to understand the complexities of policing so that it is effectively and accurately communicated to the public we serve. (Orde, 2012)

In other words, Sir Hugh argues that the police need the media, and the media have a role to play in providing information about crime and ultimately helping reduce crime.

Probation Officers in PBNI and the Probation Service are all social work qualified. Just as police in England have had a controversial relationship with the media, the relationship between social workers as a profession and the media has not always been an easy one. On many occasions social workers, particularly in the field of child protection, have

been depicted in negative and unflattering terms in the news media. The College of Social Work, in its evidence to the Leveson Inquiry, said that in a survey of 736 social workers, 91% of respondents felt that media coverage of social work is generally unfair and inaccurate. Feedback was classed around four themes, one of which was ignorance, including poor understanding of the complexities of social work.

Against this backdrop, it is timely to consider if, and how, the Probation Service can develop its relationship with the media and public relations in order to achieve positive results. With that in mind, this paper reflects on three questions: Does probation need the media and public relations at all? If it does, how can probation best use the media and public relations? How, if at all, does that relationship assist probation in its key objectives of making communities safer by challenging and changing offender behaviour?

### **Does probation need the media and public relations at all?**

The relationship that probation has with the media and public relations is on an entirely different scale to that between the police and the media. By its very nature, probation does not provide the same volume of information of interest to the public. For example, in December 2012, the PSNI placed 47 news releases on its website covering issues such as burglaries, giving crime prevention advice, and providing statements on disorder. By comparison, in December 2012, the PBNI placed six news releases on its website in relation to community service, programme work and public protection; London Probation Trust, Greater Manchester Probation Trust and Merseyside Probation Trust placed two, seven and one news releases on their respective websites. The volume of information that probation organisations are providing to the media is much less than that provided by police.

However, while probation may not have reason to disseminate as much information as police organisations, is it still important to have a relationship with the media?

In order to answer that we need to consider firstly what public relations and media management mean. The very term 'public relations' can at times be perceived as a dirty word, an attempt to manipulate the media and the public and 'spin' away negative stories. Public relations itself has suffered from an image problem. Alastair Campbell, former Director of Communications for the Labour government, speaking in 2002 after he

stepped down from the post, admitted that public relations tactics used in Downing Street did not always have a positive effect (Anonymous, 2002). ‘Accusations and counter-accusations of spin and obsession with trivia harmed voters ... The press on one side, saying we just spin you a line the whole time, then us on the other side, saying that you are obsessed by trivia ... The victims are the public who don’t think it has anything to do with them whatsoever,’ he said.

However, if we look at the definition of public relations in its truest form, it is not about ‘spin’ or manipulation but rather about better engagement and effective communication. From this perspective, we can start to consider whether it is an asset or an obstacle to probation.

The Chartered Institute of Public Relations (CIPR) defines public relations as follows:

Public relations is about reputation – the result of what you do, what you say and what others say about you. It is the discipline which looks after reputation, with the aim of earning understanding and support and influencing opinion and behaviour. It is the planned and sustained effort to establish and maintain goodwill and mutual understanding between an organisation and its publics. (CIPR, 2013)

In order to determine whether probation needs to use the media and public relations, we need to consider whether probation needs to increase understanding and support of its work.

### **Do the public understand probation?**

Maruna and King (2008, p. 339) observed that: ‘Over the last decade or more, probation has developed a distinct public relations problem in the USA and the UK’. Exploring the available evidence about public understanding of community sentences, these authors assert that: ‘Although the probation brand name has survived 100 years in the UK, nearly every other aspect of probation work has undergone a process of explicit rebranding, sometimes several times over, over the last 10 years as probation in Britain has also undergone its own period of feeling “uncomfortable, threatened, unsure of its role, and not at all confident of its social or political credibility”’ (Maruna and King, 2008, p. 340). They point to a number of high-profile cases and their portrayal in the media

in the UK that may have impacted on public confidence and support of community sentences and probation supervision.

McNeill (2009, p. 15), examining the issue of public opinion and credibility, reminds us of the complexities of public opinion: 'First of all, there is no public opinion; there are different opinions from different members of the public; different opinions from the same people depending on what you ask them, how you ask them, what mood they are in and, probably, what has happened to them in the last 24 hours'. McNeill goes on to say, however, that as regards community sanctions, ignorance is a fundamental problem.

The issue of lack of awareness or ignorance also resonated at the Westminster Justice Committee as it heard evidence on probation practice in 2011. Christine Lawrie, Chief Executive of the Probation Association, explained: 'One of our problems is that if you look at other public services such as health and education, most people have a general knowledge from their own experience of what they are like but most people do not have one about probation' (Justice Committee, 2011).

An Omnibus survey was carried out in Northern Ireland in 2009 and again in 2012. The survey asked about knowledge of probation and effectiveness. The fieldwork for the first survey took place between 1 September 2009 and 30 September 2009, during which time 1,201 interviews were completed and there was a response rate of 62%. In the 2012 survey, just over two-thirds of respondents (68%) had heard of the PBNI. This was a slight increase on the finding in the 2009 survey, when 65% of respondents had heard of the organisation. The level of awareness was higher in Eastern Council Areas than Western Council Areas (76% compared with 58%). The level of awareness in the Belfast City Council Area was 71%. Respondents were asked to indicate whether they were aware of some of the services that PBNI delivers. Awareness was highest in terms of PBNI supervising community sentences, working with offenders in prison and working as part of the multi-agency public protection arrangements. At 44%, the level of awareness was lowest in terms of PBNI's provision of a Victim Information Scheme.

In terms of awareness and understanding and providing context, an Omnibus survey carried out in 2012 in relation to policing found that 84% of respondents had heard of the Northern Ireland Policing Board. The Policing Board is similar to the Probation Board in that it is a non-departmental body. However, its awareness level is much higher than that of the Probation Board. Therefore, it could be argued that in Northern



Ireland there remains a real need to build levels of awareness of probation with the wider public.

In comparison to other public bodies such as the Policing Board, there remains a lack of awareness and understanding of the PBNI. Of interest in the 2012 Omnibus survey is that one of the areas that PBNI has invested most heavily in promoting through communications and public relations has been that of the public protection arrangements – 77% of those surveyed were aware of this work. This might suggest that media and public relations have played some role in raising awareness of the role of the public protection arrangements. However, an area that has had limited media exposure and public relations work has been PBNI's work in prisons, although awareness levels of that area also remain high.

It is clear from the Omnibus survey that PBNI still has much to do in terms of raising its profile, raising awareness about its role in local communities and building understanding about the complexity and range of its work. One of the key ways to build this awareness is through a multi-faceted communications and public relations strategy.

### **How can probation best use the media and public relations?**

If probation suffers from a lack of understanding and awareness, how can it best use the media and public relations to assist in changing this?

Cousins (1987, p. 57) said that 'most probation areas have sought to undertake public relations work but much of what has been done has been limited because the approach has been reactive and ad hoc. To be effective there is a need to have an overall public relations policy.' It is the view of the author that such a policy needs to focus on three main areas – internal communications, external communications and public affairs or building relationships with stakeholders.

PBNI is coming to the end of a three-year communications strategy that was developed and approved in January 2010. The aim of that strategy was to build awareness and increase understanding of probation in Northern Ireland. Most important in that strategy is the underlying principle that communications and public relations are not solely the job of the communications unit or PR professionals, but it is the role of every person employed by probation to play their part in explaining successes, correcting inaccurate information and increasing understanding.

Probation, however, not only has an opportunity to build awareness through proactive use of the media and public relations; it can also help

define and help shape the criminal justice system in Northern Ireland. That takes courage. That involves participating in debates, and indeed initiating debates, about crime, punishment, reoffending and victims. It means sometimes giving the public difficult messages. It means reaching out to communicate in a way that people easily understand.

A recent example of this proactive media approach related to the reopening of a hostel for offenders in North Belfast in November 2012 in the face of opposition from some members of the local community. The Probation Board along with partners who work in public protection organised a proactive media briefing to explain to the media why the hostel had to reopen and how it contributed to community safety. Media were invited to see the hostel for themselves, and open days were organised for the local community and stakeholders to see the facility and meet staff. Proactive media interviews were arranged and inaccurate information was corrected. The result was that a highly controversial media issue was neutralised by agencies engaging with the media and stakeholders, committing to be open and transparent and putting into practice the philosophy of 'seeing is believing' by enabling people to see the hostel and the security in place. A difficult issue was dealt with by having a proactive communications plan in place.

However, in adopting a proactive communications plan for probation it is essential, especially considering developments in England and the treatment of victims in particular, that sensitivity and due regard be given to the feelings and wishes of victims of crime. For example, many have argued that probation, in order to communicate, must tell a human story. However, that should not be done at the expense of the wishes of victims.

### **How does an effective relationship with the media assist probation in making communities safer by challenging and changing offenders' behaviour?**

It is clear that probation needs to continue to raise awareness of its work, and can do this through the use of media and public relations. However, apart from raising awareness of their work, for Probation Officers working in courts, prisons, the community and with victims, does engaging with the media actually assist them in any other sense to make communities safer?

With this in mind, we need to consider whether the media can actually shape or influence criminal justice policy, and policies in relation to how

Probation Officers carry out their work. There have been debates about whether the media simply mirrors public opinion or whether the treatment of crime in the media influences public opinion (see for example Beale, 2006, p. 397).

We also know that the media is an important source of information for the public in relation to crime. In the 2010/11 British Crime Survey, respondents were asked what sources of information had given them their impressions in relation to crime. The media was an important source of information on crime in the country as a whole. The most commonly cited source was news programmes on television or radio (59% of respondents). Other common sources were local newspapers (32% of respondents), tabloid newspapers (30% of respondents) and word of mouth or information from other people (28% of respondents). However, what this paper is concerned with is whether the media and public relations have the potential to shape and change criminal justice policy.

There are a number of examples of the media running direct campaigns in order to influence and try to change criminal justice policy. One such campaign was run in Northern Ireland in relation to abolishing the practice of 50% remission. The campaign was launched in 2006 by the *Belfast Telegraph* after it emerged that Trevor Hamilton committed the murder of Strabane pensioner Attracta Harron just weeks after he was released from jail halfway through a seven-year sentence for rape. The 'Justice for Attracta' campaign achieved widespread public and political support and in 2008 the Criminal Justice (NI) Order introduced new public protection sentences and restructured the existing sentencing framework, bringing an end to automatic 50% remission for all sentenced prisoners.

Deborah McAleese, crime reporter for the *Belfast Telegraph*, reaffirmed that in her view, there was a clear link between the campaign run by her newspaper and the subsequent legislation: 'The campaign gave voice to the public concerns that offenders who posed a high risk of reoffending were being automatically released from prison. The public's concern was raised by the paper with the Prime Minister and the European Parliament and eventually the policy was changed and new public protection measures put in place.' She also stated her belief that the media represents the more 'common view' about how the public feel about criminal justice issues and can often bridge the gap between the views of the public and the policy-makers. It gives a voice to the public on issues they may feel

very strongly about, and without the media they might not have the opportunity to be heard.

Ms McAleese cites a recent example where the *Belfast Telegraph* successfully challenged reporting restrictions in a serious sexual abuse case ('Unmasked', 29 November 2012). The media had been prohibited from naming the defendant, who was convicted of sexually abusing young children over a long period of time. The paper believed that providing this man – a highly regarded public figure – with anonymity was unfair, especially as to identify him would not have identified his victims. She asserted that without the media's intervention in this case the public would never have known what this man had been involved in.

I began this paper by referring to the *News of the World's* relationship with the police and the subsequent demise of that newspaper in light of allegations of corruption and phone hacking. In its final edition it claimed that its 'naming and shaming' campaign, which led to the introduction of the Child Sex Offender Disclosure Scheme (CSODS), proved the paper was in fact a force for good. The naming and shaming campaign was controversial and was blamed for attacks on both sex offenders and other members of the public. However, it did show the media's ability to highlight and keep an issue in the public domain for a sustained period of time.

So does the media really have the potential to shape or influence criminal justice policy? What do the policy-makers themselves think? The Department of Justice in Northern Ireland says the answer must be a qualified 'yes' (Patterson, 2013). The media does indeed have the potential to influence on a range of public policies, not just criminal justice, as either a reflector of public opinion or an influencer of how policy is received by the public. The media can contribute to the range of views sought by government on public policy issues, including criminal justice, not just through specific lobbying campaigns or headline stories but also in a much more passive way – the mere fact that there is a free press and policies are under scrutiny demands that the public interest be a factor when decisions are being made by governments.

Are there any examples of where this has worked? We have already looked at cases where it could be said that the media played a role in how policy evolved. However, the Department of Justice says there is a difference between the *potential* to influence and *actual* examples of where policy was changed simply as a result of media attention. It states that policy is rarely radically changed as a result of one element in the

formulation/development process, although there may be examples in extreme cases (Patterson, 2013). Policy choices are more usually influenced by a range of responses, including of course the media, but also wider public interest, general responses to policy consultation, key stakeholders' views, political opinion, etc. All of these can lead to shifts in emphasis. It is therefore difficult to say that the media alone changed policy in any of the examples illustrated above.

Does the media mirror public opinion or does it influence public opinion?

Interestingly, crime reporter Deborah McAleese states that, in her view, while the media does mirror public opinion, it sometimes takes the lead by revealing things that the public would not otherwise know. She asserts that it would be unfair to say that the public are easily influenced by the views of the media and are unable to form their own opinions.

However, the Department of Justice says that the media can do both, but is at its most dangerous when it becomes solely an instrument of influence (Patterson, 2013). This is where the presentation of policy can play to all sorts of agendas and objectivity can be lost. For example, it is in no-one's best interest to use the sort of emotive and low-level language that is seen in the media's presentation of sex offender risk management policy. The 'sex perverts', 'paedos', 'sex monsters' terminology only raises public fears and plays to that agenda, with little mention of the enormous amount of work carried out by probation, police and others to aid public protection. Nor does it in any way help to protect children. The stereotypical image of 'stranger danger' is so far from the truth in the majority of sexual crimes that it actually benefits the individuals who are perpetrating the most abuse – those known to the child through family connections; ordinary people from all walks of life. No-one wants to give that message – why not? Is it because it's too unpalatable for some?

Whatever the reason, the fact remains that these messages just make it harder for society to accept the truth about much of the sexual crime committed, and harder for children and others to report abuse. This is where the conflict lies between the commercial impetus for the media and its responsibility to contribute to the wider social agenda – in this case to help bring sex offenders to justice and protect children.

Another example relates to the recent criminalisation of squatting in empty residential properties, under section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The media has played a major role in shoring up a popular perception of squatters as organised

gangs of thugs, layabouts and revolutionary fanatics; as social ‘parasites’ who steal people’s homes. The persistence of this view across the media belies the fact that little is officially known about the squatter population, their backgrounds and motivations, or the relationships between squatting, homelessness and vulnerability. The negative portrayal of marginalised populations in the media is particularly dangerous against the backdrop of a rise in the populist model of penal policy-making, in which the government consults ordinary people, especially those impacted by crime and disorder, when formulating and implementing policies to tackle such problems (Johnstone, 2000, p. 161). Research has indicated that such consultation often leads to harsher and less tolerant policies, driven by punitive passions and prejudices rather than attempts to address the underlying social issues that may cause such problems. While this populist model is often portrayed by the government as a triumph of democratic politics, its methodologies are skewed to elicit more punitive views on crime (Hough, 1996, p. 191), often linked to the portrayal of the offender in the media. It is important that the risk of irresponsible manipulations of the public’s fear of crime through negative stereotyping and rhetorical strategies framed to carry powerful resonance in the media – and sometimes led by the political agenda of the day – be countered by honest, balanced and proportionate messages from reliable sources. The Law Society’s statement that section 144 was ‘based on misunderstandings by the media of the scale of the problem and a misunderstanding of the current law’ (Baksi, 2012) underlines the importance of responsible engagement with the media to inform public debate.

Whether the media alone influences and changes the direction of criminal justice strategy, it certainly has the potential to highlight and drive forward campaigns on many elements of criminal justice policy. With the media’s campaigning ability, it is relevant to consider whether probation could benefit by encouraging news organisations to campaign for particular legislation or in a particular direction.

In England in 2011, the National Association of Probation Officers (NAPO) worked with others to raise awareness and seek a change in legislation through a high-profile communications and public affairs campaign in relation to stalking. Harry Fletcher, Assistant General Secretary of NAPO, and Laura Richards, co-founder of Protection Against Stalking (PAS), said of the campaign:

Our success was achieved in a remarkably short time. The key was all-party support for the independent inquiry, where victims' voices were heard and frontline practitioners were taken seriously; a wide range of organisations backing the campaign; the individual lobbying of MPs and peers; and support of political parties. It was time-consuming and intense, with more than 20 detailed briefings and dozens of press releases produced, but it worked. (Fletcher and Richards, 2012)

Rather than leaving it to the media to dictate the agenda, in this case the probation union chose to seek to influence and change the agenda using the media and public affairs as the tools to do so.

Are there lessons from the examples above as to how probation might consider using a developed relationship with the media to help in its core aim of making communities safer?

Brian McCaughey, Director of PBNI, believes that there are real opportunities – particularly in light of the devolution of policing and justice – for organisations such as probation to get their message out and influence policy for the better (McCaughey, 2011). While the media has a role both in a campaigning capacity and more subtly through reporting accurately on community sentences and the role of probation, he believes that probation can also influence politicians and those responsible for policy and legislation directly: 'I believe that devolution brings real opportunities to enable organisations like probation to engage more actively with the media but it is just as important to engage directly with the decision makers'. In his view probation works, and that is a message that should be confidently communicated with the media and policy-makers.

Similarly in the Republic of Ireland there appears to have been an increase in the use of media over the past 12 months to disseminate the message that probation works. The Director of the Probation Service, Vivian Geiran, a prolific social media user, published an article in the *Irish Times* in December 2012 and has developed a probation e-newsletter for stakeholders entitled *Probation Works*. The author anticipates that the use of the media by probation in that jurisdiction will increase in order to rebut inaccurate information and effectively explain the role of the organisation to a public that doesn't fully understand the complexities faced by officers trying to prevent reoffending and make towns and cities safer.

## Conclusion

There is still much work to do in raising awareness of what probation is about, what Probation Officers do and how they contribute to community safety. John Grace, writing in the *Guardian* in February 2013, says that ‘The probation service may be fairly anonymous but we’d sure as hell notice if they weren’t there’. Clearly those working within probation still have a job to do to explain their role and the valuable contribution they make to safer communities.

Proactive use of the media and public relations can help to raise awareness, as much of the information the public receive in relation to crime continues to come from the media. But that use of media must take place within carefully constructed boundaries with a clear engagement protocol and communications strategy in place. Paramount to all communications must be the protection of the rights of victims.

However, the use of media and public relations can do more than simply raise awareness; it can also help shape the environment in which probation staff operate. Public relations and the use of media are as relevant to frontline probation staff as to senior management or those responsible for PR and communications. A probation organisation that is willing to be open, transparent, engaging, and courageous has much to gain from adopting a positive approach to using the media and public relations.

There is a need for the media and the wider public to be given accurate information about offending and public protection, and there is a need to dispel many of the myths currently peddled by some elements of the media, particularly around issues of sexual offending. These may be unpalatable messages for some, but there is an onus on professionals who work in public protection to continue to try to shape the debate and inform the media and wider public opinion about the true nature of abuse and patterns of offending.

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## The Probation Service in Romania: An Overview

**Elena Nichifor\***

**Summary:** The institution of probation is relatively new in Romania, with a structure and system that is still in a process of development. This paper provides an overview and discusses the development of the Romanian probation system, how it is organised and functions, the main activities of the service, and the counselling programmes delivered in Braşov Probation Service.

**Keywords:** Romania, Braşov, Probation Service, court, sanctions, community, Probation Counsellor, offenders, victims, supervision, counselling, programmes, rehabilitation.

### **A short history of the Romanian probation system**

The Probation Service in Romania was established under the coordination of the Ministry of Justice in the year 2000 by the Romanian Government, through Government Ordinance 92/2000, and was subsequently approved through Law no. 129/2002.

The newly established Probation Service replaced the ‘Services of Social Reintegration and Supervision’ that had previously worked with offenders. For four years prior to the finalisation of the legislation, the new probation activities were piloted in centres that provided the legal support for alternative sanctions in the community (van Kalmthout and Durnescu, 2008; Szabo, 2009). These pilots were managed by Probation Service staff and supported by community involvement, and resources from local non-governmental organisations (NGOs). In this manner the framework for the new institution was created.

However, for a better understanding of the progress made by the Probation Service in Romania, I invite you to travel back in time to 1996.

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Due to the limited range of sanctions and also to sentencing patterns, the imprisonment rate in Romania was one of the highest in Europe (Lappi-Seppälä, 2002). The Ministry of Justice recognised the need to promote a more creative way of implementing justice. One of the first steps was to introduce an experimental centre of probation, which was established in Arad (in the west of the country).

This probation centre was the result of an initiative of the Arad Penitentiary with the help of financial and technical support from the government of the United Kingdom through the Know-How Fund.<sup>1</sup> The main purpose of this pilot was to introduce elements of probation-like pre-sentence assessment reports and post-sentence supervision into the Romanian criminal justice system.

The initial group of offenders comprised minors who had committed offences and were on bail with a condition of residence in Arad city. After a period of time the category of offenders was expanded to include adults, and services were extended to Arad County. The staff team of the experimental centre of probation was led initially by volunteers from the Europe for Europe Association<sup>2</sup> employed by Arad Penitentiary.

This model was further developed between 1997 and 2000, when 10 more experimental centres were established by order of the Ministry of Justice. Some of these used the same model as that used in the Arad pilot and were included as distinct departments in penitentiaries or re-education centres. Others were established as part of NGOs. From 1998 the British government committed itself to supporting a five-year project called 'Probation in Romania' with the goal of creating a national probation system.

Here are some examples of the 10 experimental centres of probation established by the beginning of 2000 in our country. In May 1997 the second experimental centre was established at the Gaesti Re-education Centre. In August 1997 the probation experimental centre at Focsani was created with a team made up of members from Focsani Penitentiary and from the People to People Foundation.<sup>3</sup> These early centres were under

<sup>1</sup> The Know-How Fund was a British government programme to assist Eastern European nations in the transition to free market democracies. It no longer exists. The European Union also provided financial, logistical and strategic support for the development of the Romanian probation system.

<sup>2</sup> An NGO that was involved in supporting the implementation of alternative sanctions in the community.

<sup>3</sup> An NGO founded in Iasi in 1999 that promotes and protects the rights of children and the elderly: [www.people2people.ro/index.php](http://www.people2people.ro/index.php)

the administration of the National Penitentiary Service and local NGO partners. When additional centres were established in 1998, their administration was transferred to a unit within the Ministry of Justice. These centres were funded by the Open Society Foundations<sup>4</sup> or from European Union funds.

For a clearer view of the activities in the pilot centres, I will focus on the work undertaken in Iasi in 1998. The members of the team were employed by the NGO and used the title 'Probation Counsellor'. There were three main activities: supervision in the community, preparation of assessment reports for the courts, and delivering programmes in the penitentiary. The client group was minors and young adults convicted of crimes such as robbery and theft. A smaller number had addiction issues, but the drug problem was not as serious then as it is today.

The main challenges for the team were the lack of visibility and understanding of their work at a community level and the demands of providing programmes in the penitentiary system. Despite these challenges the team was motivated by the success of interventions based on clear theoretical frameworks that continue to inform our work today.

The establishment of the pilot probation centres was a distinct period in the development of probation in Romania; this period, 1996–2000, is known as the experimental stage of probation.

The second stage in the relatively short history of probation in Romania was the development and consolidation of probation as an institution. This came as a natural step following the positive outcomes of the pilots. Clear models for the implementation of a range of alternative sanctions, consistent with models in probation around Europe, had emerged as part of the reform agenda.

In August 2001, the first Probation Services were established under the authority of the Ministry of Justice. Initially there were 28, with the name 'Services for Social Reintegration and Supervision', each established on a county basis. A further change took place in the administration in 2002 when the services were established near the main court of the county, independent of the court and coordinated by the Ministry of Justice through the probation department. The probation budget remained under the administration of the court president. Gradually the number of the Probation Services grew. We now have a Probation Service in each of Romania's 41 counties and one in the capital, Bucharest.

<sup>4</sup> An NGO established in 1997 that promotes and protects the rights and views of minority groups: [www.opensocietyfoundations.org](http://www.opensocietyfoundations.org)

In 2006, legislative changes took place that led to the consolidation of the status of the Probation Services' personnel, clearly identifying the role and competencies required as a Probation Counsellor within the Romanian criminal justice system. At the same time, by enacting Law no. 123/2006, the Ministry of Justice reverted to the initial name used during the experimental stage, the Probation Service, as is used in other jurisdictions around the world.

### **Organisation and functioning**

For a better understanding of the Romanian probation system, this section will provide some data about the structure of the organisation and the nature of its activities.

The central unit of the system is the Directorate of Probation, which is the dedicated department through which the Ministry of Justice administers, coordinates and directs the activities of the Probation Services at national level. In the Directorate of Probation the Director leads a team of seven Probation Inspectors from a range of academic backgrounds, including law, sociology, psychology and social assistance, who have been promoted from the post of Probation Counsellor.

At present we have 42 Probation Services that operate independently of each other but are accountable to the Directorate of Probation in the Ministry of Justice. Each Probation Service works with the higher and lower courts. In addition, secondary offices have been established within each of the counties and, while not yet functional, they will meet the expected increased demands arising from future legislative changes.

Each Probation Service is managed by a Chief Probation Counsellor, who is also a Probation Counsellor. The main task of the Chief is the management of the overall activities of the Probation Service and the daily tasks. The number of Probation Counsellors in each service varies, from three to as many as 14 in Braşov, Iasi and Gorj and 22 in Bucharest. The teams are multidisciplinary. The Probation Counsellors have a range of graduate degrees – social assistance, law, pedagogy, psychology, sociology. There are three professional levels of Probation Counsellor, with promotion based on the years spent in the probation system.

Even though Probation Counsellors have different academic training backgrounds, they all provide the same range and level of services (Schiaucu and Canton, 2008), which can be summarised as:

- supervising how the convicted person complies with the measures and obligations imposed by the court
- writing assessment reports, at the court or prosecutor's office's request, on an offender following conviction, or on an offender who is already under the supervision of the Probation Service (in the first example only the court can make such an order)
- providing assistance and counselling for convicted persons who have been referred to the Probation Services
- participating in the parole commission in the penitentiary
- offering psychological counselling to victims of offences
- writing reports on minors who committed an offence but have not yet reached 14 years (the age of criminal responsibility)
- participating in the hearing and adjudication of a minor who is between the ages of 14 and 16 years, to ensure that minors' legal rights are respected
- cooperating with public and private organisations by working on protocols of collaboration, to address the social needs of the supervised persons regarding education, work place, place to live or obligations imposed by the court (e.g. unpaid work in the community).

## **The main activities of the Romanian Probation Service**

### *Assessment reports*

An assessment report for minors or for adults can be requested by the court or the prosecutor's office before the sentence is given. For offenders who were minors at the time of the offence the assessment report is obligatory. A report can also be requested if an offender currently subject to Probation Service supervision commits a further offence. The Chief Probation Officer assigns the cases.

The report format is standardised and includes information, in a narrative form, which must meet the following principles: objectivity, clarity, coherence and actuality/concreteness. To achieve this goal one or two meetings will take place with the person for whom the assessment report was requested, and with other information sources such as members of the family, persons from the community – police, municipality/town hall, school, place of work – thus keeping a balance between the internal and external sources of information. The information an assessment report must contain is listed in Table 1.

**Table 1.** Information that an assessment report must contain

<i>Category of offender</i>	<i>Newly requested assessment</i>	<i>Persons already under supervision</i>
Adult	<ul style="list-style-type: none"> <li>• History of the offence</li> <li>• Social and family environment/background</li> <li>• Level of education and professional background</li> <li>• Behaviour of the offender before and after committing the offence</li> <li>• Factors that contributed to the onset of criminal behaviour</li> <li>• If relevant, how the offender responded to a previous decision by the court</li> <li>• When the Counsellor considers it necessary, the report will contain information on physical and mental conditions, as well as data regarding intellectual and moral development of the offender, provided by a specialist nominated for this purpose</li> </ul>	<ul style="list-style-type: none"> <li>• Social and family environment/background</li> <li>• Educational and professional evolution</li> <li>• Behaviour during supervision time</li> <li>• The way the offender fulfilled obligation(s) set by the order of the court</li> <li>• When the Counsellor considers it necessary, the report will contain information on physical and mental conditions, as well as data regarding intellectual and moral development of the offender, provided by a specialist nominated for this purpose</li> </ul>
Minors	<p>The information mentioned above for adults, plus:</p> <ul style="list-style-type: none"> <li>• conditions of life and living</li> <li>• the way the parents, persons with responsibility for the minor or the tutor are fulfilling their obligations regarding the minor.</li> </ul>	<p>The information mentioned above for adults, plus:</p> <ul style="list-style-type: none"> <li>• the way the parents, persons with responsibility for the minor or the tutor are fulfilling their obligations regarding the minor</li> <li>• where appropriate, the Probation Service's collaboration with the nominated person or institution supervising the minor, or the public institution in which the minor fulfils the obligation of unpaid work for the community.</li> </ul>

With reference to report writing, in 2007 new legislation brought the modification that assessment reports could be requested for the offender by the police officer during police investigation, by the prosecutor's office and, during the trial, by the judge. The subsequent increase in referrals made it very difficult for Probation Counsellors to fulfil their other duties in addition to report writing. This situation continued until March 2008 when, because it was not feasible in practice, the law was changed and reverted to reports being prepared only on court request or at the prosecutor's request, if needed for his work.

### *Supervision of offenders*

At present in Romania, the supervision term varies between two years and 15 days and a maximum of nine years for adults, and half that for minors.

In relation to adult offenders there are four distinct probation conditions:

- (a) to present oneself on planned dates at the Probation Service closest to one's residence
- (b) to advise the Probation Counsellor before any change of residence or location and before any travel that is longer than eight days, as well as the date of return
- (c) to inform of and justify any change in work place
- (d) to provide information in relation to financial income.

One or more of the following obligations can be included:

- (a) to do an activity or to attend an educational course including community service or unpaid work
- (b) not to change domicile or residence except under conditions laid down by the court, or to break the territorial limits set by the court
- (c) not to go to/attend certain places
- (d) not to contact certain persons
- (e) not to drive any vehicle or certain types of vehicles
- (f) to attend detoxification or other treatment centres.

For a minor who committed a felony, the court can direct an education measure of supervised liberty and impose one or more of the following obligations:



- not to attend certain places
- not to contact certain persons
- to carry out community service in a public institution named by the court, for between 50 and 200 hours (legislation does not state the maximum or minimum number of hours for adults or minors), maximum three hours a day, after the school programme, outside of working days or during holidays.

When supervised minors reach adulthood at the age of 18, they must comply with the four adult probation measures and the court may add an additional obligation or obligations as outlined above.

Based on the statistical data provided by the Probation Services, the Probation Directorate reported that by the end of 2012, 280 Probation Counsellors were working with 16,383 convicted persons. The average number of supervision cases per Probation Counsellor was 58. There are services where the average number of cases is higher than the national average. In Braşov, Constanta, Bihor and Bucharest the number can be around 80, 100, or even 160 files per Probation Counsellor (this situation can cause some difficulty because of the range of tasks the Probation Counsellor undertakes – counselling programs, assessment reports, family visits, administrative work and collaboration with social partners).

Another activity carried out by the Probation Service is to provide assistance to convicted persons in order to strengthen the degree of public safety and prevent reoffending. The process of assistance and counselling starts at the request of the offender. This can include convicted persons under the supervision of the Probation Service, minors subject to an educational measure of supervised liberty, and convicted persons in jail six months in advance of the date when they are eligible to apply for parole.

This kind of activity may terminate in a number of ways: at the request of the person, as a result of lack of cooperation or limited engagement from the assisted person, or at the end of the period agreed in the initial contract. The Probation Counsellor's role in providing this assistance is quite complex. He/she reviews all aspects of the offender's life, identifying needs and problems that are contributing to criminal behaviour, and then matches these problems with the objectives/tasks that will need to be addressed in order to achieve the overall goals. Meetings between the Probation Counsellor and offender are planned. Review of the activities will be undertaken periodically and the plan will be revised by reference to the initial assessment contract and the counselling plan.

Another aspect of Probation Counsellors' work, which created controversy when it was introduced in 2005, is work with the victims of crime. By law the Probation Counsellor should offer psychological assistance to the victims of the offence. This type of intervention can only be undertaken by a psychologist who has obtained a licence from the Psychologists' Association after specific training. While some Probation Counsellors have a basic degree in psychology, they cannot undertake this work as they are not licensed to do so. It is hoped that this anomaly will be addressed in the new penal code.

### **Working in Braşov Probation Service**

Braşov is a city with a population of 253,200, 160 km north of Bucharest in the Transylvania region of central Romania, surrounded by the Carpathian Mountains. With a long history as a gateway city and rapid industrialisation during the Communist era, Braşov is now a developing tourist and holiday area with summer and winter attractions.

The Probation Service has been active in Braşov since 2001. Braşov Probation Service has, at present, 14 Probation Counsellors, and by the end of the year four new colleagues will join the team. There is one Chief Probation Counsellor who is the manager. The other 13 staff are trained to deliver one, two or three of the counselling programmes to offenders on supervision. There is great interest in the Probation Service in developing a diverse body of approaches that might help the Probation Counsellor to intervene more effectively.

The Braşov Probation Service is using five programmes with offenders. These are delivered to offenders either by court order or if the offender makes a written request to participate. The following is an overview of the current programmes.

#### *One to One Programme*

This is the most widely used approach due to the numerous court orders that include the programme as a condition of supervision. Twelve Probation Counsellors are trained for this programme, which has been delivered to 75 persons since January 2008.

The theoretical background of the programme is cognitive-behavioural theory. The programme can be applied to adults, women or men, young people and minors, with a risk of reoffending that is medium to high. It is suited for offences such as theft, abuse of forbidden

substances or robbery, and cannot be delivered to people who committed offences such as family violence, murder, sexual offences, or offenders with severe mental disorders. It aims to help the offender to reduce his problems, to establish his own goals and to make plans, to take control over his life and to think before acting, in order to avoid reoffending.

The programme includes five modules and lasts 14 weeks. It contains some specific techniques of working with the offenders, such as motivational interviewing, The Circle of Change and pro-social modelling. The first module is centred on working on a cognitive-behaviour paradigm related to *thoughts/beliefs – feelings – behaviour/consequences*. The second module is oriented on problem solving. The third module is focused on reorganisation of thoughts/beliefs. The fourth module is centred on developing empathy with the victim of the offence, and in the last module, solutions for preventing reoffending are analysed and the programme is assessed.

### *Stop! Think and Change*

This is a group programme and has been developed starting from the same theoretical background as the *One to One* programme. Following staff training this programme has been delivered in Braşov on three occasions. There have been difficulties in delivering it due to the lack of sufficient group participants in the immediate area and the conflicting demands of work and availability for the group.

This programme has similar application conditions to the individual programme outlined above. It is designed for adults, women or men, young people and minors, with a low to medium risk of reoffending. The programme is made available to offenders who have issues with addiction (now stable), alcohol or gambling, and have been convicted for theft, robbery (in some circumstances), public disorder, threatening behaviour and assault.

The group programme aims to help beneficiaries change behaviour. Information and exercises are used during the sessions that identify and emphasise dysfunctional thoughts and feelings of the beneficiaries and help them to understand the necessity of changing that kind of behaviour.

It is structured in 12 (usually weekly) sessions. The first session is an introductory one and the last is for programme assessment. The programme is delivered by two Probation Counsellors who facilitate the learning. The themes covered during the sessions are problems related to offending behaviour, styles of thinking, reflecting on consequences,

finding solutions to the problems, and improving social interaction, perspectives and attitudes.

### *Developing Social Abilities*

This is a group programme designed for minors. The theoretical basis is found in operant conditioning theory (B.F. Skinner), social learning theory (A. Bandura) and self-determination theory (R. Ryan, E. Deci).

The programme seeks to develop the social abilities of minors; during the programme the participants strengthen their personal internal resources, and learn how to identify and to have access to the resources of others.

The programme accepts minors who are willing to participate, are aware that their anti-social behaviour and attitudes are a problem, have difficulties with others and authority, and have a minimum standard of reading and writing. There must be homogeneity of the participants regarding age, sex and capacity of understanding. The programme includes 10 core sessions plus an initial session and the last one which focuses on the implementation of learning.

Because adults have similar problems to minors, the Developing Social Abilities programme has been adapted for participants over 18 years of age. The adapted programme has the same theoretical background as for minors and the content is structured in 14 modules, each with four sessions. The modules can be done separately and must respond to the person's social needs. One person can therefore attend two or three modules.

### *Reducing the Risk of Reoffending after Imprisonment*

This is the most recent programme implemented by the Probation Service. It is also a group programme and is delivered in the penitentiary by a Probation Counsellor and a specialist from the penitentiary. The participants in this programme are detainees who are preparing for release, who are motivated to participate and have a minimum of three months until a possible parole release. They must also have reasonable capacity for speaking and writing, and are placed in the contemplation stage on the circle of change.

The purposes of this programme are for the detainee to develop pro-social thoughts and attitudes, learn some social abilities or competences, and learn how to access social agencies and social resources.

The programme consists of one basic group module and some customised modules. The basic module comprises six sessions with the following themes: assessment, setting tasks, making individual action plans and establishing the next steps for implementing the action plan. The customised modules respond to the social needs and the individual circumstances of the offenders. These modules can be delivered in group or individually.

### *I-MAP Anger Management*

This is a new counselling programme developed jointly by the Probation Services in Romania, Ireland and Italy as part of the international project for the implementation of the Framework Decision 2008/947/JHA, which provides for mutual recognition of judgments in probation decisions and transfer of supervision in jurisdictions across the European Union. Probation Officers from Romania, Ireland and Italy participated in joint training in the implementation of this programme in April and May 2013 in Bucharest.

I-MAP Anger Management is a one-to-one counselling programme developed for male adults, over the age of 16 years. It should be delivered at least 12 weeks before the offender completes probation supervision. The programme has nine weekly sessions, and after four weeks an assessment of the programme will take place. The techniques used are motivational interviewing, the Good Lives model, and pro-social modelling. In Braşov, two members of the team are trained to deliver this programme and we are now beginning implementation.

A pilot project is being developed in Braşov Probation Service and in another two Probation Services (Dolj and Bucharest), as a result of collaboration between the Ministry of Justice from the United Kingdom, the National Offender Management Service (UK), and the Romanian Ministry of Justice (in particular, the Probation Directorate). The project is to implement a programme that was designed and used in the UK Probation Service, called SEED (Skills for Effective Engagement and Development; Sorsby et al., 2013).

The central idea around which the programme was constructed is the relationship between the Probation Counsellor and the offender, which is essential for reducing the risk of reoffending and increased public safety. We are still in the training process, and the next steps will be planned following implementation and review.

## **Conclusion**

Every beginning is hard, as it was with this process, but each step is a small victory. The experimental phase was a very important phase for Romanian probation. The main characteristic of that phase was developing new approaches to managing offenders safely in the community. That created the framework for the next stage, the institutional phase, when the independent Probation Services emerged during 2001 and 2002 in each county. Apart from the challenges of managing human resources and office accommodation, there was the additional challenge of developing a strategy for programme implementation in 2006–2007.

Gradually, from year to year, the Probation Service has become more visible in the eyes of the justice system, our workload increased in volume, and that led to additional resources so that the work of the Probation Service had the infrastructure to support it. With time the work of Probation Counsellors has received wider appreciation and the Probation Services are increasingly acknowledged as important links between the courts and the community.

Regarding the future, the Probation Services have many new challenges to meet because a new penal code will be implemented soon (2014/2015). These legal developments will bring new tasks and responsibilities, especially in relation to minors and with released prisoners.

In these changing circumstances the Probation Services across Romania will have increased workloads, which will require the development of additional materials as well as financial and human resources. In anticipation of these developments, a national competition for the recruitment of 90 new Probation Counsellors is being held.

As a Probation Counsellor I witnessed some of these changes and I am looking forward to meeting the new challenges that lie ahead. I think that these modifications are very important for our probation system. I believe that at an individual level, what sustains the activity of a Probation Counsellor is commitment and motivation. During the important and ongoing development of probation in Romania, that motivation must be nurtured, rewarded and continuously stimulated.

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## **‘At Home’ in Prison? Women and the Homelessness–Incarceration Nexus**

**Paula Mayock and Sarah Sheridan\***

**Summary:** Research in Ireland and internationally has documented a strong association between homelessness and incarceration. Nonetheless, the dynamics of this relationship are poorly understood. Although research suggests that the experience of incarceration among the homeless may have gender-specific dimensions, women have been largely ignored in the literature, which has tended to focus on the male experience. This paper examines the incarceration experiences of a sub-sample of women who are participants in a larger biographical study of women’s homelessness in Ireland. It charts their paths to incarceration and explores women’s perspectives on prison as well as their experiences post-release. Rather than a discrete life event, incarceration emerged as an extension of an institutional circuit that served to exacerbate their marginalisation and diminish their prospects of securing stable housing.

**Keywords:** Women, homelessness, prison, incarceration, institutionalisation, pathways, Ireland, biographical interviewing, ethnography.

### **Introduction**

A relationship between homelessness and contact with the criminal justice system is well established, both in Ireland (Duffy *et al.*, 2006; Hickey, 2002; O’Mahony, 1997; Seymour and Costello, 2005; Wright *et al.*, 2006) and internationally (Baldry *et al.*, 2006; Dyb, 2009; Hagan and McCarthy, 1997; Kushel *et al.*, 2005; Metraux and Culhane, 2004, 2006; McCarthy and Hagan, 1991; Shlay and Rossi, 1992). In recent years, a

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great deal of research attention has focused on the direction of the relationship between homelessness and imprisonment; that is, on establishing whether persons who are homeless are at increased risk for incarceration or, conversely, if release from prison makes individuals vulnerable to homelessness. In other words, research has begun to examine the link between incarceration and homelessness, whether studied from the perspective of the extent to which incarcerated populations experience homelessness or the prevalence of incarceration among the homeless.

Emerging from this body of research are two dominant arguments. The first asserts that persons who are homeless are at increased risk for incarceration. Indeed, the road from homelessness to prison is relatively well charted. This literature often draws on concepts of ‘survivalism’, acculturation to street life, and immersion in a homeless subculture, to account for the increased risk of criminal involvement and criminal justice contact among the homeless (Carlen, 1996; Gowan, 2002; Snow *et al.* 1989; McCarthy and Hagan, 1991). The concept of ‘rabble management’<sup>1</sup> has also been invoked to explain the greater propensity for arrest and incarceration among homeless males, in particular. Gowan (2002, p. 521), for example, found evidence of an approach to the policing of homeless men in San Francisco that ‘continuously circulated them through jails’. Thus, the subsistence and survival strategies frequently adopted by homeless individuals make them susceptible to arrest and incarceration because these activities have become highly restricted and criminalised (Feldman, 2004; Fischer, 1992; Gowan, 2002; Snow *et al.*, 1989).

Equally, there is strong evidence that release from prison leaves people vulnerable to an episode of homelessness, and high rates of homelessness among prisoner populations, both prior to and post-incarceration, have been consistently documented (Baldry *et al.*, 2006; Caton *et al.*, 2005; Dyb, 2009). Indeed, imprisonment has been described as ‘a major gateway to homelessness’ (Dyb, 2009). Homelessness, it is argued, may be one consequence of more general readjustment problems that

<sup>1</sup> The term ‘rabble management’ was used by Irwin (1986) to describe the routine jailing of disaffiliated persons for minimal offences in the interest of public order. The central argument is that law enforcement agencies target the homeless population for offences including begging, sleeping rough, drinking in public, and so on because they are highly visible (and also considered offensive), while similar behaviour by non-homeless persons would not be detected or sanctioned in this manner.

accompany release from prison (Metraux and Culhane, 2006). Other studies have drawn attention to the lack of effective discharge planning as placing persons at risk for homelessness, reoffending and reincarceration (La Vigne *et al.*, 2003; Visher and Courtney, 2006). Finally, the fragility of family ties, and the lack of a secure family base to which ex-prisoners can return, have been highlighted as increasing individuals' risk of homelessness following their release from prison (Gowan, 2002; Seymour and Costello, 2005).

The available research clearly documents increased vulnerability for arrest and incarceration among homeless persons, and also identifies the multiple barriers to stable housing post-release. The extent of overlap between homeless and incarcerated populations suggests a bidirectional association between homelessness and prison stays, in that homelessness can be a catalyst for arrest and incarceration. Incarceration, in turn, may precipitate homelessness by disrupting housing, social networks and economic opportunities. Although research across several jurisdictions has advanced knowledge and understanding of the homelessness–incarceration nexus, the dynamics of the relationship are poorly understood (Metraux *et al.*, 2008).

One of the clearest gaps in the existing research base is that the experience of women has been largely ignored. Possibly reflecting a historical absence of gender in the analysis of imprisonment (Baldry, 2010; Carlen, 1998; Carlton and Segrave, 2011) and homelessness (Baptista, 2010; Edgar and Doherty, 2001), the vast majority of studies have focused either exclusively or predominantly on the male experience. This situation significantly limits our understanding of gendered experiences of homelessness and incarceration, and impacts the development of policies that ultimately shape the way in which homeless women with histories of offending are 'disciplined' and managed.

A significant rise in the female prison population is evident in both the UK and North America (Barry and McIvor, 2008; Gelsthorpe *et al.*, 2007; Guerino *et al.*, 2011; Ministry of Justice/NOMS, 2008), a trend also apparent in Ireland, where, over the past decade, the number of women committed to prison on an annual basis has more than doubled from 923 in 2001 to 2,151 in 2012.<sup>2</sup> There is also evidence internationally, and to a lesser extent in Ireland, that large numbers of women experience

<sup>2</sup> Data from Irish Prison Service, available at: [www.irishprisons.ie/index.php/information-centre/statistics](http://www.irishprisons.ie/index.php/information-centre/statistics)

homelessness or housing instability both prior to their incarceration and post-release (Gelsthorpe *et al.*, 2007; Lindquist *et al.*, 2009; Linehan *et al.*, 2005; McIvor *et al.*, 2009; Weiser *et al.*, 2009; Seymour and Costello, 2005; Wright *et al.*, 2006).

One recent US study that examined gender-specific correlates of incarceration among marginally housed individuals found that longer street stays among women were associated with a higher likelihood of incarceration (Weiser *et al.*, 2009). This research also revealed stimulant drug and heroin use to be strongly associated with incarceration, with the effect far stronger among women, whose drug use increased the odds of incarceration by at least four-fold. Significantly, Weiser *et al.*'s (2009) study demonstrates that correlates of incarceration may be gender-specific and that patterns of housing instability have different associations with incarceration according to gender.

Although there is evidence that the experience of incarceration among the homeless may have gender-specific dimensions, there is currently a dearth of dedicated research attention to the dynamics of homelessness and incarceration among women. This paper seeks to redress this gap in knowledge by exploring the incarceration experiences of a sub-sample of women who are participants in a larger biographical study of women's homelessness in Ireland. All the women in the sub-sample had been homeless, sometimes for many years, prior to the first experience of incarceration. We examine their paths to incarceration and focus, in particular, on their repeat entries to prison and other institutional settings.

Women's perspectives on prison are a key focus of the analysis, as are their experiences post-release. We argue that, rather than a discrete life event, incarceration is an extension of the interventions and institutions that featured throughout women's lives and that served, albeit inadvertently, to reinforce their social and economic marginalisation and diminish their prospects of securing stable housing.

### **Research methodology**

The study set out to explore the lives and experiences of homeless women in Ireland using a qualitative approach that integrated biographical interviewing and ethnographic observation. Central to the research was the aim of documenting women's entry routes to homelessness, the homeless experience itself and, possibly, their exit routes from homelessness.

The fieldwork commenced with a 'Community Assessment' phase (Mayock and Carr, 2008; Mayock and O'Sullivan, 2007), which involved an initial period of engagement with homeless and domestic violence services. This phase of fieldwork helped to inform these communities of professionals about the research and also facilitated access to numerous recruitment sites. Formal meetings were held with 27 homeless and domestic violence services nationally.

Over a period of 18 months, 60 women were recruited from strategically chosen sites in Dublin and two additional urban locations known to have a significant homeless population. The recruitment sites included homeless emergency hostels (both single- and mixed-gender), domestic violence refuges, transitional accommodation, long-term supported housing, drop-in services and food centres. The eligibility criteria for entry to the study were as follows: (1) a woman who is homeless or has lived in unstable accommodation during the past six months; (2) age 18 years and upwards; (3) single and without children, or a mother living either with, or apart from, her children in a homeless or domestic violence service; (4) Irish or of other ethnic origin. In other words, the study focused on *single* Irish or migrant women who were homeless rather than on family homelessness. A combination of purposive, snowball, theoretical and targeted sampling guided the recruitment process, a strategy that helped to circumvent the risk of bias that can arise from an over-dependency on one sampling technique.

The core method of data collection was the biographical interview. This is an approach to interviewing deemed particularly effective in illuminating respondents' perceived opportunities, constraints and 'turning point' experiences (Denzin, 1989; Miller, 2000; Roberts, 2002). The biographical interview is also claimed to be 'the most appropriate method for unpacking the more sophisticated explanations of homelessness' (May, 2000, p. 63).

Interviews commenced with an invitation to women to tell their 'life story'. Later, a range of specific issues were targeted for questioning, including: housing/homeless history; family circumstances; children; drug/alcohol problems; health and mental health; experiences of service provision; criminal offending and contact with the criminal justice system; and women's perspectives on their situations, past, present and future. Rather than tracing *only* a person's housing and homeless history, the

interview thus attempted to construct *multiple* biographies by capturing transition and change, along the same timeline, in the women's personal, social and economic circumstances (Reeve *et al.*, 2007).<sup>3</sup>

Throughout the data collection phase of the study, ethnographic fieldwork was undertaken at four homeless service settings in or adjacent to Dublin's city centre, including two homeless hostels (one single-sex and one mixed-gender) and two food centres. This level of engagement with women facilitated a better understanding of 'their worlds' within more natural settings by 'being there' (Agar, 1997; Gubrium and Holstein 1997). By capturing the daily life and routines of homeless women who utilise services, the use of ethnographic observation helped to supplement and triangulate the data garnered from the biographical interviews.

The large volume of data generated meant that several different strategies and techniques were developed to guide and assist data analysis. All interview data were coded using NVivo,<sup>4</sup> a software package for the analysis of qualitative data. A case profile documenting key features of the 'life story' of each participant was also prepared. This profile thematically documented key life history events; their routes into homelessness; family situations and relationships; substance use; health; criminal offending and contact with the criminal justice system; and level of service utilisation and engagement.

A separate accommodation biography (May, 2000) documenting women's housing and homeless trajectories and their pathways 'through' homelessness was subsequently prepared for each study participant. These profiles, combined with the coded data, significantly aided the analytic process. Data excerpts from the biographical interviews and ethnographic field notes are used in the presentation of findings in later sections of the paper. To protect the anonymity of the women, all have been assigned a pseudonym and all identifiers (names of places, services, family members, friends and so on) have been removed from the data.

<sup>3</sup> At the end of all interviews, a questionnaire was administered in order to gather data on the following: demographics (schooling, employment history, income), family composition and children, alcohol and drug use, experiences of victimisation, history of offending, and physical and mental health.

<sup>4</sup> NVivo is a qualitative data analysis (QDA) computer software package produced by QSR International ([www.qsrinternational.com](http://www.qsrinternational.com)).

## Women with criminal and incarceration histories

This section provides an overview of the criminal and incarceration histories of the study's women. To avoid a decontextualised account of women's offending and imprisonment, we also document several other important dimensions of the women's life stories.

Of the 60 women interviewed, half ( $n = 30$ ) had been charged with one or more criminal offence in their lifetimes.<sup>5</sup> Nearly two-thirds ( $n = 18$ ) of those who had appeared in court stated that a fine had been imposed or, alternatively, that they had been referred to the probation service and/or were obliged to attend a drug treatment programme. The remaining 12 women who had appeared in court reported more persistent offending histories, and 11 had served one or more prison sentences during their lives. All the women who reported histories of incarceration were of Irish or UK origin. Thus, of the 43 women born in Ireland or the UK, just over one quarter reported histories of incarceration. A majority of the criminal charges reported by women were for non-violent offences. Table 1 is based on women's self-reports of the offences for which they were arrested and charged. Theft was by far the most commonly reported crime, followed by public order offences.

**Table 1.** Number of women arrested and charged with offences by category ( $n = 30$ )

<i>Offence</i>	<i>Number arrested</i>	<i>Number charged</i>
Theft	19	18
Public order	14	11
Assault	7	5
Selling stolen goods	5	5
Soliciting	4	4
Criminal damage	4	3
Drug offences	4	4
Trespassing	4	3
Possession of an offensive weapon	3	3
Begging	2	0

<sup>5</sup> Only two of the 30 who reported criminal justice contact were migrant women. Migrant women tended to have higher educational qualifications and stronger employment histories than their counterparts who were born in Ireland or the UK; they were also more likely to be caring for their children full-time (see Mayock and Sheridan, 2012b and Mayock *et al.*, 2012 for a more detailed account of migrant women's experiences of homelessness).

For the women with histories of incarceration ( $n = 11$ ), once again the most commonly reported charge was for theft (9/11). This was followed by public order offences (6/11), criminal damage (4/11) and selling stolen goods (4/11). Less commonly reported offences included possession of an offensive weapon (3/11), drug offences (2/11) and soliciting (1/11).

The average age for the subsample of 11 women with histories of incarceration was 35.4 years at the time of interview. Three women were in their twenties, six in their thirties, and two women were over the age of 45 years. Consistent with the profile of the larger sample of 60 women (Mayock and Sheridan, 2012a), all of the women with histories of incarceration had experienced structural disadvantage, including poverty and deprivation, during childhood.

Their schooling was highly disrupted and all entered adulthood with limited or no educational qualifications. All had been financially dependent on welfare for most of their adult lives and few had credentials that would enable them to enter the labour market.

As well as social and economic exclusion, the women's narratives consistently featured multiple traumatic life experiences, including high levels of victimisation across the life course.<sup>6</sup> Eight of the 11 women had experienced domestic violence in their homes as children and five reported sexual abuse during childhood. For many, experiences of victimisation and abuse extended into adulthood: seven reported intimate partner violence and three of these women had been in multiple relationships with violent partners; most had never accessed a domestic violence refuge. Trauma related to the experience of violence and abuse was consistently reported by women and the physical and emotional impacts associated with domestic and intimate partner violence were enduring throughout the women's lives.

Seven of the women were mothers and all had one or more child under the age of 18 years. All of the women's children were living apart from them the time of interview, having typically been placed in the care of either the state or a relative. Less frequently, one or more of their children lived with their father. Women's lack of regular contact with and access to their children was a source of significant distress, and most

<sup>6</sup> It is important to note that gender-based violence was reported by a majority of the 60 women interviewed and was not an experience unique to the women with histories of incarceration (see Mayock and Sheridan, 2012a, 2012b; Mayock *et al.*, 2012 for a more detailed account of the experience of gender-based violence for the entire sample and among migrant women specifically).

expressed feelings of guilt and shame associated with the absence of their children. In the following excerpt, Caoimhe expressed her regrets about the impact of her drug use on her son, who was 13 years old at time of interview.

*I got very bad then [referring to drug use]. I was like, Jesus, I was even robbin' me family. I was doin' everything. I done really bad things when I think back now of some things, but at the time you don't think about it. You are like, worry about it later, you know? Worry about that later ... I have even sold stuff belonging to me son. That's how bad I was, you know ... Now I can't pay him back enough. Now I am doing everything to just try and buy him back. But you know, me Ma keeps sayin' to me, 'You can't do that, he just wants you doing well and you're off the drugs'. (Caoimhe, 35)*

Like Caoimhe, others referred to motherhood and substance use as interconnected distressing issues. All 11 women with histories of incarceration reported heavy or dependent alcohol or drug use. Heroin was the primary drug of misuse in the case of six women, who also frequently reported the use of other drugs including benzodiazepines and/or cocaine. The remaining five women reported heavy binge drinking and/or alcohol dependency.

Without exception, the women reported poor mental health, and a considerable number had had past or recent contact with psychiatric services. Most talked about depressed feelings as well as anxiety and coping difficulties; six of the 11 women had engaged in self-injurious behaviour at some point and eight reported suicidal thoughts at some time in the past. Five had spent time in a psychiatric hospital, often on multiple occasions, during the years subsequent to the first experience of homelessness.

Women's life stories point strongly to their social marginalisation and exclusion, as well as to multiple traumatic events and experiences. These contextual accounts are critical to understanding their paths to incarceration and their narratives of imprisonment.

### **Women's paths to incarceration**

Women with experience of incarceration reported lengthy homeless histories, with the average cumulative duration of homelessness for the sub-sample being 10.2 years. All 11 women had experienced homeless-



ness for more than three years, and eight had been homeless for more than nine years; two women reported 15 and 16 years of homelessness respectively. First homeless experiences occurred during adolescence in the case of a large number of the women ( $n = 7$ ), who frequently reported a pattern of running away from home to escape violence or abuse.

*I was running from me father like, I was escaping all the time. Like before that I was running away and I would be sleeping out and I would come home again and it [sexual abuse] would start again and I would be gone again. It was just a vicious circle like. (Stephanie, 32)*

While each woman's 'story' of homelessness was unique, their accounts shared a number of distinctive features. All, for example, reported lengthy periods of 'hidden' homelessness (that is, staying with family members or friends, in squats or other concealed locations), particularly during early stages of their homeless 'careers', and a large number had also spent periods of weeks, months or years, in some cases, sleeping rough, most often in the company of a male partner.

Upon entering homeless systems and services, the women typically embarked on a cycle of movement between emergency hostels that extended for many years. Their trajectories through homelessness were often interrupted by exit spells from homeless services. For example, a large number had exited temporarily along with a partner to private rental accommodation, while others lived alone or with family members or friends (situations of 'hidden' homelessness) for a time before returning to hostel accommodation. Other exit destinations following a temporary departure from homeless services included stays in psychiatric and/or acute hospitals, stints in residential drug treatment services and periods of incarceration.

Women's reports of more regular and persistent offending were strongly associated with the condition of homelessness and their inability to finance basic needs. Daily life was unpredictable as women moved between temporary accommodation places and the stresses associated with living in hostels were significant; most talked about the omnipresence of alcohol and drugs in these setting and about the transience and chaos that characterised everyday life.

Many became more immersed in drug use and criminal activity as they commuted between hostels, established new romantic ties or returned to difficult or abusive relationships. While none of the women could be

reasonably described as embedded in criminogenic social networks, they were nonetheless exposed to opportunities for drug use and related criminal activity on a daily basis.

*When I came out of prison there were no beds and I went to [emergency wet hostel in city centre]. A girl in the room with me that was on this head [shop] shit stuff and like was sitting in front of me morning, noon and night banging out [administering the drug]. (Liz, 38)*

For a large number, offending was directly related to the need to finance their drug use. Liz's criminal offences were confined to theft.

*Yeah. I got me charges every two or three months and imprisonment every two or three months as well ... Shoplifting, all shoplifting. I never had one other charge ... To feed me drug habit; I would go out and I would rob probably [pause] €300 for the day and I would go and sell it then for maybe €100 ... People introducing me to people and then people making orders for stuff. (Liz, 38)*

Stephanie, who also engaged in shoplifting to acquire money for drugs, described a typical day during a particularly chaotic period of her life.

*Ah, it was just robbing and trying to get money for drugs, that is all it was. Robbing shops like, robbing anywhere just to get money to buy drugs. Shoplifting mostly. (Stephanie, 32)*

Stephanie estimated that she has spent a total of five years in prison, always for theft: 'they eventually just like keep locking you up then'. In most cases, women's incarceration resulted from an accumulation of charges over time, and several described amassing a large number of criminal charges over relatively short periods. Leah, for example, said that her level of contact with law enforcement agencies increased dramatically during a period spent moving between hostels and sleeping rough.

*I was drinking an awful lot and this was when things were gone really, really out of hand like and I was smoking a lot of hash and that at the time and I was just lashing out at girls, getting arrested every night and stuff ... [And what would the arrests and charges be related to?] Drunk and disorderly and public order and stuff like that ... I suppose burglary but there's nothing*

*really serious; it's just that I got so many of them [charges]. I got about 50 of them in the end or something.* (Leah, 22)

Debbie started shoplifting at the age of 21 years and also accumulated a large number of charges over a short period. She was convicted and imprisoned for the first time later that year.

*I started shoplifting because I didn't want to go out working on the streets anymore and started getting caught, getting charge sheets. I got my first charge sheet I think when I was 21, do you know what I mean ... I got locked up in prison then.* (Debbie, 27)

A majority of the women reported multiple periods of incarceration, often for short periods, although a number had also served sentences of between two and five years. The following section examines this cycle of movement in and out of prison.

### **Women's journeys in and out of prison**

The incarceration histories of a large number of the women were marked by a pattern of entering, leaving and returning to prison. Only one of the women had been incarcerated just once and most of the remaining women reported numerous episodes of imprisonment. Indeed, a number had returned to prison so frequently that they were unable to specify the precise number of prison stays they had experienced. When asked how many times she had been in prison, Kate (23) responded by explaining, 'I've lost count, loads', while Laura (33) 'was in [prison] loads of times but I can't remember. I was in for days sometimes, two days, three days.' At the time of interview, Debbie, who reported the largest number of prison stays, told of a constant cycle of movement between prison and homeless accommodation.

[How many times have you been in prison?] *About 90 times, 200 ... I could be here [hostel] for five days, in prison for two days, back out for one day, back in prison for two days, back out for three days, back in prison for a week. That is the way my life is at the moment.* (Debbie, 27)

Like Debbie, several others recounted a litany of short sentences. Liz had similarly commuted in and out of prison over the course of many years.

*I was going out robbing and I spent most of me life then in and out of prison, I was never out of prison longer than three months ... Me life has just been, since I left him [ex-partner], prison, prison, prison, prison. [How many times would you say you have been in prison altogether?] Oh Jesus Christ, the officer used to say to me, 'Liz, you have done a life sentence but you have done dlibs and drabs'. (Liz, 38)*

The following excerpt from ethnographic field notes provides further insight into the extent to which repeat periods of incarceration became the 'norm' for a large number of these women.

From week to week, it is difficult to predict whether Debbie will be in [name of hostel] or back in prison. As she explained in her interview, she can be in the hostel for a number of days and then back 'inside' for days or weeks. A week after I interviewed her, I enquired about Debbie's whereabouts from a member of staff in the hostel, who replied in an ironic tone, 'If you ever want an appointment with Debbie, you will have to catch her in prison'. During an informal chat several weeks later, this same staff member said that Debbie was moving very frequently between the hostel and the prison and that they 'expect to see her again'. During a subsequent visit to the hostel in July 2010, Debbie was standing in the reception area when I arrived and recognised me instantly. I asked how she was and she responded in a cheerful tone, 'Have had a mad few months' (since we last met in March 2010). 'Do you remember when I spoke to you, I hadn't slept in a week? ... It's all 'cos of them head shop drugs', she explained. She went on to say that she went to a psychiatric hospital asking them to admit her because she felt 'out of control', but they would not accept her 'because of the drugs in her system'. 'Me only option was prison', she added, in a matter-of-fact tone.

As stated above, these women typically reported paths through homelessness characterised by frequent moves between emergency homeless hostels punctuated by temporary stays with friends or family members and periods of rough sleeping. The accounts below further illustrate the profound instability resulting from this pattern of movement, as well as the constant uncertainty associated with the absence of a stable home.

*So I was there [transitional housing] for a while, and I was doing me course and then I went back drinking and ended back in prison again. I was in prison then, aww, then I was out and down in me brother's for a while in [provincial town]. Then I was back in Dublin, I was in [hostel] and then I ended up back in prison. I was kind of all over the place like, never stable somewhere. (Kate, 23)*

*And then it got to the stage where I was probably staying with friends tonight and tomorrow I would probably be ringing the Night Bus. I would be ringing there to see could I get somewhere for the night, you know. It's very hard. (Caoimhe, 27)*

Prison was just one of a number of institutional settings where women resided intermittently over the course of their homelessness. Hospital admissions were also commonly reported and most often occurred in tandem with problems or crises related to heavy alcohol or drug use and/or mental health problems. Grace had been admitted to a psychiatric hospital for two weeks following an attempted drug overdose.

*I tried to OD on me own tablets that just didn't, they just put me asleep like and I woke up and was like, 'Why am I still here?' But ... I got better after that so ... the two weeks [in the psychiatric hospital] was great, I didn't want to leave [laughs]. (Grace, 31)*

A number of the women had been admitted to hospital because of injuries they sustained from violent partners.

*So, then I was moving from hostel to hostel and then I had an apartment before I came in [to homeless hostel] this time. But I was living with a partner that was violent like; he was like, you know, I ended up in hospital because of him ... It was just horrible like that. I had to walk out of that flat, do you know what I mean? (Stephanie, 32)*

Several had moved between hostels, psychiatric hospitals and prison over the course of many years.

*I got out of [one psychiatric hospital] to go to the B&B and I overdosed and ended up in [another psychiatric hospital]. Then I took, I moved to a B&B and I was there for nine months and I started shoplifting and then started goin' into prison. (Debbie, 27)*

Almost all who reported periods of incarceration had histories of contact with state agencies and institutions that spanned a significant period of their lives.

*I'm only out [of prison] since last Friday again and that nine months [spent living in a B&B] is the longest place I've been out of the institutions since I'm 11 ... I've just been in the system since the day I went into care at 11.* (Debbie, 27)

### **Women's perspectives on prison**

Women rarely talked about the prison life spontaneously during interview but were very open to questions about the experience. Perhaps reflecting the extent to which many had become accustomed to sequential stints in a range of temporary living places, most talked about prison in quite unremarkable terms. Unlike other topics raised during interview, particularly those related to the women's children and the experience of gender-based violence, discussions about prison tended not to trigger emotive responses. However, a small number, particularly those who had less experience of prison, talked about feelings of fear, particularly at the point of incarceration.

*I got arrested, went to court and got one week in Mountjoy. I feared for my life. I said, 'Where am I?'. I didn't know where I was. Oh, it was awful love ... I feared for my life.* (Kay, 46)

However, relatively speaking, the vast majority of women appeared not to be affected, in the negative sense, by the prison environment. Opposition or resistance to imprisonment did not feature strongly in their accounts and, to a large extent, their stories of incarceration did not frame prison experiences as 'turning point' moments in their lives.

Many of the women depicted prison as providing an escape from various challenges and pressures, whether related to hostel life, relationships or financial pressures. Most moved directly to prison from hostels or other unstable living situations, environments that they often described as unsafe, insanitary and drug-saturated.

*It's [hostel] horrible. Even the corridors smell like urine.* (Laura, 33)

*[Name of hostel], oh, that was bad news ... When you had money they would take your money. (Kay, 46)*

*When you are in like emergency accommodation and the hostels like, whatever, it's just no way you can get clean ... Really hard because it's just all around you. (Caoimhe, 35)*

All the women were struggling to survive economically, socially and emotionally prior to entering prison. Perhaps reflecting the harsh reality of homelessness, a considerable number depicted prison as providing a 'break' from a lifestyle that held them captive outside.

*[Prison] was grand, it's not a bad place you know. It is a holiday camp if you ask me; sometimes it was a bit of a laugh. Sometimes you just think, 'Oh God, it wasn't that bad, no'. (Donna, 35)*

Several commented that prison provided an opportunity to have a period 'off' drugs and alcohol. In this sense, incarceration was perceived as positive in the sense of affording women a phase of recovery as well as freedom from relentless pursuit of money to finance their drug use. Stephanie noted that she was 'drug free' while in prison; Liz said that prison had 'saved me from overdosing a lot of times'. Prison also offered women opportunities to engage in educational and leisure activities not available to them 'on the outside'.

*I had an education [in prison]. I was seeing a psychologist in there as well; that was good ... It was good to talk through things. I did the DBT course, you know the dialectical behavioural therapy. I did that twice, and got loads from that as well ... Just how to deal with situations, to look at your behaviours. It's interesting ... I started to get into the sports, you know, health and fitness. I did step aerobics classes in there as well, started to get interested in that. (Kate, 23)*

*Yeah, when I was in the [prison] I was seeing a psychologist and, yeah, I liked her. (Donna, 35)*

*I was using the gym, I was going to classes, doing pottery classes and reading. (Carol, 39)*

It is significant that a considerable number of women indicated that there were times when they viewed prison a preferable to a return to hostel life.

*The judge would be letting me out and I would be saying, 'No, I don't want to'. (Debbie, 27)*

*I really ... to tell you the truth I only half wanted to get out of the prison. (Caoimhe, 35)*

Debbie said that there were times when she engaged in criminal activity in the hope of being sentenced because other agencies or services would not accommodate or 'entertain' her.

*Sometimes I commit the crime to go in [to prison] ... Yeah, because when I go to a psychiatric hospital for help, if I feel suicidal, they don't entertain me because I'm on drugs. (Debbie, 27)*

Nonetheless, prison was rarely framed by women as a life-changing event, nor was it depicted as a catalyst for change.

*I was good, like I was kind of keeping quiet then for a while like, when I came out [of prison]. And [pause] but I kept relapsing and then I was in there for another week again. [And did prison change anything for you?] Did it change anything for me? No, not really. I just kind of, I got on with it like. (Leah, 22)*

Post-release, women's lives generally returned to their pre-incarceration situations. All of the women re-entered the hostel system subsequent to a period of incarceration, often following a relapse. Kate explained that she never 'lasted long' out of prison because she returned to the same environments and activities.

*[And the first time you were in prison, how long were you in for?] Three months, I think it was three months. [And when you left, where did you go?] Eh, I dunno where I went! [pause] I think I was in the hostels. [And how long was it till you went in again?] About a few weeks. It never last long out like, especially when you are living in town and that's all that's around you is drink and trouble. (Kate, 23)*



For Liz, who had returned to hostels on countless occasions following her release from prison, life generally reverted to a routine of spending time with other hostel residents. She also said that she almost always quickly returned to a routine of engaging in theft to finance her everyday needs.

[So did prison change you?] *No. I always had the intention but I would go to a shop and I would be queuing and I would have three things in me hand and I could put them in me bag and I would say, ‘Ah fuck this, I am not queuing’. I would just walk to the end of the queue and out!* (Liz, 38)

Liz further commented that the experience of prison had only served to increase her antagonism and defiance towards authority figures such as prison officers and the Gardaí.

*It [prison] didn’t do me any good, put it that way. It done me bad if anything ... Em, [pause] because now I hate police and I hate [prison] officers and all them authority people as I say, I just don’t like authority and that’s it.* (Liz, 38)

For women who had served multiple sentences, prison was not necessarily an outcome that was feared. Women did not positively endorse incarceration in the sense of it providing them with the supports that would enable them to desist from criminal activity; rather, over time, prison was simply one of a long list of temporary living places in their trajectories of ongoing homelessness.

## **Discussion**

This paper has explored the dynamics of homelessness and incarceration based on the narrative accounts of a sub-sample of 11 women who are participants in a larger study of women’s homelessness. It is important to caution that a majority of the women interviewed for the purpose of the larger study from which these accounts are drawn had never been incarcerated. Thus, it would be erroneous to assume that many or most women who experience homelessness have histories of criminal justice contact. Nonetheless, a strong association between homelessness and incarceration has been documented in Ireland and elsewhere, although analyses of the homelessness–incarceration nexus have not, in the main, specifically addressed the experiences of women.

The findings presented document a range of complex dynamics linked to the homeless-to-prison trajectories of women with long histories of homelessness. Perhaps more importantly, they chart a distinctive interaction between institutional settings and women's homelessness. The women in this sub-sample had commuted between homeless hostels and other institutional contexts – prisons, hospitals and drug treatment facilities – over an extended period even if, along that journey, some had moved (temporarily) to more stable accommodation.

Women's pre- and post-prison lives were marked by multiple deprivations and traumatic experiences, including poverty, gender-based violence, substance abuse and mental health problems. Thus, rather than a discrete event, incarceration emerged as 'an extension rather than a focal point' (Carlton and Segrave, 2011, p. 554) of the disruption, instability and transience that characterised the lives of a majority of the group from an early age. Once they entered the nexus, most of the women continued to commute from homelessness to incarceration, incarceration to homelessness.

All who had moved in and out of prison in this way had very often served a number of short sentences – a form of 'serial institutionalisation' claimed to be extremely disruptive to positive community reintegration (Baldry *et al.*, 2006). Certainly, women's constant movement between prison, hostels and other institutional settings served to reinforce their 'outsider' status and exacerbate their marginalisation from the mainstream.

Women entered the carceral system having experienced homelessness for many years, most often at a point when they were struggling to survive. The impacts of incarceration and women's perspectives on prison must be understood in this context. Against a backdrop of sustained economic marginalisation, the absence of stable housing, drug or alcohol dependency, and the legacy or ongoing trauma associated with violence and abuse, it is perhaps unsurprising that many depicted their time in prison as providing a space in which to recover and establish a distance from the pressures 'outside'. Incarceration was frequently depicted as a period of respite and recovery during which women could recoup and rebuild themselves in a physical and psychological sense.

As the pattern of 'institutionalized cycling' became more frequent alongside women's successive admissions or committals to various institutional contexts, some appeared to adapt to the 'rhythms of these settings' (DeVerteuil, 2003, p. 364). Many accounts of the prison

experience indicate that a number seemed to accept rather than reject a prison stay at particular junctures, suggesting that some felt ‘at home’ in prison.

Nonetheless, women were acutely aware that time spent in prison did not lead to sustained or sustainable change in their lives. Indeed, a common pattern among those who experienced multiple periods of incarceration was that they repeatedly faced the same conditions and challenges post-release. Thus, while prison may have been a safer or more desirable temporary place of residence in the context of their continued struggles, it failed to address the ongoing cycle of their homelessness.

As noted by Carlton and Segrave (2011, pp. 559–560), ‘a “break” from the hardships outside prison may at best serve as a temporary reprieve, while in the long term producing greater harm or further entrenching marginalization and isolation’. At the point of leaving prison, most of the women entered an uncertain transitional space between institution and community in which services are fragmented at the point where they are most vulnerable (Hopper and Baumohl, 1994).

This paper is based on a small sample of homeless women with experience of incarceration, and the findings cannot be generalised to incarcerated or homeless women in general. The answers to ameliorating the nexus described in this paper need to be guided by a more detailed understanding of the contexts and situations of incarcerated women and of the difficulties confronted by them both prior to their incarceration and post-release. However, what is clear from the findings presented is that homeless women with complex histories and needs may be destined for a ‘journey’ through multiple systems, services and institutions that temporarily ‘contain’ rather than substantially addressing the challenges they face in relation to housing, substance use and mental health.

### **Acknowledgements**

We wish to acknowledge funding received from the Irish Research Council Research Fellowship Scheme 2009–10 and from the Health Service Executive, Social Inclusion, for the conduct of this study.

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## **‘Doing Nothing Is Not an Option’: Recent Milestones towards Improving Prison Conditions and Addressing Overcrowding**

**Jane Mulcahy\***

**Summary:** Following decades of neglect and inaction on the part of the Irish State, this paper focuses on recent milestones towards safeguarding the most basic human rights of prisoners with regard to steps taken (a) to improve living conditions (most notably by providing in-cell sanitation, thereby eliminating the inhuman and degrading practice of ‘slopping out’) and (b) to address overcrowding through increased use of Community Service Orders and novel schemes such as Community Return. The paper also discusses the contributions of the Thornton Hall Review Group, the Sub-Committee on Penal Reform and the Irish Penal Reform Trust in prompting a much-needed rethink of prison policy.

**Keywords:** Prisons, prison conditions, overcrowding, human rights, prison policy, decarceration, courts, sentencing, Community Service, Community Return.

### **Introduction**

Conditions in our prisons deteriorated considerably during Ireland’s boom years, often resulting in serious violations of the human rights of the people confined there. Chronic overcrowding, squalid conditions (including the prevalence of ‘slopping out’), political intransigence regarding the inadequacies of the complaints system, the continued detention of children at St Patrick’s Institution and a massive increase in the imprisonment of women were all features of increasingly punitive penal policies at a time of apparent economic plenty.

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The prison population more than doubled between 1995 and 2013, outpacing the largest prison-building programme undertaken in Ireland in 30 years. Overcrowding worsened, with new capacity unable to accommodate increased numbers. Instead of pausing to analyse the factors behind the stark increase in incarceration (for instance, issues relating to sentencing including non-payment of fines, excessive use of imprisonment for low-level offenders instead of alternatives to custody such as Community Service Orders, and presumptive sentencing schemes such as the one governing Section 15A drugs offences), government proceeded to build more prison spaces, without closing down Victorian prisons such as Mountjoy, Cork and Limerick, which feature the worst conditions.

As the financial prospects of the country were on the turn, plans to construct super-prisons on green-field sites (Thornton Hall in Dublin and Kilworth in Cork), far from urban centres, emerged as the proposed remedy for the more shameful human rights violations in Irish prisons. The fiscal crisis means that neither institution can be built any time soon. This is a positive development, since international best practice dictates that small, local prisons are far safer, more effective, easier to manage and better equipped to facilitate reintegration than large prisons housing a range of security levels on one campus.

Nonetheless, it is ironic that just as the nation is on its knees financially, resources have been made available in an effort to discharge the State's obligations to prisoners in its care and custody. Mountjoy – in the past described as beyond redemption – has recently been judged fit for refurbishment and is currently undergoing major renovation. The change of political leadership in the 2011 General Election presented prison reform advocates such as the Irish Penal Reform Trust (IPRT) with a fresh opportunity to impress on policy-makers that a different approach to prison and prisoners was both desirable and necessary.

### **Prison conditions and overcrowding: The context**

As far back as 1998, the European Committee for the Prevention of Torture (CPT) stated that overcrowding in Irish prisons was 'endemic' (see CPT, 1999, p. 30). In 2006, the daily average number of people in custody was 3,191. On 22 July 2011, a total of 5,479 prisoners were in the prison system, with a further 612 on temporary release due to overcrowding. There is a direct correlation between overcrowding and



increased violence among prisoners. In 2010 the CPT noted that ‘Stabbings, slashings and assaults with various objects are an almost daily occurrence’ (CPT, 2011, p. 21).

A quarter of Irish prisoners do not have in-cell sanitation, which means they must urinate and defecate in buckets in their cells during lock-up, which is generally from 7.30pm to 8.00am and at mealtimes during the day. A small number of prisoners are under 23-hour lock-up with no in-cell sanitation. In Limerick, Cork and Mountjoy prisons slopping out is combined with multi-cell occupancy, long lock-down periods and a lack of meaningful out-of-cell activities, exacerbating the indignity suffered by prisoners.

Despite Government assurances since 1993 that it would bring an end to slopping out, the ‘inhuman and degrading’ practice continues to this day (see Inspector of Prisons, 2010; CPT, 2011, p. 29). The CPT has consistently called on the Irish authorities to ‘eradicate’ it from the prison system and demanded that action be taken to minimise its degrading effects until this can be achieved, including the provision of toilet patrols during the night (see CPT, 2010).

At the NGO briefing session before the UN Committee against Torture (UNCAT) in Geneva in May 2011, Ireland’s leading penal reform NGO, IPRT, was asked if it supported the development at Thornton Hall (see ICCL and IPRT, 2011). While IPRT reiterated its opposition to the super-prison on grounds of location, size, proposed mixture of security levels and the fact that it would almost certainly lead to further penal expansion rather than cell closures elsewhere, it acknowledged that in order to comply with international human rights standards urgent action was necessary to address both overcrowding and inhuman and degrading conditions, most notably the lack of in-cell sanitation (see IPRT, 2011a). IPRT, therefore, requested the committee to seek clarification from the Irish State regarding its intention to proceed with the Thornton Hall development and to provide a clear timeline for its construction, or any refurbishment of existing prisons.

Accordingly, in June 2011 the Committee against Torture recommended that Ireland ‘Adopt specific timeframes for the construction of new prison facilities which comply with international standards. In this regard, the Committee requests the State party to inform it of any decisions taken with regard to the Thornton Hall prison project.’

As to existing prison conditions, the committee recommended that the Irish State ‘strengthen its efforts to eliminate, without delay, the practice

of “slopping out”, starting with instances where prisoners have to share cells. The Committee further recommends that until such a time as all cells possess in-cell sanitation, concerted action should be taken by the State party to ensure that all prisoners are allowed to be released from their cells to use toilet facilities at all times’ (UNCAT, 2011, para. 12).

While the Thornton Hall Project Review Group recommended a scaling-down of the original proposals for a large prison at Thornton Hall (i.e. the construction of 300 cells, capable of accommodating 500 prisoners, with 20 secure step-down facilities capable of accommodating up to 200 prisoners in an open centre-type setting), it also recommended keeping Mountjoy open in the medium term (Thornton Hall Project Review Group, 2011, p. 68). This, in effect, meant further expansion of the prison estate.

Despite the Review Group’s proposals to build a smaller prison on the site as well as a prison at Kilworth to address the crisis in physical conditions at Cork prison (Thornton Hall Project Review Group, 2011, pp. 69–70), both developments have been ‘mothballed’; they will not be built any time soon, if at all. However, significant steps have been taken to explore the reasons behind the explosion in the prison population through the Strategic Review Group on Penal Policy, established in late 2011 following another recommendation of the Thornton Hall Project Review Group.

The Review Group provided the first official statement that prison-building alone cannot provide a lasting response to overcrowding, describing it as ‘pernicious’. The primacy afforded to the human rights of prisoners and the group’s unequivocal message that overcrowding ‘will not be solved solely by building more prisons’ – endorsed by the Minister for Justice – were also particularly significant (Thornton Hall Project Review Group, 2011, p. iii; Department of Justice and Equality, 2011).

Following years of scathing CPT reports (CPT, 1999, 2007, 2011), critical reviews by the Inspector of Prisons and the UN Committee Against Torture’s strong concluding observations on prison conditions (UNCAT, 2011), the review group’s statement that ‘doing nothing’ was not an option was long overdue (Thornton Hall Project Review Group, 2011, p. 65). Its admission that the deplorable physical conditions and overcrowding levels in Cork and Mountjoy ‘expose the State to significant reputational, legal and financial risk’ was noteworthy, as were the proposals on alternatives to custody, the possibility of home detention and novel ‘back-door strategies’ such as an incentivised scheme for early

release including supervised community service (Thornton Hall Project Review Group, 2011, pp. 62–63).

### **Promises made and concrete steps taken to improve living conditions**

Improving conditions in Irish prisons has been painfully slow, but there have been notable signs of progress in the past two years. Significantly, the capital programme of the Irish Prison Service's *Three Year Strategic Plan 2012–2015* focuses on improving current physical prison conditions, rather than expanding the prison estate (Irish Prison Service, 2012a, p.12). This is a welcome development.

Under *Strategic Action 5: Prison Estate* of its *Three Year Strategic Plan 2012–2014*, the Irish Prison Service pledges to provide a toilet and wash basin in every cell. Prisoners in the B and C Wings at Mountjoy prison have been provided with in-cell sanitation, and work is under way in A wing. The refurbishment project is due for completion in September 2014, 'when slopping-out and overcrowding in Mountjoy will end and the prison will house 540 prisoners' (Lally, 2013).

There has been no progress at Cork or Limerick prisons to end slopping out. IPRT has reported that prisoners have alleged that they are not released from their cell to use toilet facilities at night in some prisons. Until the elimination of slopping out, all prisoners should be released from their cell to use toilet facilities at all times (ICCL and IPRT, 2011, p. 33; UNCAT, 2011, para. 12).

Change may be imminent for prisoners in Cork and Limerick, however. Instead of proceeding with the Kilworth facility, the Irish Prison Service plans to construct a new 150-cell facility with all related and supported ancillary services provided on the car park site adjacent to the existing Cork prison (Department of Justice and Equality, 2013a; Irish Prison Service, 2012b, p. 7). An environmental impact survey on the proposed new prison has been undertaken and, following the capital allocation of €24 million to the Department of Justice in Budget 2013, construction work should commence in 2013. Retrogressive aspects of the new Cork prison design include the plan to increase capacity to accommodate 275 prisoners (according to the Inspector of Prisons, the current capacity at Cork is 146, although it has frequently held 270 prisoners) by building cells large enough to house two prisoners, rather than implement the 'decarceration' strategy, discussed below, and commit

to single cell occupancy in line with international best practice (Inspector of Prisons, 2013, para. 2.9).

The Irish Prison Service's 40-month capital plan will replace outdated accommodation in Limerick prison and Portlaoise E Block. In June 2012 Minister Shatter announced plans to upgrade accommodation at Limerick Prison, including provision of in-cell sanitation, a dedicated committal unit and a high-support unit (Department of Justice and Equality, 2012). IPRT cautioned against any expansion in the number of cells at that prison, stating that construction must only seek to relieve overcrowding 'and not serve to increase numbers accommodated at that prison' (IPRT, 2012a). The building of a new block of 100 cells would mean an increase on the 55 existing cells in wings A and B (28 in A wing and 27 in the recently decommissioned B wing) at Limerick Prison. On 3 November 2011, 104 prisoners were accommodated in 55 cells, effectively 200% of the single-cell design capacity. It is likely that many of these prisoners could have been managed more effectively and humanely in the community.

The Irish Prison Service's *Strategic Plan 2012–2015* also states that a new accommodation block at the Midlands prison will provide 300 additional spaces, as well as additional work, training and educational facilities. The new wing has been completed and the spaces are coming on stream in a phased roll-out. The first cohort of prisoners was accommodated in the new wing in November 2012. The Midlands and Wheatfield prisons are both in danger of becoming super-prisons due to recent expansion.

## **Towards reducing overcrowding**

### *(a) Greater use of Community Service Orders*

Recent Irish measures aimed at reducing the use of imprisonment at the lower end of the scale seem to accord with the view of the Scottish Prisons Commission that paying back in the community should become the default position in responding to less serious offenders (Scottish Prisons Commission, 2008, p. 26; IPRT, 2011b) In enacting the Criminal Justice (Community Service) (Amendment) Act 2011, the Minister for Justice, Alan Shatter TD, lent his full support to the greater use of community service as an alternative to imprisonment.

Prior to its enactment, IPRT made a persuasive argument for strengthening the presumption against imprisonment in section 3(1)(a)

by not only requiring the sentencing judge to *consider* imposing a Community Service Order (CSO) in lieu of imprisonment for a qualifying sentence, but *obliging* him or her to give written reasons behind a decision to imprison the convicted person (IPRT, 2011b). Examples of legislation where judges are required to give reasons for the decision to imprison include section 143 of the Children Act 2001 and section 17(3B) of the Criminal Justice and Licensing (Scotland) Act 2010. While the passage of the legislation was progressive, the minister's decision not to require judges to give written reasons for every decision to imprison is unfortunate, since a public record of all decisions to imprison would have enhanced accountability regarding sentencing at District Court level and would have been a very useful tool in monitoring the success of the legislation.

Providing for greater judicial accountability by statute does not mean the separation of powers would be breached, or that judicial discretion would be compromised. Judges would still be free to sentence as they see fit under the circumstances, but they would have to explain any decision to impose a short jail sentence instead of imposing a CSO. Improved data collection on the sentencing decision-making process would lead to a more accurate appraisal of the efficacy of legislation to make the desired change; namely a reduction in custodial sentences of 12 months or less. Providing brief written explanations for sentencing decisions at District Court level would also, arguably, enhance public confidence in the administration of justice, as the shroud of mystery surrounding sentencing would be removed.

Where the liberty of a person is at stake, surely Irish judges would not balk at recording 'gravity of the offence', or 'frequent offender', etc. as the reason(s) for their decision to impose a custodial sentence in a given case. Their colleagues in the UK treasure their judicial independence in equal measure, yet all Crown Court judges are required to complete a short form every time they pass sentence. According to Justice Colman Treacy, Judge of the High Court of England and Wales, 'the form asks for information about the principal offence for which the offender is being sentenced identifying the guideline category, the aggravating and mitigating features, the number of relevant previous convictions, when any plea of guilty was entered and the allowance for that plea and other details' (Treacy, 2012). These forms are sent to the UK Sentencing Council on a monthly basis, and the purpose thereof is 'to understand how guidelines are being used and to inform the Council about their

effect – whether they are working to achieve a consistent approach to sentencing. Many judges now use them as a checklist in passing sentence.’

It is submitted that Irish judges should be obliged to fill in a similar form to their English counterparts when sentencing in order to measure compliance with the Criminal Justice (Community Service) (Amendment) Act 2011. These forms could also be a useful tool in monitoring adherence to sentencing guidelines, which may be developed by a Hibernian Sentencing Council, if established in the future.

*(b) Community Return*

A pilot Community Return project was launched in October 2012, prompted by the Thornton Hall Project Review Group Report. The project, run by the Probation Service and the Irish Prison Service, provides for earned early temporary release to be offered to offenders, who pose no threat to society, in return for supervised community service. The pilot project was successful and it will be rolled out nationally. At any one time, a maximum of 150 prisoners will be engaged in this scheme. Over the three-year life of the plan, up to 1,200 prisoners will participate. A week of community service is swapped for roughly one month of extra remission. Prisoners are eligible if their sentence is between one and five years’ imprisonment, and they can be released under the scheme as early as halfway through their sentence instead of at the normal three-quarter remission point (Houses of the Oireachtas Joint Committee on Justice, Defence and Equality, 2013, p. 21).

Participating prisoners must sign on every day at their local Garda Síochána (police) station and every week at the prison. Other conditions may also be imposed, i.e. attendance at drug treatment centres. The type of unpaid work includes painting community centres, graffiti removal or site cleaning. The potential benefits to the community of the scheme are considerable. Instead of releasing large numbers of prisoners on temporary release unsupervised, without any assessment or supports in place, the Irish Prison Service now has a structured programme, albeit for a small number of carefully selected, self-motivated prisoners. Importantly, the scheme can be used to facilitate their resettlement into the community by providing them with a place to go and work several days a week, giving their lives purpose and structure in the difficult weeks and months following release.

The dominant consideration in operating the scheme is public safety. The factors taken into account in considering the suitability of a prisoner

for community return include the nature and gravity of the offence to which the sentence being served relates; the sentence concerned and any recommendations made by the court in relation to it; the potential threat to public safety should the person be released; previous criminal record; the risk of the person failing to comply with any of the conditions of temporary release; the extent of the prisoner's engagement with therapeutic services while in custody, and conduct while in custody.

*(c) Proposals for a 'decarceration' strategy*

In October 2011 the cross-party Sub-Committee on Penal Reform was established by the Joint Oireachtas Committee on Justice, Equality and Defence 'to analyse the recommendations of the Thornton Hall Project Review Group in respect of non-custodial alternatives to imprisonment – in particular back-door strategies which involve some form of early release', including:

- the experience from other jurisdictions of potential models for such strategies, including 'earned temporary release'
- release under community supervision
- parole reform
- enhanced remission.

In November 2011 IPRT made an oral and a written submission to the sub-committee and subsequently produced a Position Paper on *Reform of Remission, Temporary Release and Parole*, which largely focused on existing 'back-door' deficits regarding the operation of remission, temporary release and parole and set out a comprehensive package of reform proposals geared towards increased transparency and accountability of the decision-making process and preparation for release of prisoners (IPRT, 2011c and 2012b).

Other penal reform experts also gave the sub-committee the benefit of their views and experience regarding the problems currently facing the Irish Prison Service and the prisoners in its care, offering ideas for penal reform including the need to tackle overcrowding and prison conditions, the desirability of promoting meaningful rehabilitation services and a structured approach to temporary release, the usefulness of looking to the success of the Finnish post-Second World War 'decarceration' initiative and the need for more open prisons (Houses of the Oireachtas Joint Committee on Justice, Defence and Equality, 2013).

The report, authored by Senator Ivana Bacik, called for the swift implementation of its five key recommendations, which would lead to a ‘real change in Irish penal culture’ (Houses of the Oireachtas Joint Committee on Justice, Defence and Equality, 2013, p. 7). Recommending the adoption of an explicit ‘decarceration’ strategy to reduce the overall prison population by a third within 10 years, the report made a specific ‘front-door’ recommendation that all sentences of under six months’ imprisonment for non-violent offences should be commuted and replaced with Community Service Orders, and a ‘back-door’ proposal that standard remission should be increased from one-quarter to one-third off all sentences over one month, with an enhanced remission scheme of up to one-half available on an incentivised basis for certain categories of prisoner, such as first-time offenders. The sub-committee also endorsed the enactment of a single piece of legislation in line with IPRT’s recommendation, setting out the basis for a structured release system (Houses of the Oireachtas Joint Committee on Justice, Defence and Equality, 2013, p. 9; IPRT, 2012b, p. 15). More generally, the report recommended that prison conditions and overcrowding be addressed in order to ensure that structured release and incentivised remission programmes can operate effectively. It also recommended greater use of open prisons.

While some recommendations in the final sub-committee report are less radical than those proposed in IPRT’s submission, they are important in ‘offering a coherent plan for reform of the Irish penal system to reduce numbers in prison, reduce reoffending, leading to safer society’ (IPRT, 2013).

## **Conclusion**

This paper details recent milestones towards safeguarding the basic human rights of Irish prisoners. It achieves this by highlighting prison overcrowding and grossly substandard living conditions, comments and recommendations of indigenous penal reform advocates and international human rights bodies, promises made by the current government to remedy the situation, and concrete steps taken to deliver on such promises thus far.

Much remains to be done. Despite considerable refurbishment at Mountjoy, prisoners there must still slop out in overcrowded conditions. There has been no improvement in Cork and Limerick. However, there



is cause for hope that change is both intended and achievable within two to three years, despite the country's financial woes. There appears to be a genuine appreciation at official level of the moral, legal and financial imperative to do things differently, as evidenced by statements and actions of the Minister for Justice and Equality, the Reports of the Thornton Hall Review Group and the Sub-Committee for Penal Reform and, significantly, the announcement in July 2013 that St Patrick's Institution will be closed as a young offenders' prison within six months, with 17-year-olds being temporarily housed at Wheatfield prison pending the development of the Oberstown complex (Department of Justice and Equality, 2013b).

The powers that be cannot in good conscience persist with a penal policy that has seen far too many people – many of them first-time or low-level offenders – pass through the gates of our overcrowded prisons without making genuine efforts to rehabilitate them or prepare them for release, and to protect their basic human rights while they are behind bars. The stark rise in prison numbers since the late 1990s has not made society substantially safer, as acknowledged by the Minister for Justice at IPRT's Annual Lecture in 2011 (Department of Justice and Equality, 2011). As far back as 1985 – long before the prison population reached the staggering levels that saw prison 'design capacity' so out of kilter with official Irish Prison Service 'bed capacity' figures – the Whitaker Committee recommended increasing the standard remission rate from one-quarter to one-third, a key recommendation made by the Sub-Committee on Penal Reform recently (Whitaker Report, 1985).

Time will tell whether the current administration has the courage to implement fully the recommendations of the sub-committee, particularly its call to adopt a 'decarceration' strategy, firmly committing to reduce prison numbers by a third within 10 years. If so, the decision to have double occupancy as the norm at the new Cork prison should be revisited and abandoned. It is hoped that the government has the mettle to 'decarcerate', which may prove to be a hard sell to the public and certain sections of the media. Cautious optimism seems appropriate, owing to the track record of the current Minister for Justice, who has been keen to distance himself from the inaction of predecessors, and the new leadership of both the Irish Prison Service and the Probation Service, who have displayed commitment to new, creative approaches to penal issues.

Not only does a 'decarceration' strategy make economic sense, but a substantially reduced prison population would mean that the people who must spend time in prison, due to the gravity of their crimes, have access

to humane conditions and structured activities that improve their rehabilitation prospects. The Minister for Justice commissioned a strategic review of penal policy in Ireland, and the committee is due to report in the coming months. It is hoped that its recommendations will bolster those of the Sub-Committee for Penal Reform regarding the desirability of an urgent ‘decarceration’ strategy.

It is an exciting time for penal reformers. As Liam Herrick, Executive Director of IPRT, recently stated: ‘The consensus for change across all main agencies and parties means we now have a once in a lifetime opportunity for real and lasting reform’ (IPRT, 2013).

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## Reducing Offending in Partnership

**Terry Doherty and Mark Dennison\***

**Summary:** This paper tracks the development and roll-out in Northern Ireland of ‘Reducing Offending in Partnership’, or ‘ROP’, as it is known. It explores the background to ROP and the evaluation of the pilot project. It looks at the challenges and opportunities in the future as ROP is rolled out throughout Northern Ireland and the role of probation, police and other criminal justice agencies.

**Keywords:** Prolific offenders, offenders, partnership, criminal justice, police, probation, Northern Ireland, preventing reoffending, prevent and deter, catch and control, rehabilitate and resettle.

### Introduction

In June 2012 the Department of Justice in Northern Ireland published a consultation document in relation to reducing offending. In launching this document the Minister, David Ford MLA, pointed to the heavy cost that crime imposes on our society – both financially and emotionally. Indeed, a study published by the Department of Justice estimated that the annual cost of crime in Northern Ireland is £2.9 billion – a huge amount of money that could be put to better uses if offending can be reduced.

The consultation document sets out how government can work more effectively to reduce offending behaviour. The Minister states that: ‘For us to reduce crime and offending, I am clear that we need to address the factors that lead people into criminal behaviour and the obstacles to them moving away from it. To be successful we must focus on both preventing offending *and* reducing re-offending. Where possible, it is much better to

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divert potential offenders away from crime rather than deal with people who have become habitual offenders.’

One of the initiatives highlighted in the document where important work is already under way is Reducing Offending in Partnership (ROP), which brings together criminal justice agencies and specialist services to target those who are at high risk of offending/reoffending and who are causing significant levels of harm.

This paper outlines what ROP is, and looks at its success to date and at what steps will be taken in the future to embed it throughout Northern Ireland.

## **Background**

ROP is the strategic umbrella or overarching framework that brings together criminal justice agencies and specialist services to prioritise interventions with identified priority or prolific offenders. In the first instance, police in Reducing Offending Units use a matrix to identify prolific offenders in a particular area. This provides a basis for discussion with partner agencies, based on the risk assessments carried out on those offenders by the respective agencies, leading to confirmation of the offenders deemed to be a ‘priority’.

The objective is to target offenders who are at high risk of offending/reoffending, and who are causing significant levels of harm within their community and are often not cooperating with criminal justice agencies or related services. It is about developing coherent and efficient local structural arrangements into which existing interventions fit to provide a proportionate and effective response to the challenges presented by local offender populations.

At the core of ROP is the delivery of a managed set of interventions, sequenced and tailored to respond to the risks and needs of the individual. These interventions have the key aim of disrupting the offender’s criminal activity and thereby reducing their reoffending.

ROP is modelled on Integrated Offender Management (IOM) initiatives that have been developed in a number of areas of England since 2008 to assist the criminal justice agencies in the management of priority groups of offenders.

The ROP initiative in Northern Ireland arose out of a local police-led initiative in Ballymena to address the reoffending of prolific offenders in that area, particularly serious drug abusers. The chief feature of this local

initiative was the regular sharing of information in respect of cases between the Police Service of Northern Ireland (PSNI) and PBNI. Over a period of time this led to discussions between PSNI, PBNI and the Youth Justice Agency (YJA) with regard to formalising this initiative and linking it to the IOM initiatives in England. These discussions were supplemented with visits by PBNI managers to IOM projects in Leeds, Manchester and Bristol. The agencies subsequently agreed to formalise the Ballymena initiative into a formal pilot across the PSNI H District, which encompasses Ballymena, Coleraine and Larne.

ROP is based on a three-strand approach, as follows.

1. *Prevent and Deter*: To reduce crime and antisocial behaviour involving young people through early identification and effective intervention strategies.
2. *Catch and Control*: A proactive approach by Police and partner agencies targeted at individual offenders who persist in their offending behaviour.
3. *Rehabilitate and Resettle*: Joint approach by all agencies to provide a gateway out of crime for priority offenders.

Catch and Control is police-led while the Rehabilitate and Resettle strand is led by PBNI in respect of adult offenders and both PBNI and YJA, where appropriate, with young offenders. Prevent and Deter focuses on early intervention and the Children and Young Persons Strategic Partnership has a key role in this strand, linking in with groups that work with substance misuse and looking at issues affecting children and young people.

PSNI has established seven Reducing Offending Units (ROUs) throughout Northern Ireland. The ROUs are made of detectives, uniformed officers and Youth Diversion Officers. They have unique skills sets, and each ROU officer is allocated up to seven priority offenders. The Probation Board and Youth Justice Agency have identified staff in each area to work with partner agencies.

Part of the success of ROP is dedicated resources, ownership and focus.

In practice ROP involves a monthly meeting between PSNI, PBNI and YJA where appropriate. At the meeting, the agencies address and review each case in the priority list of offenders and agree which category offenders currently fall into; for example, Catch and Control or

Rehabilitation and Resettlement. Agencies also share information about developments in each case and discuss progress in terms of rehabilitation, compliance and reoffending. Finally they agree responses to each case.

On a six-monthly basis the list of priority offenders is reviewed, with agreements as to which offenders should come off the list, either because of progress and positive response or because of long-term imprisonment, and other offenders are identified who are then added to the list.

In addition to PBNI's statutory supervision cases, rehabilitation services are offered to appropriate offenders in the Rehabilitation and Resettlement Strand who are not subject to any form of statutory supervision. This part of the project marks a new step for PBNI in offering services to those not under statutory supervision. It is an expansion and development of PBNI's role within criminal justice.

Offenders do of course have a choice. If they decide to keep on offending and not avail of the rehabilitation strand, the police will be working to catch them and bring them to court as quickly as possible, and will share information on any further offending with Probation staff and other relevant agencies in the partnership as necessary.

Overall, take-up of services by non-statutory offenders under the Rehabilitation and Resettlement strand has been quite limited to date. Of those that do take up services, some quickly become statutory cases and some are of a short-term nature with offenders withdrawing after a number of meetings with the Probation Officer. The aim in non-statutory cases is to provide rehabilitation interventions for a period of six months to assist the offenders to develop more positive lifestyles and reduce offending behaviour and risk of reoffending. Probation Officers will seek to engage the offender in a range of relevant services in the community to help address their criminogenic needs.

## **Benefits of ROP**

PSNI commissioned an evaluation of the ROP initiative in Ballymena in 2012. Although ROP was in its very early stages, and taking into account that the evaluation focused mostly on PSNI restructuring for the purposes of ROP, the evaluation demonstrated positive results in terms of crime reduction and satisfaction among partner agencies.

The evaluation showed that through working together to manage priority offenders there is a clear decision-making process leading to greater ownership and a reduction in crime and reoffending. In 2012,

68% of priority offenders in Ballymena/Coleraine reduced their offending while engaged with ROP. The total number of priority offenders being managed in the pilot was 60. Acquisitive crime was also significantly reduced.

Another clear benefit of ROP is in relation to better and increased communication between agencies. A Criminal Justice Inspection Report published in 2013 looked at community supervision by PBNI, and inspectors asked PBNI staff about the impact on their work of ROP. Probation Officers highlighted that the main benefit of this approach was much improved communication with PSNI officers. They advised that the fact that one police officer was responsible for managing the offender they were supervising, and therefore had knowledge of all their offences, had led to this improvement. The Probation Officer found it easier to contact the PSNI as they had a named contact in the ROU and could therefore check information more easily, for example to verify information about arrests, cautions or convictions, or obtain further information.

The benefits of ROP have been highlighted and discussed by the Justice Minister at recent visits to probation offices, and include: reducing reoffending and offences (reduction in seriousness and increase in time elapsing from crime committed); reduction in risk scores allocated to offenders; increased number of priority offenders entering Rehabilitation and Resettle strand; increased and improved quality of offender information; reduction in delays within the justice system; increased confidence in the justice system; and reduced number of victims.

## **ROP in practice**

While it is easy to quote statistics and evaluations, it is also important to consider how ROP works in practice and how it has been successful. The two case studies below illustrate this.

### *Case Study 1*

Michael (not his real name) was nominated a 'Priority Offender' in May 2011.

He was part of a small group who were involved in stealing from retail premises.

After an initial meeting with Michael, he voluntarily agreed to work with ROP as he wasn't subject to any statutory conditions or orders. To date and since being released on bail in 2011 and agreeing to work with



ROP, Michael has not been in police custody for any criminal offence. He was referred by the ROU to a project named 'Springboard', where he participated in an initiative called the 'Wider Horizons Programme'. This programme provides an opportunity for young unemployed adults to learn new skills, builds capacity through personal and professional development and provides understanding of global citizenship. After successfully completing it, Michael was referred to the Source programme at Network Personnel by ROU. Network Personnel delivers training and employment initiatives throughout Northern Ireland. Its core aim is to deliver a professional client-focused mentoring service to assist and support voluntary clients to overcome their personal barriers to employment, and avail of skills to find employment. With the assistance of Source, Michael embarked on training programmes specialising in horticulture. Practical experience was offered on an ongoing basis. In addition, the Probation Board sourced voluntary work placements for him. PBNI consulted with ROU prior to completing the pre-sentence report to assist the court. Michael received 240 hours' community service and was fined £2,000, payable to a local charity. Michael is now in full-time employment and continues to develop his skill base by attending college. He has demonstrated a positive attitude regarding changing his offending behaviour and lifestyle. He has shown a willingness to engage with any agency to help him address his past offending and prevent him reoffending in the future.

### *Case study 2*

Mark (not his real name) is 19 and was placed on the Priority Offenders List following a serious assault and robbery that occurred in 2012. At the time of the assault, Mark was under the influence of alcohol and drugs, and was increasingly coming before the courts for offences linked to his misuse of drugs. He has previous convictions for burglary and theft, criminal damage and possession of Class C drugs.

At the time of the assault he was in the final stages of an 18 month Probation Order. Immediately following this he was moved to weekly contact with his Probation Officer, and he continued on this basis until his order expired at the start of November. From that point forward he has engaged on a voluntary basis through the ROP programme.

A primary focus of his supervision was motivating him to look at his substance misuse (which began when he was aged nine), and in particular a growing dependency on cannabis that he has been very resistant to

acknowledging. Through one-to-one work in probation supervision, he has reached the point whereby he has requested a referral to drugs counselling, and for the first time has expressed a desire to be free from substance misuse. He has also undertaken PBNI's Victim Awareness Programme, and has been able to identify and empathise with the consequences of his offending.

Mark has also engaged with NIACRO's Jobtrack Programme and has attained a forklift licence, as well as drawing up a CV and disclosure statement to assist with applying for work. He has expressed an interest in further vocational training, and is actively looking at opportunities in this area. As a result of his cutting back on cannabis use, family relationships have improved, and he finds his parents encouraging and supporting him on his current pathway.

Mark's progress to date has been considerable, and there is certainly room for optimism that this will be the turning point for him in building a life free from criminality.

### **Roll-out of ROP throughout Northern Ireland**

The Multi-Agency ROP Steering Group agreed that the ROP initiative should be rolled out across all areas of Northern Ireland in 2013. As of March 2013 ROP is managing 420 priority offenders including 65 young people and 20 females. The agencies involved have agreed a 'terms of reference' document which sets out the responsibility of each agency. This is supported by an information-sharing agreement. The partnership now consists of PSNI, PBNI, Northern Ireland Prison Service (NIPS) and YJA.

### **Conclusion**

The effective delivery of ROP will depend on multi-agency participation and ensuring that all agencies and stakeholders understand and are aware of the ROP process. There are real opportunities in terms of offering end-to-end management of offenders, ensuring a sharing of expertise among agencies and targeting finite resources where they are most needed. To this end there will be a strategy to build awareness internally and externally of ROP and to show the benefits in terms of reducing offending and preventing people from becoming victims of crime.

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## **Probation Officers' Experience of Using Risk Matrix 2000 and Stable & Acute 2007 when Supervising Sex Offenders Living in the Community**

**Mary Walker and Margaret O'Rourke\***

**Summary:** This paper examines Probation Officers' experiences of the two risk assessment tools, Risk Matrix 2000 (RM2K) and Stable & Acute 2007 (SA07), used by the Probation Service to risk-assess sex offenders living in the community. It first explores the benefits, limitations and concerns of the Risk Matrix assessment. It then focuses on Probation Officers' experience of the Stable interview – how they prepare, the issues during and their views after the assessment interview. The benefits, limitations and concerns of the SA07 are also explored.

**Keywords:** Risk Matrix 2000, Stable & Acute 2007, sex offenders, Probation Officers, risk assessment, supervision, offender management.

### **Introduction**

Risk assessment in Ireland in the 1990s saw a gradual progression from unstructured professional opinion/judgement to actuarial risk assessment tools. Bonta (1996) characterises unstructured professional judgement as giving an opinion on the risk or probability of an event occurring without examining risk factors: in essence it is an unclear route. Actuarial tools or second-generation risk assessment tools are more structured. They are grounded in risk factors that are related to recidivism rates, while they also attempt to eliminate the variance between practitioners' opinions.

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In 2003 the Probation Service introduced the Level of Service Inventory Revised (LSI-R)<sup>1</sup> risk assessment tool. With the introduction of the Sex Offenders Act in 2001, the task of risk-assessing convicted sex offenders on post-release supervision became a statutory responsibility of the Probation Service. LSI-R was not appropriate, as it is designed for generic offenders. A feasibility study on the range of approaches was undertaken, and the Risk Matrix 2000 (RM2K) and Stable & Acute 2007 (SA07) were selected as the most appropriate instruments.

RM2K is a statistically derived risk assessment classification intended for males aged at least 18 years who have been convicted of a sexual offence. It uses factual information about an offender's past history to divide them into categories that differ substantially in their rates of reconviction for sexual or other offences. It is designed to assist in the prediction of sexual and violent recidivism (Thornton *et al.*, 2003).

RM2K incorporates static risk factors. These are defined as relatively fixed aspects of offenders' histories, such as age and the extent of previous offending, which raise the risk of reoffending but cannot be changed for the better through deliberate intervention (Mann *et al.*, 2010). RM2K as a tool has been used by prison, probation and police forces in the UK and Ireland since the late 1990s and late 2000s respectively.

SA07, as a third-generation risk assessment tool, utilises dynamic risk factors defined as psychological or behavioural features of the offender that increase the risk of reoffending and that are potentially changeable. As a result it is intervention-driven, closely integrating assessment with case management. The 'Stable' aspect of the assessment identifies the dynamic/changeable factors that should be addressed over a 12-month period, e.g. impulsivity. 'Acute' risk factors are those that could change quite quickly and relate to the issue of imminence, e.g. victim access. SA07 incorporates an initial 'Stable' interview with the offender where 13 risk factors are discussed. At any subsequent meeting an 'Acute' assessment that focuses on seven risk factors is conducted.

SA07 is used in Ireland, the UK, Canada, Germany and the USA by Probation Officers and Police Officers for sex offenders living in the community, although it has been used in prison settings also. It was implemented in Ireland from 2007 onwards. SA07 assessments also feed

<sup>1</sup> The LSI-R is a risk assessment tool devised by Don Andrews and James Bonta which brings together risk and needs information to determine required levels of intervention. For further information see [www.mhs.com](http://www.mhs.com)

into multi-agency sex offender management discussions in Northern Ireland (PPANI<sup>2</sup>) and Ireland (SORAM<sup>3</sup>).

This paper examines Probation Officers' perspective on RM2K and the 'Stable' aspect of the SA07 assessment.

## **Method**

A total of 24 Probation Service staff were interviewed (16 Probation Officers (POs) and eight Senior Probation Officers (SPOs)) in eight locations nationwide. Fourteen were female and 10 were male. The length of service ranged from seven to 35 years. Interviews were semi-structured and followed an interview guide with specific headings.<sup>4</sup> Interviews were audio-recorded and transcribed, and a thematic analysis was conducted. This research forms part of a PhD research project which also includes additional probation findings.

## **Risk Matrix 2000**

### *Benefits*

Findings from the evaluation of RM2K suggest that POs have mixed views on it; it was seen by some as a basic tool or a screening device in order to divide the sex offender population into risk categories which would determine resource allocation. Currently if an RM2K score of medium to very high is achieved, the sex offender will subsequently be assessed by SA07. The RM2K risk rating would impact on the level of supervision, frequency of supervision meetings, and whether they would be further assessed with SA07 or be included in the SORAM process.

The introduction of RM2K was seen as validating POs' work as it is based on evidence-based risk assessments, as can be seen in the quotes below. The concept of defensible practice was to the fore, whereby it was

<sup>2</sup> Public Protection Arrangements for Northern Ireland, which are statutory arrangements to facilitate inter-agency cooperation.

<sup>3</sup> SORAM (Sex Offender Risk Assessment and Management) meetings are joint Probation Service/Garda/Health Service Executive meetings for sex offenders who are subject to the Sex Offender Act and under probation supervision.

<sup>4</sup> Risk Assessment Tools, Stable Assessments, Management Plan, Rapport, Supervision, Co-interviewing, Interagency Working, Managing Sex Offenders, Resources, Training, Strengths/Limitations of Tools, Challenges for Sex Offenders, Future Directions.

also viewed as an aid to removing judgement biases, making the risk-assessment process more scientific. This is supported by Kemshall's work (1998), where POs felt that risk assessment instruments with their checklists and weighting systems resolved the value debates they had. With that in mind, there are concerns that as RM2K does not necessitate meeting the sex offender, it could become a 'tick-box' exercise. The assessment itself was seen as straightforward: '*very easy to use, user-friendly*'. It could be conducted relatively quickly once all the information required was at hand.

*P010: It is a part of our defensible practice now so it supports our hunches. It is a useful tool in that regard.*

*P015: It is very basic but I mean it's better than, when I was in the service first nine years ago there was nothing. So you wouldn't have a clue ... So it kind of makes you feel you have a better handle on what the risk is.*

#### *Limitations and concerns*

Some POs reported that there was a lot of unnecessary emphasis on RM2K, and that its importance as a risk assessment tool was exaggerated. POs also found that the results might not correlate with their professional opinion of risk. Therefore the value of the RM2K results was sometimes questioned. While having a defensible practice for probation work was welcomed, when the risk rating was at odds with the PO's perceived risk rating there was some anxiety. This was mainly because RM2K provides a risk of reconviction, not reoffending, and uses static<sup>5</sup> risk factors; hence it does not incorporate all the information about the offender available to the PO.

Two implications of these concerns for practice were observed. Firstly RM2K should not be used in isolation, but rather in conjunction with a dynamic risk assessment tool such as SA07. This reinforces Grubin's (2008) assertion that RM2K should be seen as the first step in the assessment process (which is the case within the Probation Service). RM2K and SA07 have different implications for practice within the

<sup>5</sup> Static RM2K Factors are – Age, Number of Sexual Sentencing Appearances, Number of Criminal Sentencing Appearances, Single Status and whether there was a Stranger Victim, Male Victim and Non-Contact Offence.

Probation Service. RM2K identifies an initial risk rating which dictates the level of supervision and whether an SA07 is conducted. This approach draws on the risk principle with the Risk–Needs–Responsivity Model of Andrews *et al.* (1990) and Andrews and Bonta (2006), where the amount of intervention an offender receives is matched to his/her level of risk to reoffend. The SA07, while identifying a risk rating, also identifies areas of supervision work. Hence RM2K was seen as having little practical value in terms of directing interventions or supervision work:

*PO1: It doesn't really give me any basis to work on. It is about his previous convictions or stuff I can't change anyway whereas I am an agent of change; that is the purpose of Probation Officers.*

The second practice implication is that a professional override can be employed. This is utilised when a sex offender scores low on RM2K but there are concerns due to their needs or responsivity. Hence it may be in the best interest of both the offender and public safety for further assessment to identify risk behaviour and/or areas of work/interventions. The override adds to the PO's defensible practice. This override facility in risk assessments is not uncommon, as the Probation Service allows this practice within the LSI-R assessment (Prendergast, 2012).

*PO10: The officer who had him thought 'nah, this boy is far from low, he needs to be assessed'. So we have the wherewithal that even if they are low we can assess them.*

As strict scoring rules have to be followed in the RM2K instrument, it was viewed as cumbersome at times, especially if it was not completed regularly. An implication for training and practice was that if POs are not conducting RM2K regularly, difficulties or inaccuracies may result when completing assessments.

An evaluation of the SA07 pilot conducted in England and Wales in 2010 (McNaughton Nicholls *et al.*, 2010, p. 20) found that, as with Probation Officers in Ireland, the RM2K was seen as 'a useful starting point for assessing risk and was felt to be quick and an easy tool to use'. However, similarly to the experience of Irish POs, 'it was felt to be limited in that it only incorporated static risk factors and was unresponsive to changing circumstances and dynamic issues'.



## Stable and Acute 2007

### *Benefits of SA07*

SA07, like RM2K, was welcomed as adding to the PO's defensible practice, but it was viewed as a practical risk assessment as it directed supervision work and interventions. This was due to the inclusion of dynamic factors and the fact that it covered all aspects of the offender's life, not just the negative aspects. Progress made could be observed and communicated to the offender, which was viewed as positive. Another benefit was that the structure of the SA07 and the skills built up by the PO were transferable to other offenders not being formally risk-assessed.

*PO9: It doesn't look for exclusively what the old days would have seen as flaws within the offender, traits. It clearly does look at those areas ... but it also takes into account the wider environment: who their supports are and deficits that arise as well, so it is much more comprehensive.*

*PO8: It is very helpful. It is extremely helpful even for working with sex offenders that are low risk. I feel it really guides you to what you need to know and what you need to find out, even to put a report together ... Well when I would have wrote reports initially ... we would gather as much information as we could using our professional judgement writing these reports and there were gaps missed and I think SA07 fills those gaps. It clearly identifies the risk areas. It makes it very clear and I think you can find out so much when you are interviewing a client and you have those headings in your head.*

### *Prior to 'Stable' interview*

When POs were asked how they prepare to conduct the SA07, they highlighted a number of elements: (i) preparing themselves as the interviewer, (ii) preparing the offender, (iii) ensuring that all available information/collaterals are in place.

### Preparing themselves as the interviewer

Apprehension was a key emotion when POs did the Stable assessment for the first time. Therefore, they prepared themselves by reading the SA07 training manual and the practical guide<sup>6</sup> for POs. Some typed out the

<sup>6</sup>This handbook was compiled in 2007 by the Probation Service and Department of Psychology, UCC, to guide and inform POs in their supervision of sex offenders and as a practical and informative aid for staff involved in assessment and intervention with adult sex offenders.

questions from the manual and put it in their own words, making it *more user-friendly*. This would be on hand as a guide if needed. Brief notes were taken which acted as prompts for discussion of subsequent risk factors. As a result the language and flow of the interview was not too scripted, and the turn of phrase was not out of character for the PO. Ultimately the wording was changed to fit the interviewer's style and the client's level of abstraction.

*PO12: I try to prepare myself as best I can by reading through the questions, by familiarising myself with the Stable guidelines. Prepare the guy as best I can, especially for the more intrusive questions, and then just go and get into it.*

*PO2: It is difficult because different people have different levels. So some days you are working and you think you have got it right and you are trying to tune into what his language is. You will say something and he will come back to you and you say 'Oh God, now I really now have confused the guy'. And he is rightly confused and it is my failure to have spotted something. So I have to re-edit quickly and come up with a new way to explain, like every interview sometimes you are on the ball, you're sharp and other times you walk out and say 'that was terrible'. It just didn't come together. But if you are working with a person you have a chance to come back on it and give it another go.*

Any initial embarrassment or discomfort in discussing the sexual regulation risk factors was quickly eroded once a professional role using appropriate language was assumed. Other concerns prior to interviewing centred on not capturing the right information or not picking up on information.

Preparing the client as the interviewee

Building up a relationship with the offender was vital to the success of the SA07 assessment. Fitzgibbon (2007), within the context of OASys<sup>7</sup> assessments, similarly found that far better risk assessments were undertaken when a consistent and sustained relationship had been built

<sup>7</sup> The Offender Assessment System (OASys) is used in England and Wales by the National Offender Management Service to measure the risks and needs of offenders under its supervision.

up with the PO conducting it. Hence it would be rare for a PO to conduct the Stable interview before three or four supervision meetings. An added benefit is that information is gathered which can be incorporated in the assessment.

The Stable assessment would normally take two or three sessions; in some cases it has been conducted over one session, though this is not the norm. This could be the case for a repeat<sup>8</sup> Stable assessment where the offender knows what to expect and has been through the process before, and there is an existing relationship. Rapport and trust were essential in order for the offender to be open and allow for disclosure of information. Essentially the sex offender is prepared and knows what to expect, and hence may engage more. POs also felt they can better '*judge his feelings and emotions*' if a relationship with the offender exists.

#### Information/Collaterals

Information obtained prior to assessment comprised written formal information and verbal informal information. The objective is to gather as much information as possible about the offender from as many sources as possible prior to the assessment. This is used to have a rounded risk-factor discussion and as collateral information to verify or spot discrepancies in the offender's responses. It further acts as a means to challenge the offender, thereby ascertaining the truth and ensuring a more accurate assessment.

Regarding the formal written information, the main items would include the Sex Offender Probation file and any reports (or case notes) written by a previous PO or possibly a report completed prior to sentence. The PO would ask for prison reports, visit reports and any prison psychological reports or educational reports to be released. In addition any treatment programme reports (Lighthouse/Safer Lives/addiction centres/private treatment providers) would be requested if those holding them were willing to provide them to the PO. Regarding young offenders, information provided by schools could also be requested to ascertain problematic schooling, expulsion and extent of misbehaviour. Sometimes if access to this information is proving difficult, a request to the offender's solicitor, with the offender's consent, to provide copies in their possession may be made.

<sup>8</sup> Stable interviews are normally conducted every 12 months.

The Book of Evidence<sup>9</sup> (BoE) is also obtained where possible in order to get a sense of the conflicting accounts of the offence and to monitor how divergent the sex offender's account is from the facts as contained in the BoE. In particular, the statements and medical reports are examined. Firstly the victim's account is deemed a more truthful description of the incident than the offender's, as it may be in the interest of the offender to lie in order to prevent a charge and subsequent potential conviction. Secondly POs look at the offender's statements to see how he shifts his defence, his rationale or motivation, whether he minimises or deflects responsibility, etc., as seen from the quotes.

PO8: [I look for] *the victim statement in the Book of Evidence ... Because my own experience tells me all offenders, not just sex offenders, will minimise the offence or minimise their involvement in the offence or try and excuse it in some way. I think the victim's viewpoint is vital because it gives you something to come back on. How do you think this affected the victim or just to get knowledge on who the victim is.*

PO4: *Generally speaking the victim's statements and medical reports are what you would be looking for really. You can see the damage the person has done and the harm.*

Furthermore, the BoE gives the PO an indication of 'where the offender was at at the time of the offence'. It captures a sense of 'then' (offence time) and 'now' (on supervision). It appears that the BoE is essential when completing an assessment. While POs have found innovative ways of obtaining the BoE, it possibly should be mandatory that it be released to the PO.

Verbal informal information would involve phone contact/discussion by a PO with a member of An Garda Síochána,<sup>10</sup> usually the monitoring Garda or investigating Garda, which POs feel is vital.

<sup>9</sup> The Book of Evidence is a document with all the evidence against the accused, which is put together by the prosecution team once the Gardaí have charged the accused. It contains statements from witnesses as well as the victim, the accused and all Garda statements. It also includes a list of any physical evidence in medical reports, chain of evidence reports, etc. in addition to items such as photographs and weapons used.

<sup>10</sup> Ireland's national police service.

PO3: *I ring the prosecuting guard and ask is there anything else you want to tell me about this person that I don't know about already. It is completely confidential and it won't be going into the report. Is there anything you want to tell me or is the way he describes the offence the way it is? I always do that, it is a matter of pride with me.*

While it is not within the remit of this paper, approximately 25 Garda members trained in RM2K and SA07 were also interviewed. The value of accurate information and the gathering of information from all sources were prized. While at the time the information may not seem hugely important, its true value may come to light when collated with other pieces of information or through discussion with the POs.

Home visits, when possible, are conducted prior to assessment in order to meet the offender's partner/family and to see home lifestyle and living standards. This provides an opportunity to verify information that the offender has given in the sessions prior to the assessment. As a safety measure, POs will notify the local Garda station that they are meeting sex offenders at a specified time and ring back when finished.

PO6: *You pick up far more information, and if you can meet somebody related to them or talk to somebody else you get another view. And it does definitely give you a different feel to the whole situation and when they are describing things you can understand what they are talking about, so it is valuable I think.*

### *Conducting the Stable interview*

#### Discussing risk factors

POs stated that they generally follow the ordered sequence of the risk factors as listed in the Stable form. This order led the client from 'easier to discuss' risk factors to the more difficult sex-oriented discussion. POs used the 'more neutral risk factors', i.e. Significant Social Influences and General Social Rejection, as an avenue to develop and maintain rapport during the assessment in addition to setting the landscape of the interview. It was felt the gradual progression of the assessment eased the offender into discussing more intimate personal aspects of their life or their offending.

PO9: *When you come in [to the meeting] you wouldn't go straight to 'how often would you masturbate a day or do you look at pornography?'. You would start with their early sexual experience, how you learned about sex, when did you first hear, was it in school, was it through peers, can you remember your first contact with girls if there was any contact?*

### Finding truth

Although it is understandable for sex offenders to be reticent about their offending and about personal intimate sexual practices, as would any non-offending person, POs felt that sexual offenders on their caseload would minimise their offending, deflect responsibility, try to distance it to historical cases, or cite mitigating factors that rationalise the offending. All this is common behaviour of sex offenders (Hudson, 2005).

Within this context they have to navigate through truth and lies to arrive at the most accurate risk assessment possible. Hence not everything the sex offender says is believed. While some sex offenders can be overly compliant and *'will do anything to please you where they will give the answers they think you want to hear'*, the truthfulness of responses is paramount.

Older men were mentioned as having more difficulty discussing their sexual interests/preoccupation than younger men. Other challenging assessments for POs were with individuals with psychological issues, disabilities and cultural issues. While some offender responses are easily verifiable, other discrepancies or hunches that the PO may have cannot be verified easily. These are specially related to the offender self-reports, on which the PO will have to make a judgement call.

PO12: *As you go down to the more sexual [risk factors], i.e. masturbation, they are very intimate details and they are all men and I am a young female. I am comfortable enough asking the questions but again for the client answering them and how truthful [they are with me is uncertain].*

PO4: *The sex offender is often a little embarrassed about how often he masturbates or what their use of pornography is or has been or whatever. But I think the more confident you are about that and how you express it [helps] ... You wouldn't be always confident that they are telling you the truth, of course, and there is no verification there unless you might have collaterals that the guards might have found pornography in the house if they searched it, but that is not that often.*

POs said they would challenge rather than confront response inconsistencies and suspected inaccurate self-reports, through the use of collateral information. The PO would give the offender the opportunity to clarify and save face rather than potentially closing down engagement and trust. Furthermore, POs stressed that they set the emotional tone of the interview and this was crucial to the successful completion of an interview. This they felt was a skill or ability that comes with knowledge and experience. Questions posed are framed appropriately, with the PO not shirking the responsibility of asking tough questions.

#### *Post-interview*

After the Stable assessment is conducted, all the risk factors are scored. A concern was '*recording the wrong information in the wrong section*'. As information can impact on a number of risk factors, it was felt that this cross-reference may be a difficulty for newly trained POs, especially for 'sex as coping' and 'sexual preoccupation' risk factors, which may impact on practice. This would be addressed with experience and increased practice, and clarified by the mentoring group process, although POs were mindful that complacency must not creep into their practice once they were accustomed to conducting SA07.

Currently an all-island (Northern Ireland and the Republic of Ireland) research project commissioned by the Public Protection Advisory Group is under way, which is examining all statistical returns for each risk factor of the Stable interview conducted within a specific time frame. This research will add to the international validation studies on Stable and Acute and provide findings in relation to the efficacy of the tool in Ireland.

The value of the mentor group process cannot be overestimated. It involves a narrative written by the PO who completed the assessment, which is co-rated by a second PO. It is then discussed with a mentoring group, where a final score is validated and signed off. This process is to ensure greater standardisation and to remove any potential assessor subjectivity.

POs felt '*the mentor group discussions are useful because the whole area is very complicated and you get a very good appraisal*'. Furthermore they saw it as an indirect learning environment, '*as there are different aspects of the information that you bring forward people will question or make suggestions and it is very helpful for the next interview you do*'. This was felt to be very important, especially in light of the absence of formal training due to resource constraints. Also it directly relates to the individual PO work,

hence its relevance is two-fold as it ensures that the SA07 is accurate and impacts on developing the skills of the PO. The mentoring group was also seen as positive as it *'places checks and balances'* and can identify any *'blind spot to a certain behaviour or something [the PO has] missed'*.

Prior to the mentoring group (and SORAM), POs felt *'very alone with a sense of responsibility on your shoulders'* when supervising sex offenders. Now this is shared, as *'you are covering every angle ... you are discussing everything, everything is out in the open and it is hugely beneficial'*. While a practice implication is that the mentoring group is resource-intensive and time-consuming, the benefits appear to outweigh the limitations.

The SA07 findings feed into the management plan of the offender, which will direct interventions and any areas of concern. Also the Stable interview is discussed at the joint agency SORAM meetings. As members of the Garda Síochána are trained in RM2K and SA07 as well, there is a common language when discussing sex offenders. Furthermore, staff from the two agencies have completed joint training, joint assessments and joint home visits of sex offenders, hence collaborative working is taking place to a high degree.

Training of Gardaí and Probation Officers as SA07 instructors has also taken place, hence this in-house capability will allow for further numbers to be trained in SA07, though now the concern is the need to concentrate attention and training on the interventions. Risk assessment has been addressed and the next stage should now be undertaken. Furthermore, POs felt they were equipped to deal with some areas of work – substance abuse, significant social influences, suicidal thoughts, social isolation – but *'they were not trained to do some of the work around some of the [Stable] areas'*, particularly work centred on the sexual elements, i.e. excessive masturbation and coercive rape fantasies. The feeling was that more support or training should be provided for POs to qualify them to do this type of work. But would this be encroaching on more of a therapeutic role? Some POs with a psychotherapy background were happy to explore these issues with their offenders, though others felt it was beyond their level of experience or role. Role clarity was an important theme in this context. Some questioned whether it was their role to do some of the intervention-driven aspects of the SA07 findings. Furthermore, if they were to conduct this work, there is no Probation Service manual where each risk factor has been deconstructed and linked to possible intervention-focused work or options.



## **Concluding discussion**

The focus of this paper has been to highlight the practice and experience of sex offender risk assessment instruments by Probation Officers. In short, the risk assessment tools have been welcomed, with the practical nature of the SA07 being particularly valued. POs describing themselves as ‘agents of change’ with third-generation risk assessment tools have the ability to measure change in the offender, hence there may be more of a perceived match with the probation role.

This all leads to a defensible practice for the PO. While POs stated that they know that risk cannot be eliminated and they have to work within the limitations of their role, the support of risk assessment tools, mentor groups and SORAM discussions adds to defensible decision-making. As a national framework is in place, there is now more transparency in the risk assessment and supervision of sex offenders than before. International practice suggests that the best and most effective risk-assessment tools will combine static and dynamic elements (Harrison, 2011).

This defensible practice helps lessen the impact of working with sex offenders and the onus of sole responsibility that POs carry. Joint assessments, joint decision making and sharing of information help alleviate the stress that some POs felt about decision-making.

None the less, there are still ongoing challenges for POs. This was mainly observed with resource and training concerns. The mentor group process was seen as providing great validity and support, but was resource-intensive. While extensive work has been completed on risk assessments and training, POs felt that now was the time to focus on intervention work. Some POs found a gap in their knowledge and skills for implementing some intervention-driven work around sexual behaviour and sexual regulation. If their role should stretch that far, more training is needed to complete this work effectively and appropriately.

To conclude, while sex offender risk assessment and management is in its infancy in Ireland, it is ever evolving, as fourth-generation assessment tools have come to the fore here since 2010. This is where risk tools are integrated into a process of risk management, the selection of intervention modes and the assessment of rehabilitation progress (Campbell et al, 2009). On this front RM2K and SA07 are integrated into a procedural and multi-agency structure of management of sex offenders (SORAM). Different agencies are using the same risk assessment tools, in some

instances conducting assessments together and having a common language, which ultimately results in more effective sex-offender management. Collaborative working, where information is shared and the significance of the information is understood, can only mean effective communication, and it is hoped, increased public safety.

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## **SORAM: Towards a Multi-agency Model of Sex Offender Risk Assessment and Management**

**Mark Wilson, John McCann and Robert Templeton\***

**Summary:** This paper charts the development of the multi-agency model for Sex Offender Risk Assessment and Management (SORAM) from its origins of co-working a small number of very high-risk cases in 2007/8 to its national roll-out in May 2013. Consideration is given to the environmental context, drivers and challenges faced, while also capturing the significant benefits of a joint approach to high-risk offender management. The context includes an outline of the work of the Department of Justice and Equality in considering high-risk offender management and the targets set within governmental and intergovernmental committees, examining how these developments led and supported operational drivers to achieve specified targets. The parallel and aligned introduction of an all-island system of risk assessment, coupled with the establishment of a cross-jurisdictional 'All-Island and UK committee', is explained, including the cross-jurisdictional strategies initiated to support best practice, training and research.

**Keywords:** SORAM, sex offender, risk assessment, risk management, multi-agency model, Probation Service, An Garda Síochána, Health Service Executive, Irish Prison Service, Sex Offenders Act 2001, better lives, treatment programme.

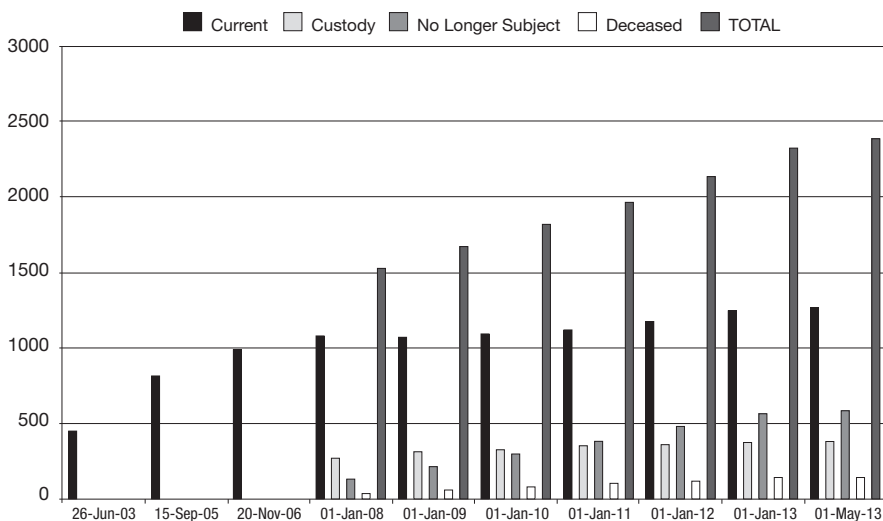
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## Introduction

For over a decade the Sex Offenders Act 2001 has been the central legislative foundation for the management of sex offenders in Ireland. This included the introduction of a notification system (similar to a sex offenders register) whereby sex offenders must provide their names and addresses to An Garda Síochána,<sup>1</sup> making Ireland one of only five countries with such a system (alongside the United Kingdom, Canada, the USA and Australia). The Act also established the requirement for the court to consider a period of post-release supervision for those sex offenders sentenced to a period of imprisonment.

Twelve years later, there are almost 1,300 convicted sex offenders subject to the requirements to notify, with approximately 12% of these subject to probation supervision. A further 363 sex offenders are currently in prison.<sup>2</sup> As can be seen from Figure 1, current patterns indicate that the numbers subject to notification and in custody are increasing. This is also the case with post-release supervision.

**Figure 1.** Sex offenders subject to Section 2 of the Sex Offenders Act 2001, 2003–13. Data supplied by An Garda Síochána (Domestic Violence and Sexual Assault Investigation Unit) (unpublished)



<sup>1</sup> Ireland's national police service.

<sup>2</sup> Figure supplied by the Irish Prison Service for 20 May 2013.

## **Moving beyond the Sex Offenders Act 2001**

The Sex Offenders Act 2001 provided a very clear legislative basis for the community supervision and monitoring of sex offenders. As the numbers of offenders increased, the need for an integrated risk assessment and management system became apparent. By 2008, while it was not included within the text of the Criminal Law (Human Trafficking Act) 2008, thought had been given to the need for legislation covering this area. This prompted An Garda Síochána and the Probation Service to engage in focused dialogue at an operational level with a view to developing a model in preparation for, and to inform, the publication of any proposed legislation. The result has been the development of the Sex Offender Risk Assessment and Management (SORAM) model of practice.

## **Structural change supporting enhanced joint practice**

In 2006–2007, the Probation Service underwent a period of significant restructuring, which included, in mid-2007, the establishment of a new national region, ‘Prisoners, Risk and Resettlement’. Within this region a High Risk Offender Management team was created and tasked with developing an enhanced practice capability within the service. At this time, initial contact was established between the Probation Service and An Garda Síochána’s Domestic Violence and Sexual Assault Investigation Unit in the National Bureau of Criminal Investigation. Information exchange developed informally and, as the working relationship became more established, a shared realisation of mutual areas of responsibility and concern was identified. In particular, it was clear that the two organisations had complementary roles to play in managing the risk posed to the community by convicted sex offenders, especially those deemed to be high profile and/or posing a high risk of reoffending. Having worked jointly on a small number of such cases, the potential benefits of replicating the aligned approach became evident.

## **Policy context**

In a 2006 paper, Dr Joseph Duffy highlighted the need for policy development in the area of sex offender management, concluding:

It is now time to give attention to policy development for the risk management of sex offenders within an Irish culture in a manner that reflects the complexity of the issues involved. (Duffy, 2006, p. 15)

Since that time, governmental and intergovernmental targets have provided significant opportunities for meaningful progress in the area of sex offender management.

In late 2007, the Department of Justice, Equality and Law Reform established a High Risk Offender Working Group to consider the management of sex offenders from the point of conviction through to imprisonment and on to post-release interventions. The group was chaired by the department, with additional representation drawn from key justice sections including An Garda Síochána, the Probation Service and the Irish Prison Service. Additional representatives were invited from COSC (the recently established National Office for the Prevention of Domestic, Sexual and Gender-Based Violence), Children and Family Services (HSE) and the Department of Environment, Heritage and Local Government.

In January 2009 the Department of Justice, Equality and Law Reform published *The Management of Sex Offenders: A Discussion Document*. It examined current management arrangements and put forward proposals for future developments. The report invited comments and observations from the public, and was promoted through the convening of a conference on 26 March 2009.

Following submissions, the Department of Justice and Law Reform published a further report, *Summary of the Views Received on Discussion Document on the Management of Sex Offenders* (2010), which focused on policy and practice areas including risk assessment, interventions in custody, sex offenders in the community, the courts, victims and legislation. Both reports, including the views of submissions received, strongly supported the need for multi-agency risk management arrangements.<sup>3</sup> Indeed, the Working Group itself supported such a development in practical ways by facilitating regular communication between key sections within Justice and between Justice, Environment and Health.

More specific government targets were also in place around this time, including the following.

<sup>3</sup> Interestingly, a similar process had been instigated by the department prior to the publication of the Sex Offenders Act 2001. Released in May 1998, *The Law on Sexual Offences, a Discussion Document* addressed similar issues such as risk assessment, post-release management and electronic monitoring, but made no reference to multi-agency models of practice at that time.

- (i) The *Joint Oireachtas Committee on Child Protection Report* (Oireachtas, 2006) focused on age-appropriate sentencing for young persons convicted of sexual offences and the assessment and treatment of convicted sex offenders, and called for a review of the operation of post-release supervision.
- (ii) The *National Development Plan 2007–13* (Stationery Office, 2007) targeted the expansion of prison and community sex offender programmes, and the need to assist the reintegration of prisoners in areas such as accommodation, employment, training and further education.
- (iii) The *Programme for Government 2007–12* (Department of the Taoiseach, 2007)<sup>4</sup> sought to ensure that all sexual offenders were assessed before their release from prison to identify the level of supervision and regulation needed. It also proposed to introduce a Sexual Offences Bill that would consolidate and modernise all criminal law in the area of sexual offences; however, this target was not realised.
- (iv) *The Way Home: A Strategy to Address Adult Homelessness in Ireland 2008–13* (Department of the Environment, 2008) identified the issue of accommodation provision, requiring liaison between local homelessness fora and the Multi-Agency Group on Sex Offenders (MAG)<sup>5</sup> with a view to ensuring a range of effective measures to prevent, as far as possible, the incidence of persons convicted of sexual offences becoming homeless.
- (v) The *Public Protection Advisory Group*, a joint justice committee established under the Intergovernmental (Good Friday) Agreement and co-chaired by the Director of the Probation Board for Northern Ireland and the Director of the Probation Service, in 2008 agreed to introduce an all-island assessment tool for sex offenders.
- (vi) The *National Strategy on Domestic, Sexual and Gender Based Violence 2010–14* (COSC, 2010) covered a broad range of targets in relation to assessment, treatment and risk management.

Also, in 2009, the Irish Prison Service (IPS) published a policy document outlining its focus in this area. *Sex Offender Management Policy: 'Reducing*

<sup>4</sup> Available at [www.taoiseach.ie/eng/Publications/Publications\\_Archive/Publications\\_2007/Eng\\_Prog\\_for\\_Gov.pdf](http://www.taoiseach.ie/eng/Publications/Publications_Archive/Publications_2007/Eng_Prog_for_Gov.pdf)

<sup>5</sup> A sub-group of the Dublin Regional Homeless Consultative Forum.

*Reoffending, Enhancing Public Safety* (IPS, 2009) aimed at bringing about changes in prisoners that would reduce their risk of reoffending and could form an integral part of wider community-based interventions by justice agencies.

### **Investigations and reports**

These policy developments cannot be seen in isolation from the numerous investigations into allegations against the Catholic Church that arose at this time and that undoubtedly strongly influenced this area of work. The Ferns Inquiry Report (Ferns Report, 2005) was published in October 2005 following investigation into allegations and complaints made against clergy in the diocese of Ferns, County Wexford. The HSE established five working groups to address the 20 separate recommendations made by the Inquiry team.

Two notable committees, from this paper's perspective, were known as:

- (i) The Ferns 4 Working Group, which focused on responses for the victims of sexual offending. This committee produced a report considering responses to the assessment, therapeutic and counselling needs of children who had been sexually abused, and their families (September 2009).
- (ii) The Ferns 5 Working Group, which focused on interventions for perpetrators. Its initial report was entitled 'Treatment Services for Persons who have Exhibited Sexually Harmful Behaviour' (March 2007) and recommended a national treatment model, structured into four regions and delivered using a 'core and cluster' model of practice.

Also, in 2009, both the Ryan<sup>6</sup> and Murphy<sup>7</sup> Reports were published. Among many other things, these strongly influenced the work of the Task Force on the establishment of the Child and Family Support Agency, which led on the governance structure of that new agency.

<sup>6</sup>While known as the Ryan Report, its formal title was 'The Commission to Inquire into Child Abuse'. Chaired by Justice Seán Ryan, the terms of reference involved an investigation into all forms of child abuse in Irish institutions for children, the majority of which fell into the category of reformatory or industrial schools. The Commission sat between 1999 and 2009. The Final Report was published in May 2009, containing some 99 recommendations. Key actions included: developing and strengthening national child care policy and evaluating its implementation; improving the organisation and delivery of children's services; revising (contd.)



## Review of An Garda Síochána Policy

To ensure that best practice was being achieved, and to enhance public confidence following the issuing of these reports, An Garda Síochána considered it timely to conduct a comprehensive review of its policies regarding both child welfare and the investigation of sexual crime. The *An Garda Síochána Policy on the Investigation of Sexual Crime, Crimes against Children and Child Welfare* was published in April 2010, updating previous policies, introducing new policies and consolidating them into a single document. That policy document has since been reviewed, resulting in a second edition being published in 2013 (An Garda Síochána, 2013). The document also acts as a practical reference guide providing comprehensive instruction and advice to members of An Garda Síochána in their work as it relates to these critical areas of public protection, including the management/monitoring of sex offenders (An Garda Síochána, 2013).

## HSE policy development

Policy in the area of child protection and welfare was significantly influenced by the appointment of an Assistant National Director for Children and Family Services within HSE in 2009. With the establishment of a national office, work began to provide consistency in child protection practice. In January 2011 the HSE appointed Ireland's first National Director for Children and Family Services.

In July 2012, the Minister for Children and Youth Affairs published the *Report of the Task Force on the Child and Family Support Agency* (Department of Children and Youth Affairs, 2012), clearly setting out the vision, governance and service model in the way forward for child and family services in Ireland. The report proposes the most significant shift in child welfare in the history of the State, with a single dedicated State agency overseen by a single dedicated government department, all focused on providing a single continuum of services committed to children's well-being and protection.

<sup>6</sup> (contd.) Children First, the national guidance for the protection and welfare of children and underpinning the guidance by way of legislation.

<sup>7</sup> Released a few months after the Ryan report, the Murphy Report was the informal title given to the Report by the Commission of Investigation into the Catholic Archdiocese of Dublin headed by Judge Yvonne Murphy. It examined complaints and allegations of sexual abuse in the Dublin archdiocese between 1975 and 2004: [www.dacoi.ie](http://www.dacoi.ie)

At the time of writing, the Child and Family Agency continues to develop and a Programme Director and CEO Designate has been appointed.

### **Risk assessment within SORAM**

In 2007, as previously mentioned, the Public Protection Advisory Group (PPAG; a cross-border justice committee, established under the Intergovernmental Agreement) undertook to advance an all-island approach to sex offender assessment. Initial work undertaken by the Probation Service established which instruments should be introduced, recommending the adoption of a combination of the Risk Matrix 2000 (RM2000) (Thornton *et al.*, 2003) and the Stable & Acute 2007 dynamic instrument (SA2007) (Hanson *et al.*, 2007). This reflected developments in Northern Ireland, where the RM2000 was well embedded and the SA2007 instrument was then being piloted, thereby facilitating a common language of the risk posed by sex offenders, who tend to travel between the two jurisdictions.

A joint approach to RM2000 training was adopted and by 2009 over 200 personnel had been trained within the Probation Service and An Garda Síochána. By 2010, through co-operation with the National Offender Management Service (NOMS) in England and Wales, a train-the-trainer programme was delivered to justice personnel on an all-island basis and was extended to include both the Irish Prison Service and National Forensic Mental Health Service.

The introduction of SA2007 was a slower process. The Probation Service initially targeted training, on a single-agency basis, in the High Risk Offender Management Team (2007–8), allowing the service to develop concentrated experience in the use of the instrument before extending the training to a broader group of personnel. Training for the team was accessed from both Multi-Agency Sex Offender Risk Assessment and Management arrangements (MASRAM)<sup>8</sup> in Northern Ireland and the Effective Practice Unit in the Scottish Government.

<sup>8</sup> Established in 2001, MASRAM was initially a voluntary arrangement to facilitate police, probation, prisons, housing and health agencies in working together. The arrangements were placed on a statutory footing in October 2008, at which time they were renamed the Public Protection Arrangements for Northern Ireland (PPANI).

By 2009 the Probation Service had an Implementation Plan in place. This was coupled with growing interest in and understanding of this more complex instrument by An Garda Síochána. To support an aligned and integrated approach, an Implementation Group was established with operational and training personnel from both agencies. Additionally the Probation Service statistician, seconded from the Central Statistics Office, and a multi-agency Public Protection Arrangements for Northern Ireland (PPANI)<sup>9</sup> representative participated. The involvement of the PPANI representative was extremely useful, allowing the benefit from the learning of the pilot of SA2007 in Northern Ireland to be absorbed. An initial attempt to secure a train-the-trainers model was unsuccessful, leading to the positive and ongoing development of a relationship with a trainer from the Scottish Government.

Also in 2009, a committee, known as the All-Island and UK committee, was formed to consider how a cross-jurisdictional approach could benefit ongoing implementation, e.g. training, efficiencies, best practice, accreditation and research. Membership initially included Ireland, Northern Ireland (lead), Scotland, and England and Wales; however, England and Wales subsequently withdrew following their decision not to implement SA2007 in 2011.

Over the following two years the Probation Service developed sufficient capacity of trained personnel to pilot a national system of assessing sex offenders which operated between 2010 and 2011. The outcome of the pilot generated learning from which both the Probation Service and the An Garda Síochána have benefited. An Garda Síochána largely focused its SA2007 training on divisions where the joint SORAM arrangements were being piloted, with over 150 An Garda Síochána personnel now trained. Finally, in March 2013, through much effort on the part of the All-Island and UK Committee, a train-the-trainer programme was delivered to identified personnel from Ireland, Northern Ireland and Scotland. Six An Garda Síochána and Probation Service personnel are now certified to deliver training in the use of the SA2007 instrument, resulting in a minimum need for further expenditure to retain the effective use of the instruments used within SORAM.

The added value of the cross-border approach was reinforced by the PPAG's decision to evaluate the use of the instruments over a three-year

<sup>9</sup> [www.publicprotectionni.com](http://www.publicprotectionni.com)

period. To this end a research project was established that is operating from 2011 to 2014.

### **The development of SORAM**

Having extensively reviewed the legislative, policy and political backdrop, it is timely to consider how SORAM itself was developed. By late 2009 the Probation Service and An Garda Síochána had agreed to formally pilot a model of joint working. A model was adopted that involved a national (lead/oversight) committee coupled with local area committees where the case management would take place. Discussion on geographical boundaries identified that both organisations used largely county boundaries outside Dublin, but Dublin was more problematic, and agreement was reached to structure the model on An Garda Síochána divisional boundaries there.

Guidance and supporting documentation was prepared, following liaison with the Office of the Data Protection Commissioner, to enable local committees to make structured use of the newly introduced risk assessment instruments, thus ensuring a high quality of joint risk management planning. In consideration of lead personnel, it was felt that a joint lead approach was required at both national and local levels, one that maximised the potential for full implementation and effect.

The National SORAM Committee was jointly led by the Detective Superintendent for the Domestic Violence and Sexual Assault Investigation Unit (DVSAIU) and the Regional Manager for the Probation Service 'Prisoners, Risk and Resettlement' region. The committee also included members of the An Garda Síochána Sex Offender Management and Intelligence Unit and the Probation Service High Risk Offender Management Team.

It was decided that local SORAM committees would be jointly led by the Senior Probation Officer for the relevant area and the An Garda Síochána Inspector with divisional responsibility for sex offenders. Additional personnel from each organisation were to be included based on the specific cases being considered (i.e. supervising Probation Officer and/or designated Garda).

For the initial pilot, five local areas were selected that allowed the model to be tested in a range of settings (city, town and rural). These were Tipperary, Cork City, Mayo, Louth and north Dublin (Dublin

Metropolitan Region North). Cross-agency residential training was implemented in the An Garda Síochána Training College, allowing targeted staff to get a common understanding of the model, each other's roles and responsibilities, and facilitating the development of working relationships. Following that training, the pilot started in June 2010, with a built-in research/review process being undertaken by the An Garda Síochána Research Unit and supported by the National SORAM Committee.

In each local SORAM committee area, a list of qualifying sex offenders was drawn up and, using the risk assessment instruments and additional information known to each agency, a joint risk management plan was prepared. This plan was then reviewed on a regular basis, based on the reported information from each agency relating to the offender concerned.

The need to include the child protection perspective of the HSE was apparent, and an invitation was extended shortly after the pilots started. Having accepted the invitation, the HSE initially limited its involvement to an observation role on the National SORAM Committee, allowing for consideration of the implications of full or partial engagement. This representation included a national specialist from the Children and Family Services, and the Director of the COSC sex offender treatment programme in Donegal.

In May 2012, based on the An Garda Síochána Research Unit Evaluation report, the model was extended to 11 new areas – all of Dublin, Cork and Limerick plus Cavan/Monaghan, Carlow/Kilkenny and Galway were included. By this time the HSE had decided to become involved in local SORAM committees. In an effort to introduce a third partner to the model, it was agreed to introduce the HSE Principal Social Workers to the five pilot sites initially.

In February 2013, in acknowledgement of the specific offender type being released into the community from prisons (repetition, persistence, serious harm), the National SORAM Committee invited the Irish Prison Service to become involved. Having accepted the invitation, there is now great potential to significantly improve the alignment of throughcare and the strengthening of information exchange mechanisms.

In May 2013, building on the momentum, the remaining 12 areas of the country were included. These were Sligo/Leitrim, Donegal, Roscommon/Longford, Wexford, Waterford, Clare, Kerry, Laois/Offaly,

Kildare, Wicklow, Westmeath and Meath. The HSE decided to roll out the model fully, and is now represented by Principal Social Workers in all 28 local SORAM committees. The aligning of boundaries was challenging, particularly in Dublin, as there are 28 An Garda Síochána Divisions in which SORAM operates compared with 24 Probation Service areas and 17 Integrated Service Areas in the Children and Family Services of the HSE.

Over the three years since the first pilot was launched, we have moved from a single-agency approach to one where four significant statutory partners have adopted a common approach using agreed processes, assessment instruments and guidance material. However, as will be seen, maintaining a momentum of change requires ongoing commitment, energy and leadership.

### **SORAM in operation**

Without underpinning legislation, the SORAM model is limited to dealing with offenders who are *both* subject to the notification requirements of Part 2 of the Sex Offenders Act 2001 *and* under the supervision of the Probation Service. Other sex offenders cannot be included due to data protection limitations. As such, the SORAM model is restricted in what it can achieve, but allows for a robust model to be developed that will be suitable for a larger number of offenders at a later time.

For offenders who are eligible for consideration, a filtering system is in place that is designed to ensure that greatest resources are applied to those posing the highest risk. At its simplest, the static risk assessment instrument (RM2000) is first applied and if the offender is assessed as above low risk, he/she is included in the multi-agency arrangements. Low-risk cases are filtered out and managed on a single-agency basis. However, this does not preclude the appropriate sharing of information between monitoring An Garda Síochána personnel and supervising Probation Officers regarding such offenders and, where further information indicates a heightened risk of reoffending, any offender can then be included in the multi-agency arrangements.

For those higher risk cases deemed eligible for inclusion in SORAM, the dynamic assessment instrument (SA2007) is applied and used by the local SORAM committee to guide a jointly agreed risk management plan. For cases where a child protection issue is identified, the Principal Social

Worker from the HSE becomes involved. The risk factors are then reviewed on a regular basis and appropriate adaptations are made to the risk management plan when necessary.

In summary, the SORAM process ensures:

- enhanced working relationships between personnel
- a structured approach to risk management
- a co-ordinated intervention with the offender
- higher levels of monitoring
- higher levels of appropriate information exchange
- more accurate risk assessment
- enhanced public/child safety.

To ensure this is achieved, the National SORAM Committee is in place to:

- lead on the development of the model
- facilitate inter-agency dialogue at an organisational level
- script and revise the supporting documentation
- drive the need for a quality assurance focus that is in keeping with each organisation's internal policy and direction.

### **The challenges of SORAM**

As already mentioned, it is one thing to roll out the model to 28 An Garda Síochána divisions, 24 Probation Service areas and 17 HSE Integrated Service Areas with boundaries that do not correspond, but quite another to ensure that the model remains healthy and continues to operate robustly and develop further. There is a need to provide ongoing training support and governance, allowing practice to develop locally that is in keeping with the consistent model of practice in place nationally. There is also a need to provide a more seamless throughcare from prisons, supporting the prisoner in maintaining gains made and/or ensuring that effective monitoring arrangements are in place as necessary.

To deliver these requirements, a co-located National SORAM Office has been established in the National Bureau of Criminal Investigation, Harcourt Square. With personnel from An Garda Síochána, the Probation Service and the HSE, the office will support the work of the National SORAM Committee, linking with local SORAM committees and

ensuring that a constant focus is maintained on standards and quality practice.

The office will operate as a single point of contact to answer queries as they arise and support problem-solving at a local level. As such it will also be in a position to assess trends and learning requirements, recommending actions to the National SORAM Committee where necessary.

Additionally, in support of SORAM, some critical issues may require a legislative response, including:

- facilitating the sharing of information between statutory partners
- the development of a common definition of sex offender (which is broader than that held in the Sex Offenders Act 2001, e.g. sexually motivated offences)
- clarity on complex human rights issues such as disclosure or equal rights in access to training or education.

One of the most recurring and enduring barriers to effective risk management is the absence of provision of appropriate accommodation for sex offenders. Indeed, for higher profile or higher need offenders (including those assessed as not capable of living independently), there continue to be serious public safety issues requiring resolution. While this has been receiving attention in various ways, including the work of the MAG in Dublin, it remains far from resolved. As such the National SORAM Committee identifies the need for the inclusion of a representative from the housing sector to lead on this area.

Finally, for SORAM to be effective at a local level, risk management interventions that target the offender's internal controls need to be available. These include obvious interventions such as engagement with treatment and/or supervision, but also actions on the part of the offender to support the development of a 'better lives' approach. Examples of these include making constructive use of daytime (activity), overcoming the common issue of social isolation, or the management of mental health or addiction issues. Each of these actions requires both positive engagement by the offender but also, significantly, the support of relevant statutory and voluntary partners. It can be difficult for local SORAM committees to access such services, particularly for higher risk and higher profile offenders.



## **Conclusion: Why does SORAM work?**

As can be seen, much has happened over the past five years; meaningful, robust changes have significantly enhanced effective practice and increased public safety. In achieving a multi-agency outcome, much effort has gone into aligning the thinking, perspectives and priorities of our organisations. This effort involved having a clear understanding of the evolving structural, policy and practice developments in each department and organisation, and demanding that through a multi-agency lens, opportunities, limitations and operational realities were maximised, accepted and developed when and where possible.

But in conclusion, the real success of SORAM lies in the added value it brings to staff managing the offender on a day-to-day basis. SORAM provides for the development of relationships and effective communication between key personnel; it ensures a robust and structured method for inter-agency engagement; it requires information to be shared; it demands that comprehensive risk assessments be conducted and reviewed regularly. SORAM pools resources that previously worked in parallel and were largely disconnected, maximising the effectiveness of the various complementary roles, responsibilities and perspectives of each agency involved to add significantly to child and public protection.

Most importantly, An Garda Síochána, the Probation Service, HSE Children and Family Services and the Irish Prison Service are fully committed to the full implementation and consolidation of the SORAM model.

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## **Assessing ACE: The Probation Board's Use of Risk Assessment Tools to Reduce Reoffending**

**Louise Cooper and Ivor Whitten\***

**Summary:** This paper provides a summary of the recently commissioned independent review to examine the use of the ACE risk assessment tool in Northern Ireland carried out by RSM McClure Watters on behalf of the Department of Justice and the Probation Board for Northern Ireland (PBNI). It will set out the context of the Probation Board's work, its use of this assessment tool with the Best Practice Framework, and evidence as to the utility of the assessment tool, its efficacy in accuracy of predicting reoffending rates and suggestions for future practice.

**Keywords:** Risk assessment, probation, courts, evaluation, assessment tool, prediction of reoffending, reducing reoffending, fit for purpose.

### **Introduction**

The Probation Board for Northern Ireland (PBNI) seeks to reduce offending and make local communities safer by challenging and changing offenders' behaviour. The focus of the work undertaken by the PBNI is to reduce offending through effectively managing offenders who are subject to a court order or licence conditions. Risk and needs assessment by a Probation Officer is integral to the supervision process to ensure sentence compliance, measures are in place to reduce potential harm, and interventions are available to change attitudes and behaviours and ultimately to reduce the number of future victims of crime.

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The objective of risk assessment is not just to assess risk of recidivism. Risk and needs assessment by a professionally qualified Probation Officer through a standardised system helps build a positive motivational relationship with the offender to encourage positive behavioural change. This is set out in PBNI's 'Best Practice Framework Incorporating Northern Ireland Standards' (the Framework) as follows.

The quality of relationship between the offender and Probation can be positively set at the assessment stage and play an important role in helping motivate offenders towards change; as well as preparing them to engage positively with programmes and other interventions throughout their order/licence and/or sentence. (Section 3, p. 4)

The Framework recognises that assessment is central to the work of PBNI, underpinning all PBNI work with offenders from pre-sentence to sentence completion stage. According to Crisp *et al.* (2003, p. 3), assessment involves:

collecting and analysing information about people with the aim of understanding their situation and determining recommendations for any further professional intervention.

Therefore assessment is about not just *collecting* information but also the *analysis* of that information in order to identify risk and/or needs so that appropriate and informed decisions can be made on any action required. In the case of probation, this means identifying the actions required to manage and reduce identified risks posed by an offender to reduce the likelihood of their reoffending.

### **Assessment tools**

The complex nature of offending behaviour requires a rigorous, thorough and consistent assessment so as to continually evaluate the risk of recidivism. In PBNI, this is done on an individual basis between a Probation Officer and the offender, using a risk assessment tool in order to accurately assess and produce an appropriate approach to reduce the likelihood of reoffending. It should be noted that Probation Officers in Northern Ireland are all qualified social workers and registered with the regulatory body, the Northern Ireland Social Care Council.

Risk assessment tools have developed over a period of time and are in common use in probation services. As these tools have been empirically researched and evaluated they have developed into more sophisticated models to assess risks and determine treatment needs.

What is commonly referred to as the ‘first generation’ of assessments consisted of unstructured professional judgements of the probability of offending behaviour: a variation of this approach is now called ‘structured clinical judgement’.

Second-generation assessments were empirically based risk instruments, but theoretical and consisting mostly of static items.

Third-generation assessments were also empirically based but included a wider sampling of dynamic risk items, or criminogenic needs, and tended to be theoretically informed.

The fourth generation of assessments guides and follows service and supervision from intake through to case closure.

## **What is ACE?**

Since the year 2000, PBNI has utilised the Assessment, Case Management and Evaluation (ACE) generic risk assessment tool. ACE is a structured assessment tool used by Probation Officers to assess the likelihood of general offending within a two-year period. Included in the ACE assessment process is a Risk of Serious Harm to Others Filter (usually referred to as RA1), which triggers a Risk of Serious Harm assessment in cases where such a concern arises.

ACE is one of a number of fourth-generation assessment tools, and is used with other assessment tools as deemed relevant to assess an individual’s risk of recidivism. ACE completion is combined with other assessments such as the RA1 assessment, and will be discussed within multi-agency risk management meetings (RMMs) and Local Area Public Protection Panels (LAPPPs) depending on the nature of the offence committed.

ACE is an integral part of PBNI’s Best Practice Framework, with the frequency of reviews determined by the presenting level of risk. It consists of three domains, all of which are scored on a scale of 0–3, to aid in predicting, as well as possible, whether the offender has a low, medium or high likelihood of reoffending. The three domains of ACE are Social, Personal, and Offending.

The Social Domain covers aspects of an individual's circumstances such as accommodation, community, employment, education and training, finances, and family and personal relationships.

The Personal Domain includes an assessment of substance misuse and addictions (including habits and obsessive behaviours), health and wellbeing, personal skills (including literacy and social skills), and individual characteristics (including self-esteem, control and risk-taking behaviour).

The Offending Domain covers lifestyle and associates, attitudes and attitude to being supervised.

Each factor is scored by a Probation Officer in relation to the 'problem' prevalence, and also how it relates to an individual's offending behaviour ('Offending Related Score').

### **How valid is ACE?**

In recent years PBNI has operated in an environment of developing legislation, expanded responsibilities and new methods of reducing the risk of recidivism. In light of these developments PBNI commissioned an independent review of the ACE risk assessment tool in 2012 to assess its predictive validity with regard to reoffending and its relevance to the ever-developing role of the Probation Officer.

This review took the format of a literature review, interviews with Probation Officers, consultation with stakeholders and benchmarking ACE against other assessment tools, and consideration of the prediction accuracy analysis, which this paper considers in more depth.

Some findings from the review were as follows.

- The literature review of the evaluation report noted that there are advantages and disadvantages in implementing any system for risk assessment, and that sources indicated that the benefits outweigh the costs. Essentially, it is better to have a risk assessment system than not. The predictive validity of general offending predictors such as ACE for reoffending is better than random, but not perfect.
- All general offending predictors (including ACE, Revised Offender Group Reconviction Scale (OGRS), Level of Service Inventory-Revised (LSI-R) and Offender Assessment System (OASys)) seem to be less reliable when used to predict rarer events such as dangerous violent or sexual offending and, where triggered, additional assessments are recommended.

- The impact of risk assessment depends on the context. Risk assessment can help where criminal justice policy/practice emphasises rehabilitation, though where the context is punitive there may be adverse effects.
- Having the right assessment system is not enough on its own; it must be used appropriately and accurately.
- Unless risk assessment systems have the confidence of practitioners, such as Probation Officers, they will not be used appropriately.

### **Interviews with Probation Officers**

In conducting primary research with Probation Officers, the evaluators sought to assess the ‘buy-in’, which was identified in their literature review as an essential part of the desired functioning of the risk assessment system.

The researchers concluded that ACE is core to the delivery of the Framework and that PBNI staff have bought into the ACE system with the recognition that other tools are required, specifically with regard to women, sex offenders and domestic violence cases. Probation Officers provided a positive response with a number of areas for improvement. The general feeling was that ACE was user-friendly and provided a good structure for interviewing clients. Most Probation Officers felt that the offender self-assessment process of ACE was not particularly useful at producing accurate information. It was felt that it did help involve the offender and assist rapport. It was also felt that it was useful for first-time offenders to adjust to the structure. Some also felt that ACE was neither gender nor ethnically friendly, as there were other issues that ACE had no way of incorporating.

It was found that PBNI staff working in prisons felt that while it is useful to have an assessment tool that can be used across the criminal justice system, it would be useful to develop it in some way to work within a prison setting.

The consultation process also found that an area of development was quality assurance by managers of ACE assessments, to ensure that Probation Officers complete their reports in a consistent manner regarding the level of detail and that there is continual development of staff in this regard.

## **Benchmarking ACE with other assessment tools**

The review benchmarked ACE against a number of other assessment systems such as LSI-R, OASys, Level of Service – Case Management Inventory (LS-CMI), OGRS, Risk Matrix 2000 (RM2000), ASSET, Static-99, and Stable and Acute 2007.

A particularly useful output was the comparison of the different risk assessment systems in use internationally and the controversies related to each. It found that some systems, such as OASys, could be very good in predicting recidivism but they could be complicated, inflexible and time-consuming. Others, such as OGRS, used as part of a bigger system (in this case OGRS is part of OASys) had weaknesses in identifying areas for intervention. There were also more specific risk assessment tools such as ASSET, which is used with offenders up to the age of 18 years, or Static-99, which is used to predict the probability of sexual and violent recidivism among male offenders already convicted of a sexual offence against a child or a non-consenting adult.

PBNI uses not only ACE and the RA1 screening tool but also the Risk Matrix 2000 system, which is a statistically derived risk assessment for use with sex offenders. Other supplementary assessment tools are used, depending on the type of offence committed or the type of individual under assessment.

ACE is used primarily to predict the likelihood of reoffending by identifying and assessing the social, behavioural and environmental context of the individual offender by highlighting the risks posed and the offender's needs. It is used to assess progress of the offender during their time of supervision under the PBNI.

A few factors must be taken into account when assessing and benchmarking ACE. While ACE is an objective risk assessment system, it will be people that will be making judgements within the system on the particular scoring in each area. When benchmarking with other systems within the UK and elsewhere, certain environmental factors can be overlooked when assessing purely the system itself. In Northern Ireland, Probation Officers must be social work trained and registered with the Northern Ireland Social Care Council. This is not a stipulation elsewhere in the UK. There is also the fact that Probation Officers in Northern Ireland still carry out home visits: again this has stopped elsewhere in the UK. Comparing and contrasting of systems could therefore be slightly skewed due to different approaches to risk and need assessment.



## Considering the prediction accuracy analysis

The review closely examined and analysed the statistical veracity of the prediction matrix used within ACE by using a sample of 1,000 offenders (reflective of the entire PBNI caseload characteristics of gender, age, offence, court order, probation length, additional requirements such as specific programmes for offenders, and risk profile). The analysis provided the percentage of individuals whose offending was accurately predicted in the sample, whether identified needs had an impact on reconviction, the relationship of the initial ACE score and risk group with the number of proven offences committed since initial assessment, and the differences between the initial ACE risk group and the number of different proven offences since the initial ACE assessment.

The research provided an overall prediction accuracy analysis in terms of the one-year and two-year reconviction rates. The review would use a representative sample which was established by using the top ACE scores equal to the percentage of reconvictions and adding the number who had not been reconvicted to the remaining percentage. The figures would then, once divided by 10, show the percentage accuracy for each category.

For the one-year reconviction rate predictive quality, the top 410 ACE scores and the bottom 590 scores were used and analysed. According to Copas (1992), the proportion of correct predictions of recidivism cannot normally exceed 75% if the actual reconviction rate is 50%. The reconviction rate in the one-year sample was established as 41%, close to the 50% reconviction rate discussed by Copas. Through analysis, the researchers found that the percentage of accurately predicted recidivism via ACE was 61.4%. This is at the higher end of accuracy in light of the Copas proposition.

The same analysis was conducted in relation to two-year reconviction rates using the top 524 ACE scores and the bottom 476 ACE scores with an actual reconviction rate of 52.4%. Again the actual reconviction rate was very close to the Copas argument that prediction accuracy cannot normally exceed 75% where the actual reconviction rate is 50%. Again a high quality of prediction accuracy (61.4%) was found.

The research used the Mann-Whitney test to assess needs identified through ACE and the differential between those who were and were not reconvicted. It found that a number of factors scored in the ACE risk assessment tool areas were not significant in their correlation in predicting offending; these included gambling, reasoning, stress management and

literacy. Significant areas related to an individual's propensity to reoffend included accommodation, alcohol, drugs and other addictions, learning disability, family and self-esteem.

Initial ACE scores and the number of proven offences found a correlation of the increasing levels of risk with the number of proven offences committed since the initial ACE assessment. This showed that ACE appeared to be accurate in predicting the level of risk at the initial stage.

The Kruskal-Wallis test was used to assess the differentiation between the initial ACE risk group and the number of proven offences committed since the initial ACE assessment. This found that the higher the risk group, the higher was the probability of a greater number of offences by the offender. The same test was used to assess the differentiation of changes in ACE Risk Group and offences committed since the initial ACE assessment. Overall the RSM McClure Watters report found that ACE had a reasonably high prediction rate of the risk of potential offences committed.

The percentages of accurately predicted offences by age, offences and risk group were examined, and ACE was found to be particularly accurate for the age groups 10–16, 17, and 18–24. Accuracy drops below 50% from the 45-year-old point onwards. Overall, ACE was consistently less accurate at predicting recidivism in the low-risk group, with higher predictions of recidivism than actually happened. In the high-risk group the number of accurate predictions ranged from 50% up to 100% depending on offence, the only exception being a sexual offence, which had a 33% accuracy.

The accuracy and needs analysis of ACE and its supporting assessment tools help to predict the level of risk of reoffending and to identify the environmental factors that increase the likelihood of reoffending. This allows the Probation Board and other agencies to assess the offender's needs and put in place resources that will provide the offender with the opportunity to change their offending behaviour.

### **Consultation with stakeholders**

Part of the qualitative work included consultations with Probation Board management and staff, Prison Service management, Youth Justice Agency and Parole Commissioners. This was to ascertain the usability of ACE and how the users of the information found the system. While all consultees

found that the ACE risk assessment tool was central to the delivery of the Framework, there were a number of specific pieces of feedback.

For example, the Youth Justice Agency felt that ACE was not appropriate for assessing risk of offending in young people; however, it adapted ACE, through partnering with Oxford University, to meet the needs of young people. This means that while it is not necessarily ACE it is a version specifically adapted for young offenders, and so has a consistent risk assessment framework.

The Parole Commissioners had particularly praised ACE for the quality of final reports produced, especially when compared with reports produced in England.

The Prison Service welcomed the consistency of having an assessment tool used across the justice system, although it felt that ACE was less applicable to a custody environment. It recognised that while the Probation Officers using ACE were social work qualified, prison staff using ACE were not. It was suggested that this could be improved by having Probation Officers involved in the induction of new staff and highlighting the issues around ACE.

## **Conclusion**

As there are a number of assessment tools in use within Europe, and even within the UK, it is always difficult to produce a consistent review across the regions to identify strengths or failings where a wider spectrum of diverse types of offenders and their backgrounds could be observed. However, each region has its own reason for a particular assessment tool. An oft-quoted saying in Northern Ireland is ‘Local solutions to local problems’, and in this respect any review is not just about the validity of the assessment tool but also the fitness for purpose, in this case its appropriateness for Northern Ireland.

The report states in its conclusion that ‘PBNI should continue to use ACE as the core risk assessment tool’. This endorses the continued usage of ACE in Northern Ireland as it is user-friendly and contributes positively to identifying offending factors that, when addressed, help reduce the likelihood of reoffending.

What should also be kept in mind is that ACE is integral to the Framework, which in turn is integral to the organisational development of PBNI (Probation Board for Northern Ireland, 2011a, 2011b). Continual development and refining of the ACE system adds to the

continual development of the organisation and can also contribute to the continuous personal development of its staff.

What can be taken from the whole exercise is the need for a fit-for-purpose assessment tool, highly skilled staff to implement the assessment tool appropriately, and a consistent organisation-wide approach to risk assessments. Even with a perfect combination of all three approaches there will always be a certain level of unpredictability, but it is still worth pursuing as the combination helps to reduce reoffending by assisting the directing of resources to those who need them most. This comes through continual validation and development of the assessment tool, Probation Officers and organisational objectives.

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## Ageing Prisoners in Ireland: Issues for Probation and Social Work

Jan Alvey\*

**Summary:** Interest in older prisoners is gaining momentum, and this is reflected in research undertaken in the USA and the UK over the past decade. Studies on this sub-population of prisoners have focused on prevalence, profile, specific health and social needs, and raised questions about how different sectors of the criminal justice sector should be adjusting policy and practice in response. Attention has also been directed to what probation/social work has to offer to older prisoners and their specific needs. This paper presents a review of the literature relating to older male prisoners alongside key findings from a research study undertaken in an Irish prison in 2011. The research study was conducted using a mixture of quantitative and qualitative methods, and sought to provide a preliminary description of ageing male prisoners and their specific needs in Ireland. The implications of these findings for social work/probation policy and practice are considered, and directions for future service provision are recommended. Further insights into the circumstances of older men imprisoned in Ireland are offered to the various professionals (including Probation Service/social work staff) working in the criminal justice system who strive towards providing 'prisoner well-being' and a 'duty of care'.

**Keywords:** Older male prisoners, older prisoners' needs, Irish prisoners, probation, social work, social work response to working with older prisoners, social work policy and practice with older prisoners.

### Introduction

The social phenomenon of ageing prisoners has become part of the research agenda in criminology and gerontology internationally (Phillips, 2006, p. 53; Wahidin, 2011). However, while research on ageing in the

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general Irish population is gaining momentum (National Council on Ageing and Older People, 2002; The Irish Longitudinal Study on Ageing, 2011), the focus on ageing in Irish prisons seems very limited. Therefore, the key themes explored in this study include a profile of older prisoners, followed by an analysis of their health and social needs and a review of the implications for social work policy and practice. While much of the more recent research conducted about prisoner populations has focused on the merits of risk assessment as an effective guide to managing rehabilitation and resettlement, it is argued that needs assessments remain equally important in order to achieve best social work/probation practice (Bracken, 2010).

### **Research methodology**

The research consisted of a pre-experimental design involving a cross-sectional study of men aged 50 years and above who are imprisoned in one particular Irish prison. The principal qualitative data collection method employed was data mining from Probation Service files. Quantitative data on the profiles of ageing prisoners was also collected through data mining from Probation Service files and existing statistics and other relevant documents from the Irish Prison Service (i.e. Annual Report, 2012).

Data mining was used as it was viewed as the least obtrusive method and limited financial costs were involved. All cases selected were of men who were serving current prison sentences and subject to working with the Probation Service in terms of their sentence (Part Suspended Sentence Supervision Order or life sentence). Thirty-four men who met the selection criteria were sent notification of the research and were invited to participate by giving their informed consent. Fourteen of these men consented to participate in the research. The overall findings were presented using mainly descriptive accounts and offered a preliminary description of ageing prisoners as opposed to explanatory or generalisable outcomes.

All recommended precautions and measures, outlined by the ethics committees from the Irish Prison Service and University College Dublin, were undertaken to safeguard the ethical issues of confidentiality and informed consent for participants throughout the course of this research study.

## International literature on ageing prisoners

Although research and policy development in the Irish context remains limited, the findings from international studies clearly suggest that ageing prisoners are appearing on the research agenda especially in areas of gerontology and criminology. A number of credible international researchers, such as Marquart *et al.* (2000), Fazel *et al.* (2001), Wahidin (2006), Aday (2006) and Mann (2012), have drawn attention to the increase in older prisoner populations and the implications for criminal justice services as well as health and social care services. This paper will now highlight key findings from the international literature and, where possible, consider whether there is evidence of similar trends developing in the Irish context.

Research has demonstrated that the increasing numbers of older prisoners on both sides of the Atlantic have been occurring in the over-fifties group of male prisoners (Wahidin and Aday, 2012). Older prisoners currently account for 10% of the total prison population in the United States (Sabol and Couture, 2008). Coupled with this, recent statistics outlined for the United Kingdom have led to some researchers describing older prisoners as 'the fastest growing age group in prison' (Prison Reform Trust, 2008, p. 1). The official statistics from the UK in 2010 revealed that 9% ( $n = 7,751$ ) of the total prison population were men aged over 50 years (Wahidin, 2011).

The latest statistics from Ireland show that 8.2% ( $n = 293$ ) of the total sentenced prison population were men aged over 50 years (Irish Prison Service, 2013). In addition, the number of prisoners being sentenced to life imprisonment increased by 4.8% in 2011–12, and the number of prisoners serving a sentence of 10 years or longer was unchanged (Irish Prison Service, 2013). These findings indicate that there is potential future growth in the older prisoner population in Ireland. Marquart *et al.* (2000) advise of the need to consider middle-aged 'lifer' population growth in order to estimate the future demand of ageing prisoners in our societies.

A range of factors are related to the significant increase of older prisoners. In the USA, Aday (2006, p. 210) identifies the 'war on drugs', historical offences, laws specifying longer sentences and the rise of violent crimes perpetrated by older men as the main causes. Subsequent American studies have suggested that these factors have contributed to an increase in the older prisoner population and that the criminal justice

sector is now facing a 'crisis' in trying to manage the needs of older prisoners (Snyder *et al.*, 2009; Maschi *et al.*, 2011). Earlier research studies from the UK predicted that the number of ageing prisoners would increase due to longer sentences and longer life expectancy in the general population (Fazel *et al.*, 2001). A report from the UK Prison Reform Trust (2008) supported these predictions by indicating that the number of older prisoners had increased considerably in the past decade. Crawley and Sparks (2006) highlighted the fact that the increase of historic convictions for sex offences in the UK led to an increase in older men serving prison sentences there. This has been supported by UK government statistics, which show that 41% of older prisoners are serving sentences for sex offences (Ministry of Justice, 2011).

It is believed that the situation for the Irish prison population is very similar to the international situation outlined above. Improvements in the detail of statistics from the Irish Prison Service (2010) reveal that life-sentence prisoners are serving longer sentences. The length of actual life sentence served increased from an average of 14 years between 1995 and 2004 to 17 years in 2009. The number of middle-aged prisoners serving longer sentences is also steadily rising, with 5,025 men aged between 30 and 50 years imprisoned in 2012 (Irish Prison Service, 2013). These findings suggest that some of the factors related to population growth in older prisoners internationally are also a feature of Irish prisons, and this population growth will therefore continue.

While ageing prisoners are generally regarded as a heterogeneous group, some recurring similarities have emerged from the various international research studies (Snyder *et al.*, 2009). Most of the older prisoners interviewed as part of Fazel *et al.*'s research (2001, p. 404) identified themselves as being separated or divorced, employed in skilled non-manual work with no educational qualifications, and renting their accommodation. Similarly, participants in research undertaken by Marquart *et al.* (2000) were mainly single, with low levels of educational achievement, and unemployed. However, the profile of older prisoners remains underdeveloped as the existing research studies used relatively small sample sizes and findings are therefore not considered generalisable or completely representative (Maschi *et al.*, 2011).

According to international literature reviewed to date, the most prominent concerns for ageing male prisoners relate to their health and social care needs (Phillips, 2006). Marquart *et al.* (2000) conducted specific research on two groups of older prisoners (aged over 50 years) in



a Texas State prison. They interviewed 23 prisoners from the 'geriatric facility' and 46 prisoners from the mainstream facility about 'health habits', 'perceptions of health' and actual 'conditions'. Their main findings revealed that older prisoners were more likely to smoke, unlikely to have used health services before imprisonment, and more likely to be suffering from arthritis, hypertension, coronary heart disease or back trouble. Much of the research conducted in the USA concludes that older prisoners experience higher rates of 'chronic disease and significant functional disability compared to similar age groups on the outside' (Aday, 2006, p. 213) and have poorer health than their counterparts in the community (Reimer, 2008).

Fazel *et al.* (2001) interviewed more than 200 male prisoners aged over 60 years across 15 prisons in the United Kingdom with specific reference to their health problems. They found that over 80% of older prisoners suffer poor health, the most common complaints being 'psychiatric, cardiovascular, musculoskeletal and respiratory' (Fazel *et al.*, 2001, p. 405). Crawley and Sparks (2006) undertook qualitative research on older men's experiences of imprisonment over a two-year period in four British prisons. They found that many interviewees worried about their health and about accessing healthcare while in the prison setting. The Inspector of Irish Prisons (2011) acknowledges that existing international research on older prisoners reveals that they are more likely to experience health difficulties.

A specific health need in relation to older prisoners that was identified in most of the international literature concerns 'end of life' issues and palliative care (Aday, 2006; Crawley and Sparks, 2006; Prison Reform Trust, 2008; Snyder *et al.*, 2009). The increase in terminally ill older prisoners has been noted in the USA and the UK and hospice programmes have become a feature of service provision in many prisons (Wahidin, 2006, 2011). Accounts are given of these men experiencing increased isolation while ill, and 'a dread of dying in prison' (Crawley and Sparks, 2006, p. 72). It is thought that this specific health need could pose real challenges for the various service providers working in Irish prisons as the older prisoner population increases.

The social needs of older prisoners are defined differently by various international researchers. However, needs in relation to adjustment/coping with prison environment, age-appropriate education programmes or work schemes, maintaining family/social supports and resettlement planning are most commonly stressed (Prison Reform Trust, 2003, 2008;

Aday, 2006, Crawley and Sparks, 2006; Wahidin, 2006). Imprisonment is a traumatic experience at any age; however, recent qualitative research undertaken by Crawley and Sparks (2006) indicates that older prisoners can experience more difficulties in trying to adjust and cope with the prison environment than their younger counterparts. The 'elderly first timers' are found to experience a culture shock, while older 'long-termers' are thought to withdraw socially in order to cope (Crawley and Sparks, 2006).

Snyder *et al.* (2009, p. 121) believe that older prisoners are 'overlooked' for education/work programmes due to their smaller numbers. Aday (2006) states that education and work programmes for older prisoners are not responsive enough to their needs and interests. The situation in Irish prisons remains unclear. Recent strategy statements from the Irish prison authorities commit to providing adequate services and programmes to enable prisoners to 'achieve positive personal development ... and successful re-integration and resettlement in the community' (Irish Prison Service, 2011, p. 22). However, it is argued that very little detail is known about what specific education programmes or work schemes are targeted at older prisoners.

Maintaining family and social supports is a well-documented difficulty for all prisoners (Mills and Codd, 2007, 2008). Older prisoners face extra difficulties in maintaining family and social networks. Older prisoners are less likely to be married or to be in a stable relationship (Fazel *et al.*, 2001; Prison Reform Trust, 2003), which is viewed as a contributing factor to weakened family and social supports. The types of offence usually committed by older offenders are also viewed as having a negative impact on maintaining family bonds, especially in the case of sex offenders (Prison Reform Trust, 2003). Difficulties in maintaining family and social supports raise concerns among researchers and practitioners, as maintaining these supports is being increasingly linked to effective resettlement and desistance (National Economic and Social Forum, 2002; Mills and Codd, 2007, 2008). The Irish Prison Service has identified maintaining family support as a 'core value' (Irish Prison Service, 2009, p. 9). However, it remains unclear whether older Irish prisoners experience specific needs in relation to maintaining their family and social supports and how Probation Service/social work staff could best respond.

Specific needs in relation to resettlement planning are experienced by older prisoners because of the social needs already highlighted. If older

prisoners have not benefited from appropriate education programmes or work schemes in the last years of their sentence, they will be less prepared for resettlement in the community (Prison Reform Trust, 2008). Similarly, if older prisoners have reduced family and social supports they will receive less practical support and will be more reliant on statutory or voluntary agencies for finances and accommodation (Prison Reform Trust, 2008). Some researchers have described cases of older prisoners feeling anxious about the prospect of release and requesting to remain in prison indefinitely (Crawley and Sparks, 2006; Prison Reform Trust, 2008). As older prisoners seem more likely to experience extra difficulties in terms of their social needs, attention should be given to how these needs can be addressed by service providers (including social workers) in the prison setting (Wahidin, 2011).

The social work tasks of assessment, sentence planning or 'through care', welfare work and resettlement planning are usually undertaken by Probation Officers in the British and Irish prison systems (Williams, 1996; Probation Service, 2010). Therefore the following discussion on social work policy and practice in relation to older prisoners has a direct relevance to probation work too.

While healthcare needs are mainly addressed by the medical professions, evidence from the international research suggests that some features of older prisoners' healthcare needs have special implications for the social work role (Aday, 2006; Snyder *et al.*, 2009). Social workers are viewed as the most effective advocates for better health service provision within the prison system, and the most skilled in offering counselling or 'emotional care' to prisoners facing terminal illness or death (Aday, 2006; Snyder *et al.*, 2009). Research from the Prison Reform Trust (2008) recommends that social work staff should receive specialised training and increase utilisation of local hospices as part of their response to the specific health needs of older prisoners.

Recommendations arising from international research studies that seem to have the most implications for social work practice in relation to social needs include supports for adjustment/coping, maintaining family/social links and resettlement planning (Aday, 2006; Wahidin, 2006; Prison Reform Trust, 2008; Mann, 2012). Researchers in the field believe that probation/social work services have a responsibility and are best placed to address many of the social needs that older prisoners may have (Prison Reform Trust, 2008). Many interventions are suggested, including using formalised assessments to ascertain individual needs and

guide service provision (Wahidin, 2006, p. 187; Prison Reform Trust, 2008, p. 5; Maschi *et al.*, 2011), consultations with prisoners to improve links with family or other social supports (Prison Reform Trust, 2008, p. 15) and better communication around resettlement planning (Crawley and Sparks, 2006, p. 77). The issue of appropriate accommodation for older prisoners on their release is relevant to Probation Service/social work staff, and researchers have outlined liaison and negotiations with relevant 'community-based programmes' as key tasks to be undertaken (Prison Reform Trust, 2008; Snyder *et al.*, 2009). Counselling to address feelings of loss and social isolation among older prisoners is another social work intervention that is recommended by researchers (Snyder *et al.*, 2009).

### **Main research study findings on the specific needs of older prisoners in Ireland**

The research findings on the profiles of ageing men (i.e. those aged over 50 years) imprisoned in Irish prisons described how most of the men were at the younger end of the 'older prisoner' scale (i.e. between 50 and 60 years). All of the older men studied had committed very serious types of crime, including murder and sexual offences, and were serving long sentences as a result. This differs from the most common types of crime and sentence lengths being served by younger men in the general Irish prison population.

While many of the men studied had children and even grandchildren, very few remained in supportive relationships with partners or wives. Little information was identified in the research findings about the older men's pre-imprisonment employment status. However, nearly a third of all the men studied had second-level education prior to their imprisonment, and a similar proportion of men were pursuing further education while imprisoned.

Over half of the men studied were facing homelessness on release, and this was viewed as a most worrying finding by the researcher in terms of its implications for future service demands.

All of the men studied in this research reported having some level of ill-health that seemed age-related. While the younger men (aged between 50 and 60 years) were more likely to view themselves as being in 'general good health', they acknowledged that prolonged abuse of alcohol and drugs, combined with ageing, was impacting negatively on their health.

The older men (aged 60 and above) seemed more convinced that their health problems were age-related. It was evident from their files that these men spoke openly to Probation Service/social work staff about their health problems, concerns and subsequent needs.

The specific health needs of the older men studied centred on increased medical appointments, treatment and monitoring; changes to their physical environment, information about social welfare entitlements, access to staff who demonstrated understanding about the impacts of ageing and poor health, psychological services, emotional support and counselling, advocacy and multidisciplinary work.

Specific tasks for Probation Service/social work staff included emotional support and counselling to address feelings of loneliness and isolation, worries and concerns about deteriorating health and death while imprisoned. In addition, Probation Service/social work staff undertook advocacy and multidisciplinary work to ensure the delivery of appropriate medical care and psychological services for the older men.

Most findings about the specific health needs of older prisoners from this research study corresponded well to findings from previous studies. For example, older prisoners experienced poor health (such as heart conditions, arthritis, smoking-related respiratory problems and depression or worries/concerns) that required high levels of medical or psychological treatment and social work interventions such as emotional support, counselling, advocacy and multidisciplinary work (Marquart *et al.*, 2000; Fazel *et al.*, 2001; Aday, 2006; Snyder *et al.*, 2009; Wahidin, 2011). Findings from this research study that had not emerged in previous research studies centred on the large proportion of older men who reported past alcohol abuse and associated ill health.

Most of the men studied reported social problems of homelessness and low levels of contact with many family members, and were approaching the 'end of their working lives'. Most of the men aged between 50 and 60 years were occupied within the prison through work programmes, further education and offending behaviour programmes. There was little evidence that these men were concerned that their age was impacting negatively on their ability to be occupied throughout their prison sentence. However, most of these men were serving lengthy sentences and would be over the official age of retirement (65 years) on release. It is expected that Probation Service/social work staff will need to address the needs of these men in the near future.

The men aged 65 years and above were less likely to be occupied within the prison and seemed more likely to acknowledge the 'end of their working lives'. They were meeting with Probation Service/social work staff to address their specific needs in relation to social welfare and state pension entitlements. Some multidisciplinary work was also being undertaken by Probation Service/social work staff and other prison services (education and psychology) to ensure that responsive programmes were being offered.

Other specific social needs identified for the older men included access to information about social welfare entitlements (specifically state pensions and medical cards), adjusting to the impacts of ageing while imprisoned, maintaining contact with family members and friends, and coping with feelings of grief and loss about changes to family circumstances, i.e. weakened levels of contact, family breakdown and family bereavements.

Specific tasks for Probation Service/social work staff included providing emotional support and counselling to address feelings of grief, loss and separation about family breakdown and bereavements. Assessment, consultation and ongoing planning in relation to sentence management and resettlement options formed a main part of the social work tasks. Advocacy work to promote family/social supports and multidisciplinary work to ensure the delivery of appropriate services within the prison and the community also appeared as a specific social work task.

## **Conclusion**

This paper outlines how the findings from a research study about older prisoners in Ireland offer preliminary descriptions of their profiles and specific needs. The findings also correspond well to many of those from previous international research studies and main areas of need highlighted in relation to health and social problems. For example, older prisoners are likely to be experiencing physical health problems (heart conditions, arthritis and smoking-related respiratory illnesses) and mental health problems (depression or worries and concerns about their deteriorating health or fear of death while imprisoned) that require high levels of treatment and care from a range of health and social service providers. Specific social problems such as homelessness and limited family supports were also identified. New findings have emerged from this study

that inform us about older prisoners having health problems related to past alcohol abuse or facing the 'end of their working lives' and needing support to come to terms with this.

Future implications for social work policy and practice include the importance of meeting with and providing a 'listening ear' to older prisoners, conducting ongoing holistic assessments, and referrals to relevant prison-based and community services. As a result of the key research findings it is recommended that time and resources be allocated to ensure that staff can undertake specific social work tasks required when working with older prisoners. Post-qualification training with a geriatric focus may contribute further to delivery of best social work practice. Policy guidelines should be agreed and implemented between prison management and social work agencies that reflect the specific needs of older prisoners as a matter of priority.

It is recommended that future research from social work and criminal justice sectors should include longitudinal studies using much larger sample sizes across a number of Irish prison settings. The use of semi-structured interviews to collect data from older prisoners, prison officers, medical prison staff and probation/social work staff would result in much richer detail and findings. On a final note, the issue of elder abuse in Irish prisons needs to be explored, and research that promotes anti-ageism in service delivery should be generated.

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## Book Reviews

### **Electronically Monitored Punishment: International and Critical Perspective\***

**Edited by Mike Nellis, Kristel Beyens and Dan Kaminski**

Abingdon, UK: Routledge, 2013

ISBN: 978-1-84392-273-5, 292 pages, hardback, £80.00

This book is an essential and timely publication that should be read by practitioners and policy-makers, from main grades to senior management, interested in fully understanding the complexities of electronic monitoring (EM). EM and Home Curfew (to give it its full title) has been available to PBNI since its inception on 1 April 2009, coming under the Criminal Justice (NI) Order 2008. More recently a piloted GPS scheme was undertaken by the Probation Service in the Republic of Ireland. As an operational manager responsible for EM, I would encourage staff across the criminal justice system to read this book.

Professors Nellis, Beyens and Kaminski have international reputations as leading authorities on EM and criminal justice, ensuring that this publication contains a range of essays that will educate, inform and, it is hoped, provoke debate. I make this assertion after three years of limited use of EM in a community supervision setting, and I agree with Mike Nellis that EM 'is not simply a device ... it is also "socio-technical" in that it requires human input' (p. 7).

The book starts with the historical development of EM across the world, including an analysis of the technology against the social/cultural and political context of various countries. We see its origins in the USA in the 1980s: a society proud of its innovation and 'can do' approach embraces EM and begins a path towards 'techno-utopianism', but never reaches it because

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that same society 'never manages to match or challenge the more ... reassuring appeal of punishment ... in US penal practice' (p. 37). Thus the USA continues to have one of the largest prison populations in the world. Ironically, South Korea's special probation unit using GPS EM with banks of monitors for live/real-time supervision of sex offenders was created in response to the recognition that custody was not working. However, while South Korea pursued this technical alternative to custody with enthusiasm, it did not adopt any new welfare model along with it, and its 'command & control' approach is viewed as closest to the embodiment of a futuristic dystopia more akin to the writings of George Orwell than of Arthur C. Clarke.

Between these essays lies the debate within the European nations. Across Belgium, Holland and France we can define similar patterns in the evolution of EM. A compelling factor was the increase in prison populations and the seductive political argument of EM as an overwhelmingly cost-effective alternative to custody – a claim that many of the authors say is not easy to disprove but difficult to measure. However, it is the chapter on the parallel development of EM in England, Scotland and Wales that will strike the most resonance with practitioners, as it provides a frank review of the fortunes of the UK Probation Service over the past 20 years.

EM was eagerly seized upon as a 'vote winner' by the then Conservative government as a vehicle for many of its policies: a means to reduce the prison population and public sector expenditure, but also presented as more punitive community punishment in contrast to 'soft' social-work-values-led approaches to crime and poverty. Not surprisingly, NAPO greeted its implementation with a degree of wariness, not least because the Home Secretary Michael Howard's demands for a more punitive penal system were seen as a direct attack on probation (p. 66). Despite equivocal results from three pilot schemes, EM continued with consistent government backing. Under the Labour government the implementation of EM as 'stand alone' orders and its use with home detention curfews (HDCs), an early release from prison option, saw EM increase from several hundred orders in the mid-1990s to almost 15,000 by 2002. This figure continues to grow, despite research regularly advocating its use alongside community supervision as being more effective in reducing recidivism, and two government audit inspections describing the current approach as 'unimaginative' and as failing to realise EM's potential.

By contrast, Sweden's (and to a lesser extent Australia's) experience of EM has involved carefully thought-out programmes of treatment and

supervision, underpinned by a strong rehabilitative ethos and very limited private sector input, and has had significant results. In one study of released prisoners under EM as part of their post-custody supervision, their reconviction rate after three years was 26% compared to the control group's 38%. The Swedish model of high-level support and control is interestingly perceived by some offenders as far more daunting than custody, given that during electronic monitoring alcohol is prohibited and random drug tests are the norm.

Given the limited public debate in regard to the value and merits of EM in current practice, the next part of the book has a series of debates that scholars and practitioners will enjoy. Nellis examines the ethical challenges of EM. He addresses concerns that EM does little to reduce offending for low-risk and first-time offenders. He identifies that in many cases it has no direct impact on custody and only serves to draw more people into the criminal justice system. He argues that we should be morally compelled to seek alternatives to custody given the damage that custody inflicts on the individual and society. The argument is developed to include the point that community sanctions should be more demanding (not just punitive for the sake of it) in order to act as a deterrent and protect victims. The issue of exclusion from communal areas as opposed to home detention raises the debate over the need for EM to be intermittent and that it is essential that offenders be afforded some element of respite, and so too their families.

Craig Paterson provides a global perspective on the rise of the 'techno-corrections industry', examining how corporate interests have long held disproportionate influence across many countries and their governments. While it is easy to conjure perceptions of the 'corporate menace', he illustrates the political process that allows ideology to usurp logic or empirical evidence and the worrying trend for politicians to use evidence to 'legitimize rather than inform their policy'. Perhaps the most interesting chapter is by Professor Anthea Hucklesby, who reports on a study she conducted on the experiences of both offenders and staff. In this piece she identifies the ongoing problems of the parallel model, identified in Chapter 3, notably the lack of communication between monitoring staff and probation, how the quality of the supervisory/monitoring relationship is directly proportional to levels of compliance, and that for all the research conducted on EM, surprisingly little has been undertaken on the actual experiences of offenders during and after their tagging.

The book ends with Professor Marc Renzema providing an overview of evaluative research on EM, or rather a clear and honest summation of its

problems. He identifies the 'slippery' nature of EM and the almost impossible task of evaluating something that is perceived so differently by the public, government and criminal justice agencies. As the chapter continues Renzema becomes increasingly cynical regarding not just EM, but the lack of empirical study. He argues that any research, to be valid, requires an almost homogeneous test group of similar age, class, etc. in order to attempt to quantify recidivism or desistance.

An overall reading of this book left me with a strong conviction that EM for low-risk clients is unfair and for high-risk/PPANI offenders it can be almost redundant given the levels of active supervision. There is, however, a medium-range population of offenders where EM, used imaginatively and as part of an integrated programme of supervision, could provide the means to maintain the family, employment and community ties recognised by many of the authors as necessary for rehabilitation and reintegration.

## **Youth Justice in Context: Community, Compliance and Young People\***

**Mairéad Seymour**

Abingdon, UK: Routledge, 2013

ISBN: 978-0-415-66792-0, 210 pages, hardback, £85.00

This book examines young people's compliance with community supervision, an area of criminal justice theory and practice that has been subject to limited empirical research. It explores the interventions, knowledge and skills required to engage young people to promote compliance with statutory supervision and to develop the skills they need to desist from offending behaviour. The ultimate aim of promoting compliance is to reduce recidivism. The material presented in the book is based on empirical research that was generated through qualitative interviews with professionals and young people. The research was conducted with three statutory agencies in the Republic of Ireland and Northern Ireland: Young Person's Probation (YPP), a specialised division of the Probation Service in the Republic of Ireland, the Probation Board for Northern Ireland (PBNI) and the Youth Justice Agency (YJA) in Northern Ireland.

The context of youth justice practice in both jurisdictions, including the social and legal changes that preceded current legislation, is provided, and is situated within the wider context of the European Conventions. The process for supervision of Community Orders is described and explored in relation to accountability to the judiciary and standards of enforcement. Particular reference is made to Youth Conference Orders and the restorative underpinning whereby the victim is included in the conferencing process. Common to all three statutory agencies is the young person's understanding that a report will be completed to aid in sentencing and that breach proceedings will be initiated to return the order to court for non-compliance.

The book draws on wider research evidence, which highlights the fact that stringent enforcement of non-compliance does not promote increased compliance in young people. Given the often multi-faceted problems experienced by young people involved in offending behaviour,

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this book helpfully examines the theoretical underpinnings of working with young people and the complexity of such work. The skills that promote compliance (often over protracted periods of time), theories of engagement and specific links to desistance are explored. The evidence is clear that young people in conflict with the criminal justice system need to be engaged in supportive, holistic and empathetic programmes of support.

Practitioners identify young people who are subject to community supervision and viewed as 'persistent offenders' as among the most disenfranchised young people in society. This underlines the need for practitioners to utilise their skills of engaging young people in a supervision process that incorporates the needs of completing a Court Order while developing a supportive 'working relationship'. The importance of congruence between a supervisor's words and actions for young people subject to supervision is highlighted. This is achieved through practical support such as reminders to attend appointments. The importance of developing social and emotional supports in local communities through engaging with training, employment, therapeutic interventions, families and peer influences alongside the promotion of pro-social diversionary activities is also highlighted. An important finding from practitioners and young people interviewed for this study is that if the young person believed that their supervisor would 'stick' with them, they were more likely to engage with them over a period of time and show increased compliance.

It is acknowledged that there is an inherent power imbalance in a supervisory relationship; however, it is argued that this can be redressed by the practitioner through the supervision process. This does not negate the practitioner's accountability for maintaining agency standards of enforcement, assessment of risk of reoffending and managing the required level of public protection from further offending behaviour. The meaning of compliance is also debated – a young person attending appointments but not engaging may be deemed acceptable initially, depending on the practitioner's view of their ability to engage. This reinforces the fact that each young person is supervised, on an individualised basis, from a holistic viewpoint with the order being enforced accordingly.

This research also emphasises the importance of 'front-end compliance' – i.e. ensuring, from the start, a young person's understanding of what is expected of them to maintain compliance with the court order, and the consequences of non-compliance. This appears to

increase a young person's motivation to engage, and further, a young person will be more likely to comply if they feel included in completion of the order (communicative approach) rather than told what to do. The importance of attending to procedural justice is also critical. These findings and associated theories emphasise the importance of promoting 'ownership' in a young person towards successfully completing the order.

Having worked within the Youth Justice Team in PBNI for the past three and a half years, I found this book insightful and focused on identifying the complexity of promoting compliance with young people on community supervision. The author ensures throughout this complex and theory-based research project that knowledge is applied in a manner that is accessible and understandable for the reader. This book is a must-read for social work students or practitioners seeking to promote understanding of working with young people and promoting compliance with community supervision on statutory Court Orders.



# General Information & Guidelines for Contributors

*IPJ*, a joint initiative of the PS and the PBNI, aims to:

- Provide a forum for sharing good theory and practice, increasing co-operation and learning between the two jurisdictions and developing debate about work with offenders.
- Reflect the views of all those interested in criminal justice in an effort to protect the public and to manage offenders in a humane and constructive manner.
- Publish high-quality material that is accessible to a wide readership.

*IPJ* is committed to encouraging a diversity of perspectives and welcomes submissions which genuinely attempt to enhance the reader's appreciation of difference and to promote anti-discriminatory values and practice.

**Preliminary Consultation:** If you have a draft submission or are considering basing an article on an existing report or dissertation, one of the co-editors or a member of the Editorial Committee will be pleased to read the text and give an opinion prior to the full assessment process.

**Submissions:** Contributions are invited from practitioners, academics, policymakers and representatives of the voluntary and community sectors.

*IPJ* is not limited to probation issues and welcomes submissions from the wider justice arena, e.g. prisons, police, victim support, juvenile justice, community projects and voluntary organisations.

Articles which inform the realities of practice, evaluate effectiveness and enhance understanding of difference and anti-oppressive values are particularly welcome.

Submissions (in MS Word attachment) should be sent to either of the co-editors.

Gail McGreevy, PBNI  
gail.mcgreevy@pbni.gsi.gov.uk

Gerry McNally, PS  
gpmcnally@probation.ie

**Originality:** Submissions will be considered on the understanding that they are original papers that have not been published or accepted for publication elsewhere. This does not exclude submissions that have had limited or private circulation, e.g. in the writer's local area, or as a conference paper or presentation.

**IRISH PROBATION JOURNAL** is a peer-reviewed publication. The following types of submission are considered.

**Full Length Articles:** Normally around 3,500–5,000 words, though all contributions up to a maximum of 7,500 words including references will be considered.

**Practice Pieces:** Shorter practice pieces are very welcome. These offer an opportunity to describe a recent piece of practice, practice-related issues or recent practice developments in brief. Ideally around 2,000–3,000 words including references; 4,000 words maximum.

All *full-length articles* submitted to the journal are anonymised and then subjected to rigorous peer review by members of the editorial board and/or editorial advisory board and/or by appointed specialist assessors. The final decision to publish or reject is taken by the editors in the light of the recommendations received.

All *practice pieces* will be considered and a link-person from the editorial committee will be assigned to liaise with the author. The final decision to publish practice pieces will be taken by the editors.

**More detailed guidelines for contributors are available from the Editorial Committee on request and should be followed when making submissions.**