

Irish Probation Journal

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

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The Probation Service

Haymarket
Smithfield
Dublin 7 D07 WT27
+353 (0)1 817 3600
www.probation.ie

Probation Board for Northern Ireland

80–90 North Street
Belfast BT1 1LD
Northern Ireland
+44 (0)28 9026 2400
www.pbni.org.uk

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Editorial

Welcome to the thirteenth edition of Irish Probation Journal. One of the strengths of probation across Europe is its willingness to promote and seek out academic and practitioner based research to inform effective practice which supports desistance and the shared goal of safer communities and fewer victims.

Over the past thirteen years *Irish Probation Journal* has established itself as a recognised forum for criminal justice related research, with contributions from experienced and new researchers. A commitment to research and evaluation not only within probation but in the wider field of criminal justice helps to improve operations and to ensure that services maintain their ability to address new challenges and explore new opportunities as well as to bridge gaps and improve performance.

The return of the North–South Criminology Conference this year and the successful Criminal Justice Agencies Conference on *Evidence-Informed Decision Making: Putting Research into Practice in Criminal Justice* in Dublin Castle are indicators of the vibrant and growing criminology community in Ireland. It is important that criminal justice agencies, policy makers, practitioners, researchers and the academic community in Ireland and internationally continue to maintain this visible and positive momentum.

Irish Probation Journal will continue to encourage and support dialogue and debate as well as providing a forum for practitioners to share lessons from practice.

In this edition of *Irish Probation Journal* readers will find research, evaluation, analysis and lessons from practice. Themes include the assessment and management of sexual offenders, restorative practices, rehabilitation, resettlement and reintegration of offenders in the community, engagement with probation service users, diversity, the experience of desistance and working with older people on probation. There are also articles on wider issues in criminal justice including the role and contribution of social enterprise, lessons from the life stories of persistent

offenders, prison system comparison, and perceptions and reporting of minorities in the justice system.

Underpinning many contributions is the commitment to learning how probation and criminal justice can better and more effectively support and encourage offenders in their journey towards desistance. The research and commentaries explore how and why people stop offending and consider the role of individuals, practitioners and society in supporting offenders on that sometimes rocky road.

Irish Probation Journal would not be possible without the support of the Directors and senior management teams of the Probation Service and Probation Board for Northern Ireland. Their support and encouragement is sincerely appreciated. The Editorial Committee has provided invaluable advice, guidance and support in the development of *Irish Probation Journal*. We also want to thank the members of the advisory panel and those who provided peer reviews, advice and guidance.

Finally, *Irish Probation Journal* is indebted to the authors who have shared their knowledge and expertise. The calibre of authors and quality of writing in *Irish Probation Journal* will ensure that it continues to be held in the highest regard by academics, policy makers and practitioners, and that it makes a real contribution to better practice and outcomes in probation and criminal justice.

Gerry McNally
The Probation Service

Gail McGreevy
The Probation Board for
Northern Ireland

The Reintegration of Sexual Offenders*

Anne-Marie McAlinden[†]

Summary: This paper considers current and future approaches to sex offender reintegration. It critically examines the core models of reintegration in terms of risk-based and strengths-based approaches in the criminal justice context as well as barriers to reintegration, chiefly in terms of the community and negative public attitudes. It also presents an overview of new findings from recent empirical research on sex offender desistance, generally referred to as the process of slowing down or ceasing of criminal behaviour. Finally, the paper presents an optimum vision in terms of rethinking sex offender reintegration, and what I term ‘inverting the risk paradigm’, drawing out the key challenges and implications for criminal justice as well as society more broadly.

Keywords: Sex offenders, risk, strengths-based approaches, shaming, public attitudes, circles of support, reintegration, desistance.

Introduction

This paper draws upon many of the themes that underlie the work and legacy of Martin Tansey, as a progressive and forward-thinking criminal justice practitioner within the field of offender rehabilitation – namely the competing balance of rights between offenders and the wider community; the need to recognise the ‘humanity’ of offenders and to give them a ‘second chance’; and the wider social objective and benefits of offender rehabilitation and reintegration. With this legacy and these ideals in mind, I will examine a number of core aspects related to the topic of the reintegration of sexual offenders as one of the most challenging of offender groups within contemporary criminal justice policy and practice.

* This paper comprises the revised text of the 9th Martin Tansey Memorial Lecture, sponsored by the Association for Criminal Justice Research and Development and delivered at the Criminal Courts of Justice, Dublin, 7 April 2016.

[†] Anne-Marie McAlinden is Professor of Law and Director of Research at the School of Law, Queen’s University Belfast. Email: a.mcalinden@qub.ac.uk

The paper begins with a critical overview of models of reintegration primarily in terms of the ‘risk-based model’, which has shaped the contemporary criminal justice context, and the prospects of the ‘strengths-based model’, which is premised on the notions of reparation, community partnership and social inclusion as encapsulated in initiatives such as circles of support and accountability. Central to both models is the notion of ‘shame’ – shame in the criminal justice context has been said to lead to ‘disintegrative shaming’ (Braithwaite, 1989) where the offender is labelled and singled out as different from the rest of the community. Shame in the strengths-based context, however, is premised instead on ‘reintegrative shaming’ which shames the offender’s behaviour, rather than the offender per se, and seeks to affirm their membership of the local community.

Second, the paper examines barriers to sex offender reintegration in terms of individual obstacles stemming from the offender as well as a range of structural obstacles that relate to the role of the community in individual offender rehabilitation. This includes most notably public attitudes and mindsets regarding the presence of sex offenders in the local community, particularly those who have offended against children. The discussion seeks to draw out the common myths and misconceptions concerning sexual offenders and the risk they are deemed to present as well as the challenges of public engagement. Data are presented from an empirical study on public attitudes to sex offenders against both children and adults within Northern Ireland.

Third, the paper provides a brief overview of recent primary research on sex offender desistance. This research has highlighted key aspects of the desisting narratives of a group of men recently convicted of sex offences against children in England and Wales. These relate chiefly to work, relationships and hope for the future. The analysis also draws out the implications for sex offender reintegration in terms of the importance of helping sex offenders forge a new, non-offending future ‘identity’ and the role of social bonds and support in underpinning longer-term desistance.

Finally, the fourth part of the paper seeks to ‘rethink’ the reintegration of sexual offenders, which is presented in terms of ‘inverting the risk paradigm’ and involves incorporating strengths-based approaches within the risk framework and, crucially, changing the fundamental question to asking why it is that sex offenders do not reoffend rather than why it is that they do. The discussion also draws out the key messages for society as well as the implications for criminal justice in supporting and promoting sex offender reintegration and desistance.

Models of reintegration

Seminal research by Maruna and LeBel (2002) espoused two main models of offender reintegration which are premised on the cross-cutting themes of ex-offender resettlement, community re-entry and ‘what works’ in rehabilitating offenders and in reducing crime.¹ The first model is the risk-based model, which characterises the contemporary criminal justice context and is typified by the ethos of crime control, public protection and the social exclusion of ‘deviants’, resulting in penal and sentencing policies based on incapacitation and high rates of imprisonment. More recently, scholars have pinpointed trends in ‘preventative governance’ (Ericson, 2007) and ‘pre-emptive approaches’ to risk (Zedner, 2009), which aim to capture all possible future risks before they occur. In practice, these values are translated into measures that aim to increase the surveillance of former prisoners by extending control from prison to the community (Kemshall and Wood, 2007). They also derive from and feed into what Bottoms (1995) calls populist approaches to risk management and reintegration. That is, such situational approaches to crime prevention are based on the notion that having increased knowledge of the whereabouts and behaviours of known categories of offenders will help manage risk and increase public protection – what Ericson and Haggerty (1997) succinctly term the ‘knowledge–risk–security’ chain.

In relation to sexual offending, the risk-based model has been the cornerstone of academic and policy debates for the past two decades (Kemshall and Maguire, 2001). The model is exemplified in measures such as sex offender registration or notification and other control in the community measures common to many Anglo-American jurisdictions, such as electronic tagging and vetting and barring schemes. The risk-based model has also fashioned multi-agency frameworks on sex offender risk assessment, treatment and management across the United Kingdom and the Republic of Ireland in the form of MAPPA/PPANI/SORAM.² Within such frameworks, court-ordered treatment and rehabilitation can become a ‘vehicle’ for risk management where, potentially, ‘rehabilitation’ may be

¹ The other type of ‘deficit’ model outlined by Maruna and LeBel (2002) is ‘needs-based’ strategies, which focus on helping ex-offenders to overcome addictions or learn basic skills in order to reduce the risk of reoffending.

² MAPPA is the Multi-Agency Public Protection Arrangements, which apply in slightly different forms in England and Wales and Scotland; PPANI is the broadly equivalent Public Protection Arrangements Northern Ireland; and SORAM is Sex Offender Risk Assessment and Management in the Republic of Ireland.

fettered by ‘risk’ (McAlinden, 2012). As a result, as Farrall and Sparks (2006: 7) have put it, ‘the social consequences of a criminal conviction have become not just more prevalent but also weightier and “stickier” than in previous decades’.

The ‘risk-based’ model, however, is grounded on a somewhat narrow and over-simplified version of the ‘risks’ stemming from ‘known’ sexual offenders in the community; that is, those who have already come to notice. Risk management, in consequence, is conceived as ‘known’ and clearly identifiable; as aberrational rather than systemic; as being linked to ‘predatory paedophiles’ in extra-familial settings; and as being the preserve of experts via top-down elitist processes from which the public are generally excluded.

Indeed, the role and response of the local community to sex offender reintegration within the confines of the risk-based model is based on the notion of ‘disintegrative shaming’ (McAlinden, 2005, 2007), where the emphasis is on the labelling, public shaming and ostracism of sex offenders, particularly those who offend against children. Via ‘othering’ processes (Garland, 2001), the sex offender is deemed a ‘double outsider’ (Spencer, 2009: 225) – physically excluded from the community and also not seen as of the community. At worst, this has resulted in violence and vigilante action towards sex offenders, as evidenced in the aftermath of the Sarah Payne case³ and the *News of the World*’s newspaper campaign to ‘name and shame’ all known sex offenders. At best, it can impede offender rehabilitation and either increase or displace the risk of reoffending if offenders ‘go to ground’ to escape notice. In sum, the potential failure of the risk-based model is that it tends to confirm the label of ‘sex offender’ and reinforce rather than break from an offending identity, when such a break is pivotal to the process of sex offender reintegration and desistance (McAlinden *et al.*, 2016). As set out below, however, the community can make a potentially more positive contribution to sex offender reintegration through the process of ‘reintegrative shaming’ (Braithwaite, 1989).

The second main model is the ‘strengths-based’ approach, which is linked to restorative justice and based on the themes of reconciliation, community partnership and social inclusion. The model is also underpinned by ‘the helper principle’, which emphasises the role of the ex-offender in developing ‘pro-social’ concepts of self and earning their

³ Sarah Payne was an eight-year-old girl who was abducted by known sex offender Roy Whiting while playing in a field near her grandparents’ home in Sussex in July 2000, and murdered.

place back in the local community (Bazemore, 1999), usually in the form of socially useful activities such as work (Burnett and Maruna, 2006). The strengths-based model is based on the notion of shaming with a reintegrative and positive effect (Braithwaite, 1989), promoting community re-entry and a 'positive reframing' of offending identities (McNeill, 2006). That is, the emphasis is placed on shaming the offence/sexual offending behaviour rather than the offender as an individual, with the overall aim of social reintegration.

As regards sexual offending, the strengths-based approach is encapsulated in the model of circles of support and accountability (CoSA). CoSA originated in Canada, where it was initially used in an organic context with high-risk sex offenders on release from prison (Cesaroni, 2001; Petrunik, 2002). It has also been used or piloted in a range of jurisdictions across Europe, including the Republic of Ireland, Northern Ireland, and England and Wales. Circles are based on the twin premises of safety and support – they provide important assurances to the local community that sex offenders are being actively 'managed' but also high levels of emotional and practical support to offenders with aspects of reintegration such as finding suitable accommodation and employment. Circles are based on a 'partnership' approach to sex offender reintegration (McAlinden, 2007) where the offender as the 'core member' works in tandem with statutory and voluntary agencies and with community volunteers. The signed 'covenant' specifies each member's area of contribution and the offender has contact with the circle daily in the high-risk phase after release, which gradually diminishes.

Circles have had proven effectiveness in securing reintegration, reducing the risk of reoffending and managing risk; in engaging the local community and the offender's family in the reintegrative process; and in mediating between local structures as barriers to reintegration (such as public opposition to offender placement in the area) and the offender's rehabilitation (Wilson *et al.*, 2009; Bates *et al.*, 2012). Moreover, more recent research has also shown that 'helping sex offenders to desist' via circles can have benefits for community volunteers (Höing *et al.*, 2016) as well as significant 'cost savings' for the criminal justice system (Elliott and Beech, 2013).

The framing of 'risk' within the strengths-based model is potentially much broader and holistic than within the risk-based paradigm. In particular, by the adoption of proactive approaches to managing risks before they might occur, the strengths-based philosophy can capture

‘unknown risk’; risk is recognised as systemic, whereby it might potentially occur anywhere, rather than aberrational or one-off; it can thus target intra-familial offending as opposed to predatory, extra-familial sex offending; it involves the local community in community-led/bottom-up as opposed to expert/top-down processes; and ultimately the community are regarded as an active and vital part of the reintegration process rather than being excluded from risk management and constituting an uncertainty and risk themselves.

In short, measures such as CoSA aim to address reintegration at both the micro and macro levels (Braithwaite, 1989) and the structural as well as individual variables that may underpin sex offender reintegration and desistance. That is, their strength lies in taking account of local infrastructures and the offender’s interaction with these. Circles have acted as a means of social ‘certification’ of rehabilitation, empowering offenders to take responsibility for their past offences via positive reinforcement of a ‘new’, ‘pro-social’ identity that recognises but, at the same time, seeks to break from an offending past (Burnett and Maruna, 2006). They also provide an actual and symbolic means of ‘hope’ in terms of reintegration and desistance (McAlinden, 2007).

Barriers to reintegration

As also noted above, there are individual as well as structural obstacles to reintegration. In brief, one of the main individual obstacles to reintegration is self-motivation, which is known to be undermined by the custodial experience but restored by aspects of community and social life (Burnett and Maruna, 2004; Farrall and Calverley, 2005). The structural obstacles to reintegration relate to risk factors and serious social and economic disadvantages which can undermine effective informal social controls (such as work and relationships) and promote reoffending.

As also noted above, a reconnection with the ‘community’ is a key structural correlate underpinning sex offender reintegration. While the role of the community was formerly a neglected dimension of academic and policy debates, more recently ‘place’ and specific social spaces have emerged as pivotal in individual reoffending (Sampson and Laub, 1993; Farrall, 2002) and in confirming an offending or non-offending identity. The power of the community in this sense is that it can suggest reformation by fostering social inclusion and constructive activities. Indeed, while the individual and structural correlates of desistance will be

considered further below, the main barriers to sex offender reintegration are often structural ones in terms of the role of the community and negative public mindsets.

Large-scale quantitative research, carried out via public surveys in Northern Ireland with over 1000 respondents, has confirmed that public attitudes to ‘child sex offenders’ – that is, those who sexually offend against children – are much more punitive than for ‘adult sex offenders’ – those who sexually offend against adults (McAlinden and RRS, 2007) with generally high levels of scepticism about rehabilitation and treatment. For example, only 16% agreed that ‘most people who commit sexual offences against children can go on to live law abiding lives’ (compared to 23% for sexual offences against adults). Further, only 32% agreed that ‘treatment programmes can help sex offenders stop reoffending’, while 66% vastly overestimated recidivism rates for child sex offenders as over 40%.⁴ The public were generally unaccepting of a sex offender living or working in the local community, with many refusing sex offenders basic rights such as education: 58% thought it unacceptable for an adult sex offender to be living in the local community; and 92% stated that if they were living near a child sex offender they should be informed of any past offences. Although communities as whole appear to have a much more collective response to sexual offending than to other political issues (see e.g. Katz-Schiavone *et al.*, 2008; Willis *et al.*, 2010), attitudes were not uniform. As might be expected, women, parents of children aged under 18 and those in the older age bracket have stronger and more punitive attitudes.

There were also low levels of awareness about statutory risk management processes and programmes such as circles of support and Stop It Now!.⁵ There was a significant lack of knowledge and misinformation about issues related to ‘risk’: the public tended to underestimate overall levels of sexual offending but overestimate increases in these rates and the level of risk posed by sex offenders. Notably, there was also lack of awareness about what constitutes a sexual offence, particularly surrounding non-stereotypical offences involving, for example, children or women as perpetrators. At the same time, however, the public

⁴ In fact, recidivism rates for sexual offenders are generally low (Barnett *et al.*, 2010) and decline with age (Lussier *et al.*, 2010; Scoones *et al.*, 2012). Harris and Hanson’s (2004) meta-analysis of over 4500 sexual offenders found an average long-term reoffending rate of 24% over 15 years and that the longer offenders remained offence-free in the community the less likely they are to reoffend sexually.

⁵ Stop It Now! UK and Ireland is a charity organisation which aims to raise awareness of and prevent child sexual abuse: <http://www.stopitnow.org.uk/>

recognised the lower risk of victimisation by a stranger and the risk of sexual abuse to children by other children. Therefore, while there were in general inaccurate, negative and often stereotypical views about sexual offending, there were also some positive aspects and evidence of faith in the 'redeemability' (Maruna and King, 2009) of sex offenders: an average of 44% agreed that society has an obligation to assist sex offenders released into the community to live better lives.

The challenges of public engagement concerning sex offender reintegration are therefore manifold. Chief among them is addressing the common myths and misconceptions concerning sexual offending, particularly relating to children. These relate to the 'stranger danger' phenomenon and the notion of known and identifiable 'risk' – not the hidden, unknown and therefore the most dangerous risks; the predatory nature of sex offending – as opposed to offending which may also occur in situational or opportunistic contexts (Wortley and Smallbone, 2006); the gendered and oppositional notions of who are victims and offenders – generally adult male perpetrators and young (usually female) victims; the conflation of levels and types of risk – that all sex offenders tend to pose the same degree of very high risk; the lack of faith in 'treatment' or redemption – and the notion that sex offenders are 'incurable'; the belief that control in the community measures are a panacea for managing risk; and the belief that child protection is the preserve of statutory and voluntary agencies. This list can be distilled to a narrow version of 'risk' in the public mindset and the permanency of the sex offender label.

Furthermore, the challenges of public engagement surrounding the reintegration of sex offenders also relate to addressing 'punitiveness' and harsh public attitudes towards sex offenders; downplaying negative and unhelpful public attitudes and encouraging the positive aspects; and building on current initiatives such as Stop It Now! and circles of support which are aimed, *inter alia*, at greater public awareness surrounding child sexual abuse and offender reintegration. A key step on this path is the initiation of a major government-sponsored media campaign, involving key stakeholders in both Northern Ireland and the Republic of Ireland, aimed at public education around key messages pertaining to the nature of sex offender risk, reintegration and the work of statutory and voluntary agencies. A better informed public may help to manage some of the 'panic', fear and mistrust that exist concerning sex offenders. Ultimately, this may also help to promote social inclusion and remove some of the barriers to reintegration.

Desistance

‘Desistance’ is generally taken to refer to the dynamic and complex process whereby offenders refrain from and/or decrease their criminal activities over time (Kazemian, 2007). There are said to be three stages of desistance (Maruna *et al.*, 2004): primary desistance – where the offender may be ‘in and out’ of criminality; secondary desistance – where the offender stops their criminal behaviour for good and begins to form a new ‘non-offending identity’; and tertiary desistance – where the offender develops a clear sense of belonging to their family and the local community. In relation to tertiary desistance, successful community re-entry (reintegration) is known to be pivotal to the desistance process (Göbbels *et al.*, 2012; Lussier and Gress, 2014). Indeed, contemporary thinking on desistance affirms that it is necessary to take account of individual (cognitive) as well as structural (societal) changes that might underpin trajectories of change (Bottoms *et al.*, 2004; LeBel *et al.*, 2008).

While there is a well-established body of literature on desistance from non-sexual crime and its role within rehabilitation practice (e.g. Laub and Sampson, 2001; Maruna, 2001; Weaver and McNeill, 2010), empirical research on desistance from sexual crime is in its infancy. However, a number of themes are emerging: ‘the age–crime curve’ shows that most sex offenders, like offenders more generally, will eventually ‘age out’ of sexual crime (Lussier *et al.*, 2010) – what Harris (2014) terms ‘natural desistance’; the role of informal social controls such as job stability in reducing the probability of reoffending (Kruttschnitt *et al.*, 2000); and the role of ‘cognitive transformations’ (Harris, 2014), which may range from a simple recognition that the individual has caused harm to the formation of a new, non-offending identity (see also Kewley *et al.*, 2016).

A recent empirical study conducted by the author in conjunction with colleagues aimed to contribute to this emergent field of research by examining the core themes arising from the self-narratives of a sample of men convicted of a range of sexual offences against children.⁶ A total of 32 in-depth ‘life history’ interviews (McAdams, 1993) were conducted asking participants to recount and rationalise their lives and their offending. These ‘narratives’ amounted to first-hand accounts of reintegration and desistance by looking at the structural (social context) and subjective (individual cognitive) domains associated with desistance.

⁶ The research was undertaken by Mark Farmer, Shadd Maruna and Anne-Marie McAlinden and was supported by the Economic and Social Research Council (grant number ES/K006061/1).

The study employed a purposive sampling strategy – convicted child sex offenders who had been or were currently under probation supervision in England and Wales were initially identified from probation records. The participants were selected on the basis that they had a recent conviction for sexual offences and had been living in the community for at least three to five years, during which time there were no new charges or investigations for sexual offending. Our comparison sample consisted of individuals who had received convictions for child sex offending on more than one occasion, the most recent of which was for an offence within 12 months from the date of the research (fieldwork conducted July 2013 to April 2014), so that they could not be said to be in a stable state of desistance. A total of 25 individuals in the desisting group and seven in the comparison group were interviewed.

In relation to the findings, while several themes emerged that are worthy of analysis, the discussion here will focus on three core themes: work, relationships and hopes for the future (for further discussion see Farmer *et al.*, 2015; McAlinden *et al.*, 2016). Many of the participants identified ‘turning points’ in their lives (aside from being convicted, being sent to prison or undergoing probation supervision or treatment) based on the importance of work and relationships, which were classified into ‘high points’ and ‘low points’. The ‘high points’ related to marriage or meeting a partner; having children; finding or having a job; and friendships in their childhood or adolescence. The ‘low points’ related, *inter alia*, to divorce or relationship breakdown; the death of a parent or grandparent; and their offending behaviour.

Work was generally seen as central to the identity of those deemed to be desisting. Many offenders defined themselves by work and had continuity in employment or a lifetime of work via either a professional career or a series of jobs. Work was seen not only as a ‘means of keeping busy’ in the sense that they were not then free to engage in potentially criminal pursuits, but also as central to their future identity and aspirations. However, in a departure from the mainstream literature on desistance from non-sexual crime (e.g. Sampson and Laub, 1993), gaining employment did not seem to operate as an informal social control in the sense that it was not related to a ‘shift’ in identity towards desistance – many of the men had jobs prior to and after their offending.

Many of the desisting men described lengthy relationship histories or partners who had ‘stuck by them’. There was also regret at relationship breakdown, often as a consequence of their offending, including the loss

of contact with their children. For some, offending had occurred at a low point in their lives, yet the significance of relationships is not clear-cut in relation to desistance. Relationships and the 'love of a good woman' gave the desisting men 'something to lose' and underscored Braithwaite's (1989) notion of 'reintegrative shaming'. They recognised the impact of their offending on their partner and family and the role and support of significant others in underpinning their reintegration and desistance.

For the desisting group, both work and relationships as tangible, aspirational goals were deemed pivotal to future happiness. With relationships and friendships there were hopes of forming new ones and fears of losing old ones should their sex-offending past become publicly known. Similarly, many sought to maintain existing stable employment or gain new forms of employment. Overwhelmingly, however, the desisting men in the study had a very optimistic outlook for the future and a firm and positive sense of their own wellbeing which was absent from the comparison group.

What this empirical research on sex offender desistance affirms is that there appear to be different pathways to desistance and reintegration for sex offenders compared to non-sexual offenders. In the main, informal social controls such as work and relationships remain important for offender rehabilitation and reintegration but they do not operate in the same way for this particular offender group. Their importance, however, underlines the need to take account of offender agency as well as the social context which may hinder reintegration and desistance. In bridging the gap between what has been termed 'imagined' (Soyer, 2014) and 'authentic' desistance (Healy, 2014), as professionals and as a society we need to recognise the importance of providing offenders with an alternative future identity and the role of social bonds and supports in underpinning this process. Breaking from the sex offender label, however, ultimately involves rethinking sex offender reintegration.

Rethinking reintegration

While the 'risk-based' model has dominated academic, public and policy discourses on sex offender reintegration, key aspects of a more progressive approach are inverting the risk paradigm and removing the individual and structural obstacles to reintegration. The latter involves overcoming the public stigma associated with the sex offender 'label' and strengthening criminal justice interventions to improve the range of pro-social

opportunities for longer term sex offender desistance and reintegration. The former involves integrating ‘strengths’ and ‘needs’ with ‘risk-based’ approaches. It also entails moving ‘beyond risk’ and thinking more broadly in terms of social reintegration, incorporating what Weaver (2014) terms ‘control’ as well as ‘change’ and even ‘care’ aspects within criminal justice policies. In essence, this involves changing our mindsets as academics and practitioners from thinking about reoffending to thinking about desistance, and also, crucially, changing the fundamental question and the emphasis in praxis from asking why it is that sex offenders reoffend to why it is that they don’t.

Inverting the risk paradigm, as I would term it, has profound implications for society as well as for criminal justice provision. A number of key messages need to be imparted to society concerning the realities of ‘risk’ concerning sex offenders in the community and in particular that sex offenders are not a homogeneous group – that there are differing levels of risk and not all sex offenders pose the same level of high risk; that sex offenders can include women, children and young people;⁷ and that the majority of abused children are abused in the home or by someone they know.⁸ Further, in relation to current processes, efforts need to be made to downplay ‘risk’ – that many sex offenders will not reoffend with appropriate treatment and support; that sexual offending can be situational/opportunistic as opposed to simply preferential, and may occur as a result of a combination of circumstances rather than predatory intent;⁹ that most sex offenders, who come from communities, will be released back into society at some point; and finally, that ‘child protection is everyone’s responsibility’.

As regards criminal justice, while the justice system deals predominantly with the offender as the ‘perpetrator’ and the person who is adjudicated upon, there are twin dimensions of sex offender reintegration that are often little considered – that is, the offender as the person who committed the offence, and their family and the local community as the people also

⁷ Female offenders account for about 15–20% of sexual offending against children (see e.g. Cortoni and Hanson, 2005; MacLeod, 2015) and young people who display harmful sexual behaviour account for one-third to one-half of sexual offending against children (see e.g. Vizard *et al.*, 2007; Finkelhor *et al.*, 2009).

⁸ Approximately 80% of abused children are abused in their own home or by someone they know (Grubin, 1998).

⁹ Only about 25–45% of sex offenders attract the label ‘paedophile’ and will set out to groom children for sexual abuse (McAlinden, 2012).

impacted by the offence. In short, there are both ‘affective’ and ‘effective’ dimensions of criminal justice.¹⁰ Sexual offending, particularly against children, has significant emotional dimensions for society as well as the offender’s family. The offender’s family and significant others have a vital role to play in supporting emerging ‘desisting identities’ and promoting ‘trajectories of change’ (Sampson and Laub, 1993). As I have noted in a previous study, citing a criminal justice professional in relation to the role of the family in reintegration and in stopping future offending:

It’s a very painful thing for a family and it often splits the family right down the middle. And if they can’t step away from that awful imprisoning need to either completely collude with the person or to shut the person out completely ... if they can manage to hold some middle ground there’s huge benefit to be gained in that. (McAlinden, 2012: 273)

In practice, the potential contribution of the community and the family to criminal justice interventions on risk management and reintegration can be taken forward as follows: by developing rehabilitative sex offender programmes that are forward-looking rather than backward-looking and that focus on future change rather than a ‘confessional’ approach to past offences; by improving the range of work-based opportunities for sex offenders to help promote positive self-identities and longer-term desistance and social reintegration; and to extend the range of programmes for offenders’ families as part of a ‘reintegrative’ release package. The last of these in particular would have dual benefits in terms of enhanced risk management and in helping families come to terms with the offence and its aftermath.

Conclusion

In conclusion, the goals of sex offender reintegration amount to assimilation of the offender into the community and cessation of or reduction in offending behaviour. This highlights the responsibilities and needs of society as well as those of the offender. The analysis has offered some tentative thoughts on how we might, as a society and as reflective practitioners, begin to ‘rethink’ reintegration. Key to this approach is

¹⁰ See Karstedt *et al.* (2011) on emotions and criminal justice generally.

helping the offender to break free from the label ‘sex offender’ and forge a new non-offending identity. For society, this means accepting sex offenders as ‘of us’ rather than ‘other than us’ (McAlinden, 2014: 188). For the offender, this means helping them to break free from an ‘offending past’.

The analysis has also highlighted how strengths-based approaches might help offenders develop intrinsic motivations for change yet how, at the same time, pure managerialist approaches, premised on a range of external controls, may undermine strengths-based policies. It has been contended that we need to extend the range of ‘pro-social’ opportunities for change and the range of programmes for offenders and their families by developing and institutionalising these approaches as a standard part of reintegrative practices for sex offenders.

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Risk and Reward: The Development of Social Enterprise within the Criminal Justice Sector in Ireland – Some Policy Implications*

Siobhán Cafferty, Olive McCarthy and Carol Power†

Summary: The emergence of social enterprises (SEs) within criminal justice jurisdictions across Europe has increased significantly in recent years. Prison- and community-based income-generating businesses are providing employment for those who find it most difficult to secure jobs as a result of their previous criminal lifestyles. Combining a business model with a social mission, SEs are particularly attractive to those working with offenders, as securing employment plays a key role in recidivism rates. Despite the proven successes of SEs in criminal justice sectors across Europe, they remain uncharted territory here in Ireland. Based on primary research conducted with key stakeholders from the Department of Justice, the Irish Prison Service, the Probation Service and the community and voluntary sector, this paper explores the factors that support or hinder the development of SEs across the Irish criminal justice system. It concludes by proposing possible next steps to addressing the factors that have delayed their development up to this point.

Keywords: Social enterprise, offenders, criminal justice, employment, desistance, recidivism, Third Sector, progression, prison, probation.

Introduction

The Irish criminal justice sector has seen significant changes to the type, nature and frequency of offences committed during the past 20 years. This

* The research on which this paper is based was completed as part of the requirements of an MBS in Co-operative and Social Enterprise with the Department of Food Business and Development, University College Cork. In addition to the academic focus, the research was intended to help the Probation Service and other criminal justice agencies to explore possibilities for the development of the social enterprise sector in Ireland.

† Siobhán Cafferty is the Executive Manager of The Bridge Project, a community-based organisation working with violent offenders. Email: Siobhan@bridge.ie. Dr Olive McCarthy and Dr Carol Power are lecturers in the Department of Food Business and Development and researchers with the Centre for Co-operative Studies, University College Cork.

is evidenced by a 100% increase in the prison population between 1997 and 2011; 2011 was the year when the number of people incarcerated was at its highest (4587 on 12 April) (Irish Penal Reform Trust (IPRT), 2015). Although the number of people in prison fell in the following four years, all prisons in Ireland are operating at or above capacity. Rising levels of drug-related crime, violent offences, prolific offenders and gangland activity have challenged the criminal justice system to respond effectively, as well as increasing the financial burden on the state. In 2014, the average cost of an 'available, staffed prison space' was €68,959, representing an increase of €3417 from 2013 (Irish Penal Reform Trust, 2015). It is in the interest of all citizens that these figures are tackled effectively, and with a long-term vision, so that the number of victims of crime reduces as the number of people committing offences falls.

The research on which this paper is based examined the potential role of social enterprise (SE) in reducing reoffending rates. It is widely known that the securing of employment plays a significant role in desistance from crime (Farrington *et al.*, 1996; Maruna, 1997; Visher *et al.*, 2005; Social Exclusion Unit, 2002), and as such it is enshrined in legislation as a key target for criminal justice agencies when working with their clients (The Probation of Offenders Act, 1907). Research also indicates, however, that the motivation to remain crime-free post-release reduces over an extended period of time in the absence of ongoing supports to the offender (Tripodi *et al.*, 2010; Visher *et al.*, 2005). SE as an approach to providing supported employment for offenders has been under-utilised within the sector. This research explores the views on SE among key decision-makers within various agencies of the criminal justice system.

Research has shown that the rate of unemployment is disproportionately higher among prison populations (Social Exclusion Unit, 2002; Farrington *et al.*, 1996; IPRT, 2014). Mair and May (1997) found that, of 3299 offenders on probation in the UK, only 21% were employed (Cosgrove *et al.*, 2011).

The Theory of Desistance (Maruna, 1997) argues that being in gainful employment is a key factor in reducing or desisting from crime. Desistance from crime is defined as 'the long-term abstinence from criminal behaviour among those for whom offending had become a pattern of behaviour' (McNeill *et al.*, 2012: 3). While employment is recognised in legislation, policies and evidence-based practice as being important, a criminal record is a significant impediment to securing employment. SEs not only provide employment opportunities and training for ex-offenders;

they do so in a supportive, client-centred environment where other factors leading to offending behaviour can also be addressed (Nicholson, 2010: 17).

Interest in social enterprise has increased significantly in recent years due to an awareness of its potential to address deep-rooted societal issues while operating from a model of inclusion and community development. In the UK, specific social enterprises have targeted people with a history of offending in an attempt to reduce recidivism. This growing interest has also been influenced by the global financial downturn; austerity measures implemented in many First World countries mean that communities cannot rely on the state to provide resources or services. This research explores the factors that support or hinder the development of SE in the Irish criminal justice sector. In addition to the academic focus, the research was intended to assist the Probation Service and other criminal justice agencies to explore possibilities to assist with the development of the SE sector in Ireland.

Social enterprise defined

SE presents a different and refreshing way of doing things that recognises societal issues and need as well as being inclusive of those most affected by disadvantage and/or the financial crisis. However, defining what an SE actually is can be difficult, and there is no universally accepted definition (Gardner *et al.*, 2014; Forfás, 2013; Eustace and Clarke, 2009; Everett, 2009).

A definition that is frequently used is provided by the UK Department of Trade and Industry and cited by Doherty *et al.* (2009: 26):

A social enterprise is a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximize profit for shareholders and owners.

Using similar themes and language, the Social Enterprise Alliance in the United States presents the following definition (2014):

Social enterprises are businesses whose primary purpose is the common good. They use the methods and disciplines of business and the power of the marketplace to advance their social, environmental and human justice agenda.

Having analysed a number of European definitions, the Forfás Report (2013: 2) proposes the following definition in an Irish context:

A social enterprise is an enterprise: i) that trades for a social/societal purpose; ii) where at least part of its income is earned from its trading activity; iii) [that] is separate from government; and iv) where the surplus is primarily re-invested in the social objective.

Common to all of these definitions is the social focus or mission, income-generating capacity and reinvestment of profits into the organisation in order to benefit the community and wider society (Gardner *et al.*, 2013). Despite the numerous definitions, there remains a lack of clarity on certain elements such as the amount of surplus to be reinvested, legal structures and the level of independence.

In addition, SEs are part of the Third Sector: the umbrella term given to any organisation that is independent from the state but may receive state-funded support and may contribute to the delivery of public services (Eustace and Clarke, 2009).

Typology of SEs

As a result of ambiguity around the definition of SEs, categorising the various forms and functions they perform can also be challenging. Following a mapping of SE ecosystems across Europe, the European Commission (Wilkinson *et al.*, 2014) categorised SEs into six broad activities: social and economic integration of the disadvantaged and excluded (e.g. work integration and sheltered employment); social services of general interest (e.g. disability services, childcare); other public services (e.g. community transport); strengthening democracy; environmental activities; and solidarity with developing countries (e.g. promoting fair trade initiatives).

This report highlighted work integration SEs (WISEs) as the most visible form of SE across Europe, supporting the employment of those who are disadvantaged or marginalised, such as the long-term unemployed (Wilkinson *et al.*, 2014; Defourny and Nyssens, 2012). ‘The main objective of these enterprises is to help low qualified unemployed people, who are at risk of permanent exclusion from the labour market, and to integrate these people into work and society through a productive activity’ (Nyssens, 2006, cited in Defourny and Nyssens, 2012: 76).

In an Irish context, the Forfás report (2013) states that there are four types of SE in operation:

1. commercial opportunities with a commercial dividend
2. creating employment opportunities for marginalised groups
3. economic and community development
4. service delivery.

Because WISE organisations support employment for those most excluded or marginalised from the labour market, a category within which offenders fall, this is the type of SE that is most commonly written about and researched in relation to the criminal justice sector.

According to the European Network of Social Integration Enterprises (ENSIE), one of the main objectives of social integration enterprises or WISEs is ‘the training and re-integration of the excluded persons from the labour market and mainly the low qualified unemployed and the disadvantaged persons to stop them been [*sic*] permanently excluded from the labour market and to re-integrate the society in general’ (ENSIE, 2014). WISEs, therefore, would seem to be the best fit for those who have been, and will continue to be, excluded from the labour market due to their criminal history (Fletcher, 1999; Maruna, 1997; Sturrock, 2012).

By combining one-to-one support, job coaching, relevant work experience and training leading to employment, WISEs offer significant potential for the social reintegration of offenders.

Methodology

Semi-structured interviews with eight key stakeholders were undertaken to seek an understanding of their perceptions in relation to the role of SE in the criminal justice system and the risks and rewards of developing SE in a criminal justice and integration setting. Four stakeholder groups were identified as having views or positions relevant to the research. These were relevant senior decision-making staff within the Department of Justice, the Probation Service and the Irish Prison Service as well as a representative from a community-based organisation working with criminal justice clients and with experience of operating an SE. The focus was on groups whose remit included rehabilitation and/or the ability to contribute to policy development in the area.

Key stakeholders were purposively sampled due to their influence in relation to policy within the criminal justice or SE support sectors.

Findings

Based on a thematic analysis of the interviews conducted, 14 emerging themes were identified, all of which have been synthesised for this paper.

1. Recognition by decision makers that there are limitations in knowledge and awareness of SE within Ireland

Seven of the eight respondents reported that their level of awareness and understanding of what SE is and how SE is defined was very limited. Of this group, none had practical or first-hand experience of SE. One stakeholder had practical experience of having developed an SE for people with criminal convictions.

Four respondents stated that they were unsure of how to define an SE as distinct from a charity or other small business, and provided examples within their dialogue of this lack of clarity. Five of the eight respondents were unsure as to whether particular businesses they were familiar with were operating as SEs.

Three respondents could name an example of general SEs operating in Ireland (Rothar, Churchfield Garden Café and IT Recycling were all named) while the remaining five individuals were not confident in naming SEs or stated that they were unaware of any.

Interviewees were also asked if they could identify any SEs operating within the criminal justice system. Four were unable to do so. The remaining four respondents stated that they were more familiar with SEs operating further afield; examples were named in the United Kingdom, France, Italy and the USA. All of these examples were within the criminal justice system and were familiar to respondents because they had previous experience or contact with them. Interviewees were aware that SEs had been established more successfully and with more institutional support in countries other than Ireland.

When asked about whether SE was a genuinely new model or simply a reworking of previously trialled models, there was a clear agreement (seven of eight respondents) that SE presented a tangibly different way of providing services, if done well. The main reason for the difference was perceived to be the core business model, and the reality that this brought to the training aspects of the programme.

Another theme to emerge, and which would not be in line with common understandings of SE,¹ was a belief that in order to operate successfully as an SE, the enterprise would or should become completely self-sustaining. While this may be a productive or appropriate goal for some SEs, to regard it an imperative in all situations or as a singular marker of success highlighted a lack of knowledge in relation to the spectrum of SE models, especially where these related to WISE or supported employment initiatives and where some element of state funding may be an ongoing element of the SE business model.

Another area of potential confusion was in relation to which type of organisations can run SEs. One interviewee's comments indicated that it was possible for public sector bodies to establish and run SEs. Again, this runs contrary to key definitions of SE (Senscot, 2014) which clearly state that the state cannot establish an SE.

Despite an acknowledged limited awareness of SE, seven of the eight respondents felt that the model had relevance for the future criminal justice system. SEs were regarded as offering alternative ways of doing business that benefit individuals, families and communities.

Interviewees were clear that their working or technical knowledge of SE was very limited. However, within the boundaries of their knowledge, there was support for what the model could potentially offer the Irish criminal justice system.

2. Acknowledgement of the potential benefits of SE in the criminal justice sector

All eight respondents reported that they would like to see the development of SEs within the criminal justice system increase, as they believe SE offers significant potential for the welfare of the client group and its families, and for the state and its agencies in relation to efficiency and service outcomes. Benefits articulated could be divided into two groups: benefits to the criminal justice system and benefits to the offender or individual.

¹ Senscot criterion 2 states that 'Social enterprises are trading businesses aspiring to financial independence. This is demonstrated by an enterprise earning 50% or more of its income from trading. A high level of income from the public sector is acceptable however in the form of contracts, not grants' (www.senscot.net/view_art.php?viewid=9636). Similarly, the Forfás definition given above emphasises the financial position. The EMES definition states that 'Social enterprises are voluntarily created by a group of people and are governed by them in the framework of an autonomous project. Although they may depend on public subsidies, public authorities or other organisations (federations, private firms, etc.) do not manage them, directly or indirectly' (Spear and Bidet, 2005).

When asked about the relative importance of securing meaningful employment for those leaving prison or engaging with the criminal justice system, all eight respondents stated that this was an extremely important goal. One respondent highlighted that the securing of employment is so important to reducing recidivism that it is enshrined in the 1907 Probation Act. The importance of employment and meaningful use of time was acknowledged by all eight respondents.

Respondents considered there to be a number of potential benefits that SE could contribute to the criminal justice system and offenders. These included enhancement of employment and enterprise opportunities for offenders and, for those availing of these opportunities, a reduction in recidivism rates. Also noted was the potential for a lower funding burden on state departments for similar outcomes to existing grant-funded services. SE was also viewed as having the ability to provide clear and measurable outcomes for the state's investment as well as providing direct benefits to the offender.

When articulating the benefits of SE to the criminal justice system, respondents also highlighted the potential benefits to the offenders engaging with them. Many practical benefits were noted not only to the individual but also to their families and communities overall; these included an improved and more positive self-image, increased household earning potential, reduced reliance on social welfare payments and a reduction in reoffending and conviction rates due to higher levels of integration in employment and the community.

3. SEs need to be responsive to individual client and customer need, which requires flexibility in funding structures

Responsiveness and ability to adapt quickly to the demands and needs of various stakeholders was a theme mentioned by four stakeholders. The need for responsiveness poses a challenge in relation to the standard structures of traditional grant aid funding where services are expected to have detailed plans and key performance indicators, and to meet these with minimal changes over the funding period. These requirements may constrain or not be appropriate to the environment that new start-up businesses operate within.² However, the ability of SE to take a more responsive approach to client needs was also viewed as a positive.

² Steve Blank, the well-known writer on enterprise, states that 'Most start-ups are facing a series of unknowns – unknown customer segments, unknown customer needs, unknown product feature set, etc. Writing a static business plan first adds no value to starting a company, as the plan does not represent the iterative nature of the search for the model' (2012).

These points highlight the need for funding structures to take account of the fact that a successful start-up will generally require significant flexibility in how it runs its business, in order for the needs of the business and client to be met.

4. The need for leadership and for specific entrepreneurial skills

Five respondents highlighted that existing structures within the state or currently funded community based organisations (CBOs) are not likely to have, or do not have, the expertise to initiate or develop organisations on a business (income-generating, profit and loss) rather than a grant-funded model. Leadership was seen as being needed at two levels: firstly, to establish SE within the criminal justice sector, and secondly, to establish and run new SEs. The view was that without dedicated and experienced leadership, change was unlikely to happen in any significant manner.

It was noted that, at the current time, adequate expertise was unlikely to reside either in state organisations ($n = 3$) or on the board of traditional grant-funded CBOs ($n = 3$). However, in both cases – CBOs and state agencies – respondents saw the solution as being either the co-opting of sufficient additional expertise or, in the case of CBOs, funding new organisations which had been explicitly established with appropriate levels of internal competence and experience to develop and manage an SE.

5. The need for organisations to maintain the focus on personal development and avoid mission drift

The primary goal of SEs operating in this sector is the personal development of clients and the enhancement of life skills and employment-focused skills. However, a business focus is also important to ensure the viability of the SE. It was noted that, at times, there was a challenge in maintaining this dual focus. One interviewee noted that when customer orders need to be filled, there is a temptation for project staff simply to do the work themselves when clients are presenting as challenges. This would present difficulties if it became a standard response.

6. A range of risks exist that are particular to SE: liability and decision-making

Two main risk areas were identified by respondents as affecting SE in a way that was not experienced in relation to other grant-funded services. These were firstly concerns around financial and governance liabilities, and whether these would fall to state agencies, and secondly risks related to closing down unsuccessful SEs: how this decision would be made and

its impact. The fear of financial failure and risks associated with it were mentioned by a number of respondents.

In relation to the first area of risk, there was some concern that primarily state funded SEs would, if they failed, have recourse to state funding to cover outstanding liabilities.

The second grouping of risks, mentioned by three respondents, was how and when justice agencies would decide to stop funding an SE that had not performed adequately. Concerns related to, on one hand, the process by which decisions would be made and the factors that would be considered, and, on the other, the need for the service to have a process by which they could disengage.

The potential financial risks and future liabilities of SEs were noted as factors that have hindered their development up to this point. However, respondents noted that with adequate structures and agreements in place from establishment, through the independent legal structures of the SE, these risks and liabilities can be reduced and managed.

7. Public relations: risk and reward in relation to the development of SE

There were mixed views on whether SE could have a more potentially positive or negative impact on public opinion. However, all who raised this ($n = 3$) were clear that the introduction of SE would require careful consideration and management of PR, either to avoid potentially damaging media coverage or to optimise the potential benefits of this development. There is likely to be more of a spotlight on SEs than on other new businesses. How failure would be contextualised would need to be considered from the outset.

Other PR concerns were also noted, for example if the state services are seen to be connected to profit-making enterprises then this may be considered inappropriate. Also noted was that negative publicity related to one client case could have a significant and disproportionate impact on the overall organisation.

An alternative view was raised by three respondents who saw SE as being a potential source of good PR. This reflected previous themes whereby SE could potentially address some of the challenges of other funding models. SE was viewed as providing a clearer way for offenders to participate meaningfully in society through the labour market. This notion is connected to the idea that employment is a tangible way to 'give back to society', as opposed to attending state-funded programmes where the dynamic can be construed as offenders receiving support and not returning anything tangible.

One respondent, who had experience of SE in the criminal justice area, noted that the best way of mitigating PR issues at a customer level was to be up-front about the client groups, any associated risks of working with these groups, and the overall mission and goals of the project. It was noted that an honest approach may provide more initial challenges to customers and groups not familiar with this target group, but that this approach had better long-term results and was more effective as a risk management strategy.

Respondents noted a range of both potentially positive and negative views regarding the public relations of an SE employing people with a background in offending. An awareness of and sensitivity to customers' needs and concerns as well as the potential negative public perception of state-funded SEs competing with non-subsidised private companies need to be addressed in the marketing plan for any SE of this nature.

8. Attitudes to commercialism and the need for a wider culture change are barriers to SE development

Five respondents referenced the fact that Ireland had a different governmental culture to countries that had invested significantly in SE, and that these factors would need to change in order for SE to become supported at the mainstream state agency level. Cultural majority understandings or views that respondents highlighted as potential barriers that may need to be addressed included a fear of business or a general understanding that 'money and profit is not our concern'.

A comparison between the UK and Ireland was made by two respondents who stated that the UK had a state funding mentality that favoured hybrid-funding models, such as the engagement of private enterprises in social service provision or engagement with the commercial marketplace through an SE structure. Respondents were aware that a significant difference between the success of SE in the UK and within Ireland was attributable to cultural factors. The need for local success stories was seen as a critical success factor for the development and promotion of the work of SE within this sector.

9. The need for clear interagency and interdisciplinary structures to support decision-making in relation to SE

Five respondents stated that, in order for SE to be developed within the Irish criminal justice sector, there is a need to establish a cross-agency structure to support and fund new SEs. This steering group structure was

seen as essential to the engagement of individual state agencies and as a response to concerns around the risks related to SE and potential failure of individual enterprises. There was agreement that key partners would ideally include the Probation Service, the Irish Prison Service and the Department of Justice, as well as individuals from the business and SE community with expertise in areas such as finance and procurement.

There was strong support for a co-ordinated interagency process for establishing SE within Ireland or within the criminal justice sector. This process would ideally be defined by clear terms of reference, external expertise, and training and information supports for all those involved as well as within the general agencies. The need for robust, transparent and fair decision-making processes in relation to resource allocation was also highlighted.

10. The need for funders to understand SE value propositions³

The need for senior staff within state agencies to have a better understanding of SE has already been noted. Aligned to this is the need for an agreement on the value proposition of SE that takes account of internal standards and research.

The notion of the need for a return on investment was well understood; however, little in the way of other detail or concrete definitions was offered in relation to value and the outcomes that could be expected.

Three respondents identified an opportunity for the state to gradually reduce funding after a term of four to five years as a core aspect of the value proposition. However, this potentially overstates the return that SE can realistically provide, while underestimating the time frame within which the SE could become self-sustaining.⁴ These comments point to a need to ensure that expectations in relation to the value proposition of SE are grounded in real examples from other jurisdictions, while considering challenges that may be specific to Ireland. It should also be remembered that SE is relatively new in Ireland and that many of the infrastructural supports may not yet be in place.

However, other respondents highlighted that there were significant opportunity costs of not having successful programmes to reduce

³ A brief business or marketing statement that clearly describes the benefits to a customer as to why they should buy a particular product or service (Emerson, 2003).

⁴ A recent report conducted with 33 SEs in Cork found that just under half ($n = 15$) had been in existence for 11 years or more. Only a quarter ($n = 9$) reported that they were fully self-sustaining (Gardner *et al.*, 2014).

recidivism, namely the cost of prison, and that the benefits of SE needed to be weighed against other models aimed at attaining similar outcomes, such as employment.

11. The need for SE to be contextualised within the overall criminal justice service provision continuum of care

The need for SE to have a defined place within the criminal justice service was noted. Two respondents stated that there is a clear need for new SE ventures to be able to articulate precisely why this pathway was appropriate and useful to them, and what separated it from other options.

SE could potentially provide supports to bridge the gap from courses or supported training programmes to employment. This gap is significant in some existing training programmes.

12. The role of state agencies as customers

Two respondents noted early in the interviews that the state had a role to play not just in supporting development and innovation of SE but also in purchasing or hiring from SE projects. Subsequently, all interviewees were asked whether they thought it was likely that the state criminal justice agencies would have adequate trust in criminal justice focused SEs to engage their services or buy products from them. Six of the eight respondents stated that, dependent on there being a need for the product/service offered, and it providing comparative value for money, this would be a positive and necessary development.

Respondents were asked whether they could identify a good or service that SE could provide to the criminal justice sector. The following list shows how frequently these services were identified across the eight interviewees:

- maintenance (3)
- cleaning (2)
- coffee shop in prisons for visitors (4)
- catering (2)
- recycling/handicrafts (1).

A significant theme was that in order for these potential opportunities to be actioned, certain structures or policies need to be put in place such as communications with staff, and practical considerations in relation to risk management, security measures and procurement rules.

13. Need for statutory leadership to support change in relation to procurement

The issue of awarding of contracts to SE through open tender processes was discussed with interviewees. It was noted by the majority that value for money was a major consideration of all procurement processes ($n = 5$). Respondents were also asked about whether they supported the idea of procurement processes giving weighting for social value, i.e. employment of ex-prisoners.⁵ This highlights potential for additional training and information in relation to the way that the state and SE conduct procurement within other jurisdictions. Five respondents supported this idea.

In relation to large service contracts (cleaning, maintenance, laundry, etc.), it was noted that there may be legal issues in relation to changes in contracting arrangements, which may present barriers to the state contracting SEs.

Another potential challenge identified was the minimum annual turnover clause⁶ in many procurement processes, which would be a significant potential barrier to many start-up SEs. The lack of a prior service provision history and satisfied client record was also viewed as a significant barrier to new SEs. However, these factors could also be managed through thoughtful changes in existing procurement practice.

While it was acknowledged that there would be both practical and perception-related challenges that would require specific targeted responses, the need for the criminal justice sector to explore its role as customer alongside that of funder was highlighted as requiring further consideration.

14. The challenge for new SEs in developing trust with customers

The need for new SEs to gain the trust of potential customers – and the challenge this presents – was seen as a key issue by the majority of respondents ($n = 6$). This was noted especially in reference to services where ex-offenders may have access to people's goods, space or private information. Leading on from this, some services were viewed as being harder to sell: one respondent saw window cleaning as a harder sell than

⁵ Social or community benefit clauses (CBCs) provide a means of achieving sustainability in public contracts by allowing procurement officers to build in a range of economic, environmental or social conditions into the delivery of contracts (Social Enterprise and Entrepreneurship Taskforce, 2012).

⁶ This process means that businesses will only be eligible to apply for a tender if they can provide evidence that they have a certain minimum amount of money in their accounts. This excludes many small businesses and SEs.

making coffee, because it would mean that workers had access to clients' personal space. However, this was not viewed as an insurmountable problem; rather as a factor that needed consideration and careful management. Also, as stated by one respondent, with many services – such as existing cleaning services in the Probation Service – Probation staff did not have information as to people's criminal history; it is possible that current cleaners are ex-offenders but this is not particularly noted or viewed as an issue. However, in the case of an SE operating in the criminal justice sector, these issues would be a key factor influencing customers' perceptions.

Trust was viewed as being intimately connected with governance and it was recognised that senior staff within an SE had a core role to play in relation to developing trust with potential commercial customers and establishing trust in the service's quality, a component of which would be related to security and safety.

There is significant potential for criminal justice services to become customers of emerging SEs that can provide a useful service. However, issues in relation to trust and service quality will need to be managed and much of this will be down to the leadership of new SEs. External quality marks could also be a useful aid in developing customer interest and trust.

Policy implications

SE is recognised as an alternative approach to reducing recidivism rates for offenders by providing supported employment opportunities on an ongoing basis. The purpose of this research was to explore the perceptions of key stakeholders involved in the provision of services in the criminal justice sector with a view to identifying factors that might support or inhibit the development of SE.

Stakeholders, despite a self-acknowledged limited understanding of SE, were open to the idea of developing SE as a means to achieving key goals in the sector. They exhibited a keen awareness of the problems that might be encountered in this development process, but these were not viewed as insurmountable.

Potential benefits to offenders, their families, criminal justice agencies and wider society were seen as the main reasons why the development of SE should be explored. However, in order for this development to be effective, a number of key considerations need to be addressed, which include cultural, structural and policy reforms.

For SE to reach its full potential within Ireland and not just within the criminal justice sector, first and foremost a cultural change is required at government levels. Clearly defined strategy statements and policy reform in the area of procurement are needed. State support in the form of financial incentives will also support the development of SE from the top down. Policy changes that allow state agencies to become customers of SEs will be of significant benefit.

Change also needs to occur within the criminal justice sector to overcome a culture of risk aversion, especially in terms of developing new funding mechanisms particularly for SEs. Strategies to address financial and governance risks will assist with the creation of flexible funding structures required for SEs to operate effectively and to be responsive to the needs not only of customers but also of the offenders employed by them.

If SE is to be supported and to achieve realistic outcomes in the criminal justice sector, funders need to have a clear understanding of the notion of value proposition. Learning from operational SEs in other jurisdictions would assist core funders to shape realistic expectations in relation to either financial or social returns for SEs working with people with offending backgrounds.

The development of SE within the criminal justice sector will be greatly enhanced if it occurs within the context of existing structures. SE has the capacity to fill the current gap between traditional training programmes – provided both in prison and in the community – and employment. Each SE operating within this sector should take adequate steps to avoid mission drift: losing focus on the essential personal development aspects of the enterprise.

Having appropriately qualified people who have the capacity to drive SE initiatives is fundamental to their success. Leadership, entrepreneurial skills and business experience are important components that support the development of SE but are often lacking in state agencies or community organisations. The absence of these core skills is an inhibiting factor but not an insurmountable one.

Finally, for SE to be an effective alternative approach to reducing recidivism rates and increasing employment for people with a history of offending behaviour, public perceptions need to be managed appropriately. Well-thought-out public relations and communication policies need to be developed so that the general public buys in to the concept of supporting an SE that has been developed to give people a

chance and, in return, creating safer communities for everyone. SEs in the UK and further afield have successfully achieved this, which proves that it can be done and done well.

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Chronic Offenders and the Syndrome of Antisociality: Offending is a Minor Feature!

Georgia Zara and David P. Farrington*

Summary: The aim of this paper is to delve into the psychology of chronic offenders by exploring not only their criminal careers but also their life stories. The *syndrome of antisociality* is relevant in so far as it explains how delinquent behaviour is a relatively minor aspect of a life characterised by extremely abusive parental relationships, emotional neglect, substance abuse, unemployment, social rejection, and domestic violence. This examination allows for a more integrative quantitative and qualitative explanation of why chronic offenders remained entrapped in a life characterised by an accumulation of failures and losses, in which their persistent offending is only one feature of their life development.

Keywords: Chronic offenders, criminal career, life failure, syndrome of antisociality.

Introduction

A criminal career is defined as a patterning of antisocial, delinquent, criminal and violent behaviour that characterises individual development over the life-course (Blumstein *et al.*, 1986). Not all offenders start their criminal careers at the same time: some are involved in only one offence and then switch back to a prosocial life for ever after; some persist in offending; while others become very prolific offenders, committing crimes frequently, escalating from less serious to more serious crimes, and following a lifestyle that precipitates them into a pattern of failure and maladjustment in many aspects of their life. These are called chronic offenders.

Little is known about who these offenders really are, and why they develop in the way they do. Nonetheless, research evidence (Zara and

* Georgia Zara PhD is at the Department of Psychology, University of Turin, Italy (email: georgia.zara@unito.it). David P. Farrington is at the Institute of Criminology, University of Cambridge, UK.

Farrington, 2016) shows that there is continuity and relative stability in offending. These individuals tend to have numerous criminal convictions, and mostly have an extremely versatile criminal career. Within the persisting chronic offender population, it is also possible to find some similarities in their personal, familial, and social features.

The aim of this paper is to explore the criminal careers of chronic offenders and to look at their case histories, in order to describe how and why their life has unfolded into an escalating antisocial pattern of personal, familial and social failure. Data from the Cambridge Study in Delinquent Development (CSDD) are used.

This paper will first briefly describe the CSDD, and then analyse who these chronic offenders are, and specifically explore the life histories of two of the most prolific offenders in the CSDD. Some aspects of prevention and intervention will be briefly addressed.

Criminal persistence

Persistence in offending is at the basis of criminal recidivism. Psychological and clinical longitudinal studies (Farrington, 1995a, 2007, 2010, 2012; Farrington and Loeber, 2014; Loeber and Farrington, 1998a, 2001, 2011; Loeber *et al.*, 2003, 2008; West and Farrington, 1973, 1977) are concordant in pointing out the importance of identifying the risk processes and criminogenic needs that, acting as stepping-stones, direct a person towards a persistent antisocial trajectory. While it is never too late to intervene, the early promotion of programmes of social integration, family support and schooling is critical as a buffer against social exclusion, individual maladjustment, family conflicts, school dropout, unemployment, and mental health problems.

Scientists (Hodgins, 2007; Loeber and Farrington, 1998b, 1998c; Moffitt, 1993) studying criminal recidivism have consistently recognised that a small group of offenders are responsible for the majority of crimes. Members of this small fraction, defined as chronics, represent about 5% of the age cohort, commit a large proportion of all crimes, and are involved in a considerable number of antisocial and violent acts.

The CSDD study and sample

The CSDD is a longitudinal prospective survey of the development of antisocial behaviour and offending in a sample of inner-city boys from

South London, who were mostly born in 1953. It is a unique project in criminology, and it is the longitudinal project that includes the most face-to-face interviews (nine, over a 40-year period from age eight to age 48) (Farrington, 2015). The sample was originally composed of 411 males first studied at age eight in 1961. These boys were chosen because they were in the second forms of six state primary schools in a working-class area of London, and therefore represented a traditional White, urban working-class sample of British origin.

The ethnicity of the CSDD sample reflected the ethnicity of families living in that area at that time: 357 boys (87% of the sample) were of British origin and White in appearance. Of the remaining 54 boys, 12 were Black, having at least one parent of usually West Indian or African origin. The other 42 boys were White and of non-British origin: from North or South Ireland, from Cyprus, or from another Western industrialised country (Australia, France, Germany, Malta, Poland, Portugal, Spain or Sweden) (West, 1969).

Moreover, these males were followed up to age 56 for their offending (Farrington *et al.*, 2013b) and criminal records (Farrington *et al.*, 2013a, 2014, 2015). Convictions were only counted for the more serious offences (excluding motoring offences) normally recorded in the Criminal Record Office or Police National Computer.

Chronic offending

The definition of chronic offenders is not consistent across studies. Chronicity in offending is often confused with violent offending. While individuals who commit a large number of offences are more likely to commit a violent crime sooner or later (Farrington, 1991b), the fraction of crimes that are violent is not greater for chronic offenders than for other offenders (Farrington and West, 1993). Research findings (Hanson, 2005, 2009; Hanson and Bussière, 1998; Hanson and Morton-Bourgon, 2009) show that violent offenders are more likely to recidivate with a non-violent than with a violent crime, and this also applies to chronic offenders.

Chronic offenders are more likely to have an early onset and a later age for their last conviction, are more likely to be involved in a pattern of maladjustment and antisociality, are more likely to engage in a variety of offences as their criminal career continues, and are less likely to desist spontaneously from a criminal career. In most cases, their criminal interruption is the result of a tragic event such as illness or death, rather than an acted-out choice of changing their lifestyle.

How are chronic offenders defined in the literature?

For Wolfgang and colleagues (1972), chronic offenders are individuals with five or more offences prior to age 18: a small percentage (6%) of the 1945 Philadelphia Birth Cohort was responsible for over 50% of the criminal acts.

Different explanations for chronic offenders have been proposed. It seems that chronic offenders are most likely to discount the future consequences of behaviour in favour of immediate rewards (Wilson and Herrnstein, 1985), and to make a general and subjective assessment of the causes of their offending that may reflect their belief in an *unjust world* and in an acquired *broken self*. It is likely that these self-perceptions sway their conduct (Agnew and Messner, 2015). According to the general theory of crime (Gottfredson and Hirschi, 1990), chronic offenders are the individuals who are lowest in self-control (i.e. they have the highest criminal propensity). It is not unusual for chronic offenders to develop from a combination of neuropsychological deficits and a disadvantaged environment (Moffitt, 1993), and to experience poor parental and coercive interactions in childhood (Patterson, 1982, 1995).

Chronic offenders are widely recognised as habitual offenders or career criminals (DeLisi, 2005), responsible for a disproportionate amount of crime (DeLisi, 2001). However, apart from the criteria adopted by Wolfgang and colleagues (1972) to distinguish chronic offenders from other persistent offenders, none of the above studies specified a *cut-off* point. Looking closely at the criteria of ‘five-plus’ offences to define chronicity (Wolfgang *et al.*, 1972), Blumstein and colleagues (1985) argued that it is arbitrary because it is unknown whether other definitions of chronicity, based on more objective criteria, would identify the same individuals and/or lead to similar substantive conclusions.

Piquero and colleagues (2007), using longitudinal data from the CSDD, assessed the criminal careers of offenders who accumulated five or more convictions up to age 40. In their analysis, 53 chronic offenders accumulated many offences, mostly non-violent (e.g. thefts and burglaries), and their average number of years between the first and fifth convictions was 6.35 years. Their analysis suggested that being a chronic offender significantly predicted whether an offender would commit a violent crime. Piquero and colleagues (2007: 138) concluded that the five-plus designation of offending chronicity ‘appears more arbitrary than a true reflection of the persistent population in the CSDD’.

In a more recent examination of chronic offending, Zara and Farrington (2016) focused their attention on chronic offending based on the CSDD data, but used a more conservative criterion of 10 or more convictions for inclusion in the high chronic category. Under this definition, 28 offenders qualified as high chronic offenders out of a sample of 118 recidivist offenders. This paper focuses on these chronic offenders.

Chronic criminal careers

The CSDD sample analysed in the work of Zara and Farrington (2016) was composed of 404 men at risk, of whom 167 became offenders (41.3%) (see Table 1). Among this offending group, 118 were recidivists (70.7%), who persisted in offending after the first conviction and incurred at least two convictions.

These recidivists were distinguished into: *low* chronics ($n = 62$), i.e. offenders who had two to four convictions; *ordinary* chronics ($n = 28$), who had five to nine convictions; and *high* chronics ($n = 28$), who had 10 or more convictions (see Table 1). This distinction was made as a result of assessing the *antisocial syndrome* that constituted the scaffolding for the offending continuity and was not based on the seriousness of their crimes. High chronics were more likely to come from a very unstable and neglectful family background, had an earlier age of onset (before age 14), had longer criminal careers (on average over 21 years), had a later age of the last conviction (over 35), had more offences and convictions (on average over 14), and developed a problematic and maladjusted lifestyle.

In their multivariate analyses, Zara and Farrington (2016) found that the 28 high chronic offenders (6.9%) were responsible for 417 offences (51.6%) out of the 808 total offences of the entire sample.

Because of their longer involvement in a criminal career, high chronic offenders in the CSDD were significantly more likely to be involved in a number of different crime types (having a *variety offending index* of 6.96) compared to ordinary chronics (4.43 different crime types) or low chronic offenders (2.32 different crime types), and one-timers (one crime type). They were more likely to be involved in a versatile criminal career (e.g. including acquisitive crimes and violent crimes) rather than being specialised in any specific or violent type of crime. Rather than escalating from a less serious to a more serious pattern of offending, they showed continuity in versatile criminal behaviour.

Table 1. Criminal careers of the CSDD offenders: one-timers, recidivists, chronics (age/time in years)

	<i>Offenders</i> (<i>n</i> = 167)	<i>One-timers</i> (<i>n</i> = 49)	<i>Recidivists</i> (<i>n</i> = 118)	<i>Chronics</i> (<i>n</i> = 28)
Average age onset	19.11	23.00	17.49	13.78
Average age last offence	28.18	23.00	30.33	35.15
Average career duration	9.07	–	12.84	21.37
Min. career duration	.00	–	.00	3.44
Max. career duration	41.42	–	41.42	41.42
Active career duration	8.82	–	12.48	20.09
Average no. of convictions	4.84	1.00	6.43	14.89
No. of men incarcerated	44	2	42	24
% incarcerated	26.3	4.1	35.6	85.7
Average time served	1.34	.85	1.37	1.86
Min. time served	.04	.72	.04	.17
Max. time served	15.84	.97	15.84	15.84

Adapted from Zara and Farrington (2016: 50). Recidivists = those with two or more convictions; chronics = those with at least 10 convictions; recidivists includes the 28 offenders who were chronics. Active duration career = time served in years. Max. career duration: one male was first convicted just after his tenth birthday and finally at age 51. Active career duration: excluding time served. Average time served was based only on men who were incarcerated. Six men were incarcerated only after their last conviction.

When an active offender is prolific (i.e. commits a considerable number of crimes) it is in fact quite unlikely that he would commit violence in any particular offending event. Violence, when detected, is more likely to be followed by incarceration. Thus, if chronicity were significantly related to violence, it would be unlikely that chronic offenders would be as prolific as they are, because of their lower time at risk. Farrington (1991b, 1998) studied the predictors, causes and correlates of male violence, from childhood aggression to adult male violence, and found that violent offences were committed randomly in criminal careers. While their antisocial persistence could be predicted, given their lifestyle and their past behaviour, it is this *randomness* (i.e. the lack of pattern or predictability of violent events) that constitutes a rather complicating factor, not least because it makes any risk assessment more difficult. Hence, any form of intervention becomes a sort of emergency response.

It therefore seems unlikely that antisocial chronicity could be understood if divorced from the *syndrome of antisociality*, which is its fundamental core.

The syndrome of antisociality

The crucial aspect of chronic offending is the persistence over time of a prolific patterning of antisocial and delinquent activities, so that any previous experience of convictions seems not to have exerted any dissuading influence from offending. Is it adequate to focus only on the behavioural antisocial dimension of criminal careers, or, in order to understand chronic offenders, does one have to look beyond criminal behaviour? Research findings suggest the latter.

Farrington (1997: 363) describes how crime appears ‘to be only one element of a larger syndrome of antisocial behaviour which arises in childhood and usually persists into adulthood’. West and Farrington (1977) referred to this as ‘the delinquent way of life’, and similar conclusions were drawn by Walters (1990). Research findings are consistent in demonstrating that individuals who are persistently involved in delinquent behaviour also exhibit difficulties in adjusting to other areas of their life, which lead to familial conflicts, family disruption and marital breakdown (Lussier *et al.*, 2009; Maughan and Rutter, 2001; Theobald and Farrington, 2009, 2011, 2012a), broken homes and adult violence (Theobald *et al.*, 2013), domestic violence (Piquero *et al.*, 2006; Theobald *et al.*, 2016), pathological aggressiveness and hostility (Freilone *et al.*, 2015), procriminal and distorted thinking (Andrews and Bonta, 2010; Zara and Farrington, 2016), anti-establishment attitude (Farrington, 2003), poor physical health, accidents and injuries (Farrington, 1995b), unemployment and economic problems (Jennings *et al.*, 2016; Laub and Sampson, 2001; Moffitt *et al.*, 2002), drug abuse and heavy alcohol use (McCollister *et al.*, 2010), neuropsychological and emotional impairments (Raine, 2013), mental problems and personality disorders (Farrington, 1991a; Freilone, 2011; Fornari, 2015).

Criminal behaviour is in fact one of many manifestations of a *syndrome of antisociality* that is pervasive in an individual life and influences not just conduct but how the individual functions: ways of relating to people, of taking social and professional responsibilities, of bonding with others and building up a family life, and of educating children.

Understanding the psychology of chronic offending

Chronic criminal careers do not appear in a psychological or familial vacuum. In the CSDD, the life development of the high chronic offenders was characterised by family disruption, parental negligence, abuse and

neglect, emotional solitude, social deprivation, and psychological desperation, with their delinquent behaviour being just one aspect of a bigger picture. Farrington and colleagues (2006) studied aspects of life success at ages 32 and 48 and how they were related to offending.

Could these men have become prosocial rather than high chronic offenders?

This is a question that touches upon the core issue of primary prevention. When we look back at the lives of chronic offenders, everything appears to fall precisely into a systematic pattern in which one event could not result in something other than offending, and offending persistently. Even though it is difficult to predict with certainty what a person will become or how they will react, research findings are concordant (Armstrong and Kelley, 2009; Fergusson *et al.*, 2005; Wolff and Shi, 2012) in recognising that continual exposures to early adverse and traumatic experiences have both an immediate and a distal impact in putting in motion a cumulative and escalating antisocial sequence.

Two life stories of high chronic CSDD offenders exemplify these ideas. They convey a sense of what it means to grow up in extremely problematic family conditions, where parental affection and support are optional rather than a secure basis to lean on.

The stories of two individuals, Jordan¹ and Matthew, epitomise the lives of many of the high chronic offenders in this study, in showing the development of criminal careers and their worsening transformation over time (for the case histories see Zara and Farrington, 2016). They elucidate the risk factors, criminogenic needs and risk processes that have played a significant role not only in early antisocial onset but in the maintenance of their long-lasting offending career.

The case of Jordan

Jordan was born in 1953 and lived with his parents and siblings in a rambling and deteriorated maisonette, part of a public house. Jordan's parents were very unhappy but they stayed together for over 10 years because of the children. Jordan had two sisters. He had a paternal half-brother and half-sister, and also a maternal half-sister.

When Jordan was five years old, his mother left home without explanation. Jordan's father looked after the children on his own until his

¹ Names and some details have been changed to protect confidentiality and ensure anonymity.

remarriage. Neither father nor stepmother was punitive, though it was very difficult for them to be affectionate, effective and coherent in their attitude to the education of the children.

Childhood

The sudden separation from his biological mother was extremely traumatic for Jordan. He needed constant reassurance and was always looking for attention.

Despite being sociable, Jordan was described by his father as a bit callous and insensitive towards others. At school Jordan did quite well in some subjects, such as English, but lacked concentration. He did not show any particular behavioural problem in childhood and his level of antisociality at age 10 was low.

Adolescence

In adolescence, Jordan became uninterested in school; his school reports were poor and he truanted frequently. His parents had difficulty in dealing with Jordan's transgressive behaviour, and relied on the school to exert discipline.

At age 14, Jordan's rebellious behavior was continuing, with frequent displays of immaturity. He also held an anti-police attitude, became a quite aggressive adolescent, often involved in daring or risk-taking activities, and self-reported (at ages 14 and 16) high levels of involvement in delinquency with peers. When 14, he went before the juvenile court for using a motor scooter without a licence.

Jordan left school rather precipitously at 15. Between ages 15 and 18 he had various short-term employments including office work, garage attendant and furniture removals. According to his parents, the general situation with Jordan had improved when he applied for a job as a clerk in a computer firm, in which there was scope for future prospects.

In late adolescence, Jordan appeared fairly self-contained; he had a number of friends but no particular interests. He was happy to spend evenings watching television, and Sunday afternoon at the cinema.

Young adulthood

At age 19, Jordan became a soldier in the Army, but he described this experience as terrible: he was dishonourably discharged because of drug possession and supply. When he was interviewed at age 19, his general health was good, even though he smoked compulsively. He complained of

uneasiness with his sleep, and he recollected that even when he was younger he had interrupted sleep patterns.

Jordan was quite impulsive, was a frequent consumer of cannabis and other drugs, and often drove after drinking. He had no significant intimate relationships but many casual girlfriends. He was an active football hooligan, and had some gambling problems.

He self-reported high delinquency and violence, and manifested a high level of antisociality. Jordan recounted his antisocial experiences with a sense of pride and lack of remorse. During the interview, it seemed that he used the interviewer as an audience to vent his anxiety over his experiences, especially during military service in Northern Ireland.

Adulthood

At age 21, Jordan's job pattern was quite unstable. He had left his job as a barman in the family's pub after a year, following a disagreement with his father. He was then employed as a caretaker and handyman, but lost the job through absence. He started to work as a roofer's labourer. During the interview, Jordan was collaborative, though his tendency to recount his convictions, aggrandising them with fantasy, was still strong.

Jordan left home at age 21 to live with his common-law wife, with whom he had a child at age 24. His lifestyle was untouched by his fatherhood, and he continued to smoke compulsively, drink heavily, and be involved in numerous fights. He went out every evening, and was sexually promiscuous.

When Jordan was 26 years old he was re-interviewed. He was working for a roofing and tiling firm, and was happy with it. At this time, Jordan separated from his partner, towards whom he was physically abusive. His lifestyle was characterised by heavy drinking and cannabis and cocaine use, his involvement in fights was always central in the description of his social activities, and he had no stable relationships.

Jordan had another child with his previous cohabitee but contact with this child was limited. At this stage, Jordan lived with two friends, and all three were involved in drug dealing.

Jordan was re-interviewed at age 32. He reported a high level of anxiety and depression as measured by the General Health Questionnaire. His aggressiveness and antisociality levels were extremely high. He continued to consume large quantities of alcohol and drugs. By this stage, Jordan was living in a rented flat with his second wife, and they had a daughter. Jordan had infrequent contact with three daughters from his previous

marriage. He described the relationship in positive terms, despite frequent episodes of physical violence.

When Jordan was aged 48, he was interviewed again. He was now single, unemployed and lived on benefits. Jordan described his life as a disaster, not least because he had been a heroin addict for 20 years, and had been in and out of court and prison almost all his life. Figure 1 shows Jordan's time-line, characterised by many of the significant events that marked his antisocial life in a continuum from sad to bad to worse.

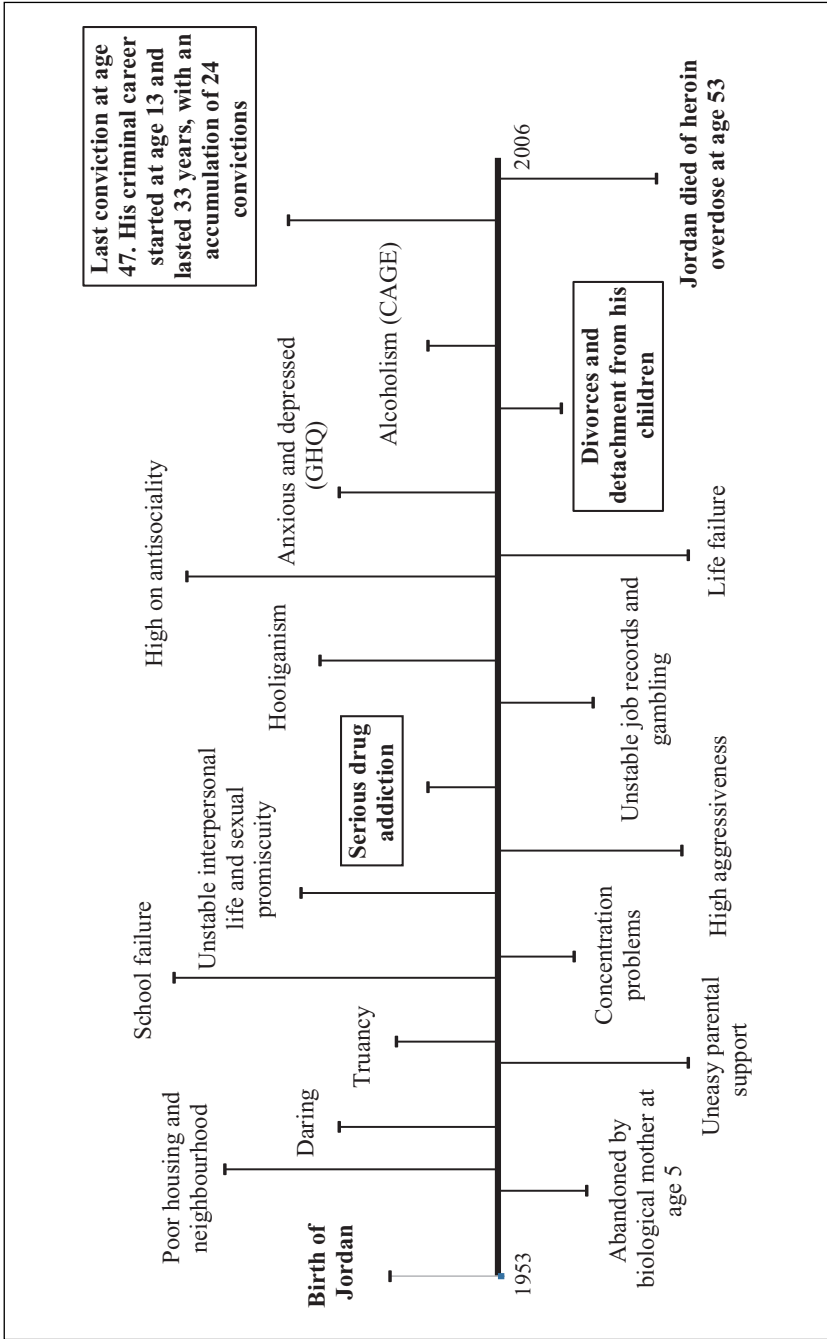
After four overdoses, Jordan was admitting that he had had a serious drug addiction. He wanted to start a new life, and mentioned that he would soon be going into rehabilitation again. This never occurred, because he died at age 53 from heroin abuse.

Jordan's life was marked by failure. His criminal career started when he was aged 13, and lasted until he was almost 47 years old. His first criminal offence with others was taking and driving away a motor vehicle. The length of his criminal career was 33 years, of which over five years was spent in prison. He was convicted for 24 offences (committed on different days), and his index variety of offences was 10, indicating that he committed 10 different types of offence out of 18. His most serious convictions were armed robbery and antique theft. He frequently appeared in court for cannabis possession.

According to the personality disorder examination at age 48 (using the SCID-II; Spitzer *et al.*, 1990), Jordan showed severe signs of lack of remorse, callousness, irresponsibility, and difficulties in investing in intimate and personal relationships. While he expressed regret for failure in his personal relationships, he seemed almost resigned to a solitary life in which other people were important only in so far as they could be temporarily useful. It seems that his life was a desperate search to find a 'holding harbour' to build up a sense of confidence and trust in significant others.

Jordan met the criteria for a schizoid personality. He was extremely antisocial and his tendency to disrespect social norms was assessed as pathological, as was his level of impulsivity, his reckless behaviour, and his lack of remorse; he met the criteria for antisocial personality. The Psychopathy Checklist – Screening Version (PCL:SV; Hart *et al.*, 1995) was administered to him; his level of psychopathy was 15 (very high), with 5 points on Factor I (affective/interpersonal) and 10 on Factor II (irresponsible/antisocial lifestyle).

Figure 1. Unfolding events in Jordan's life



The case of Matthew

Matthew was born in 1953 and was of English–Irish origin. The family was composed of two parents and seven children: four boys and three girls. All the older children had been in care. They lived in a four-bedroom terraced house, which was reasonably well furnished, although it did not have a bathroom or hot water. Matthew's parents struggled with financial difficulties. The father had made a bigamous marriage and he continued paying money to his first wife, with whom he had three other children.

Matthew's mother came from a family of eight children. Her early life was difficult and she reported a criminal record. When she left her husband in 1963 because of one of his extremely bad drinking bouts, she took the children with her. Eventually she returned; her husband did not drink subsequently and started to work on a more regular basis.

At times she was very depressed, and suffered from sleeplessness and headaches. Her considerable strength was her adeptness in telling a sorry story to people in such a convincing and appealing manner that she left any listener overawed. She was quite attached to Matthew, who was her eldest son, and was very concerned about Matthew's first offence at age 10.

Matthew's father was Irish and was the third of 14 siblings. He had some health problems, drank heavily and had a quick temper. He had been arrested at various times, and had five convictions. One burglary was committed with two of his children, one of them being Matthew. He had a very unstable history of employment.

Childhood

Matthew was very much an unwanted child. The climate in which he grew up was poor, not only because of the deprived and neglectful parental attitude but also because of the disharmony of family interactions. The first years of Matthew's life were characterised by loss and continual disappointments. When he was aged three, there was an application to place the children in care. Matthew spent the next five years in residential care, an experience that precipitated him into emotional turmoil. His mother rarely visited him. He suffered from a sense of rejection that became stronger as the periods between visits grew longer. In 1961 his mother suffered a health problem, which delayed the return home of the children. When Matthew first returned home he was eight, and started to show some signs of emotional problems, being afraid of the

dark, being moody, and wandering off without telling his mother where he was going.

From age 10 Matthew started showing a daring attitude, a high level of antisociality and impulsiveness, and behavioural problems. When he was aged 11, a psychiatric report indicated that there was no sign of physical disorder nor any evidence of formal illness or severe emotional disturbances, even though he started to manifest some signs of neuroticism (on the NJMI²) and was assessed as a quite vulnerable and high-risk child, not least because of his long period of institutionalisation. Matthew was of low intelligence, his verbal and performance IQs being 87 and 86 respectively on the WISC; his reading age was five years, indicating his continuing need for remedial tuition.

Matthew was a shy and small boy for his age, and attempted to compensate through fantasy and by identifying with bigger, older boys. He was never at a loss for words, especially when defending his rights or his innocence, and despite his dislike of criticism, he was able to listen. At around age 12, Matthew started to truant from school to feed pigeons. He became a regular smoker at 13 years of age, and his antisociality began to emerge and continued to be high throughout his adolescence. He had a bullying attitude, and frequently he lied to justify his behaviour.

It was evident that Matthew needed a great deal of encouragement and affection from significant adults. In 1965, with the help of a Probation Officer, Matthew made excellent progress at school, and he was developing considerable self-confidence. He no longer associated with the local delinquents but spent some of his time indoors playing with his brothers or with his classmates. At age 14, Matthew failed to achieve expected educational standards; he started to exhibit some concentration difficulties that led to poor school attendance. His peers rated him as dishonest and unpopular.

Adolescence

Matthew left school at age 15, and subsequently had intermittent work as a metal worker, a packer, a waiter and also as a greengrocer's assistant, which was the longest spell of work (six to seven months) until the firm closed. He continued to have difficulties in concentrating, and was aggressive and daring. He developed a strong anti-police attitude, was involved with delinquent friends, started to steal outside home, and self-reported high involvement in delinquency.

²The New Junior Maudsley Personality Inventory (Furneau and Gibson, 1966).

When Matthew was 16, he was remanded in a detention centre. The psychologist who met Matthew in 1969 said that he functioned at the low average level of ability, but potentially his ability was within the good average range. His verbal and performance IQs were 89 and 93 respectively (on the Wechsler Bellevue Scale for adolescents and adults). Matthew could read for practical purposes, but he came within the dyslexic category when he had to do spelling and written work. On the other hand, he was able to perform at a good average level of ability in practical tasks.

The encouragement Matthew received from school and the Probation Officer who supervised him was not sufficient to compensate for the pangs of loneliness and neglect he endured during his childhood and adolescence. He tended to opt out of difficult situations. He was quite malleable and gullible, and easily influenced by delinquent friends.

Young adulthood

At age 18, Matthew's antisociality continued to be high: he was a consumer of cannabis, other drugs and alcohol. He had a high level of neuroticism and a very aggressive attitude. He often got involved in fights, and had some problems in finding a job. His criminal career was by this stage very active and prolific. Matthew got married at age 20 and had a son. However, he had frequent rows with his wife, and because he continued to consume large amounts of alcohol and drugs, he was quite unstable and abusive at home.

Adulthood

When Matthew was interviewed at age 32, he lived with his wife and son. His level of life failure was extremely high, and he was assessed as very high in alcoholism on the CAGE test (Mayfield *et al.*, 1974). Something significant was his interest in his son. His son was not a problematic boy but, at times, he was disobedient, got involved in fights, and had some temper tantrums. Matthew wished to give his son the love, warmth and affective parental presence that he had never experienced. At age 32, Matthew's health condition seemed good. He was banned from driving because of a drink driving offence. His working pattern continued to be unstable, and he went through some unemployment periods over the years.

There was no doubt that Matthew's life was complicated by his antisocial attitude and social behaviour. Matthew mentioned that he felt

downtrodden by life events, less able than usual to face up to his own problems, and was continuously feeling nervous.

When Matthew was 49, he was interviewed again. His situation had evolved rather dramatically in the previous 17 years. Matthew had split up with his wife about a year earlier, and he did not have a stable occupation. He was in debt, and homeless.

There was no doubt that Matthew's problems stemmed from his childhood. It was too painful for him to answer many of the questions about his childhood or even about his siblings. He freely admitted that he drank to block out the pain of his past.

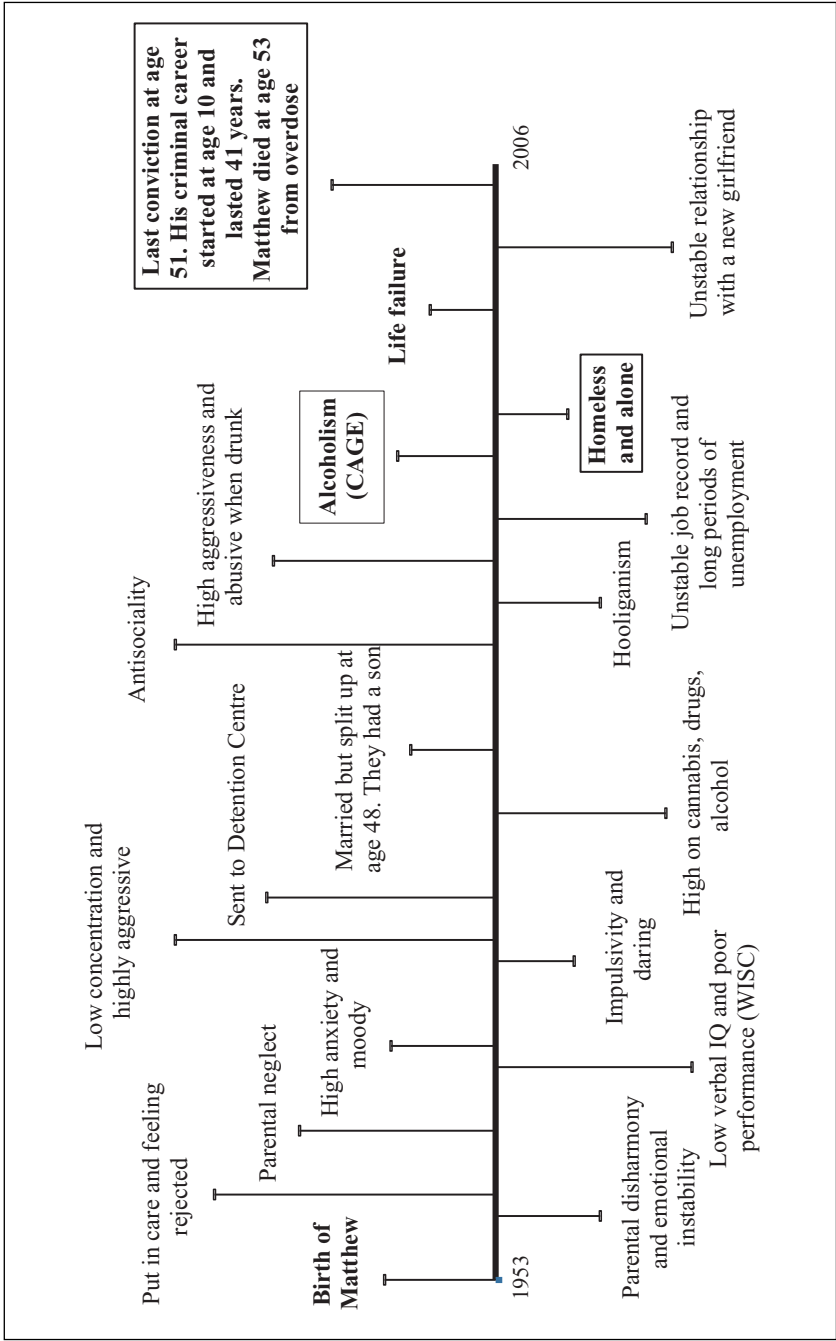
Matthew was trapped in a vicious circle: his life history was characterised by a succession of failed attempts to stop drinking and drug abuse. The alcohol interfered with his work, his work was sporadic, and his need to drink increased. Matthew admitted that he could fly into a rage, described as 'a red mist that comes into me'. That rage had contributed significantly to destroying his interpersonal world.

Matthew seemed powerless to stop his destructive ways, despite much intervention. He continued to be extremely antisocial, and was actively involved in criminal activities. At the time of the last interview, he had a new girlfriend, but it sounded like an unstable relationship which seemed to strengthen his need to drink.

Matthew's criminal career was long. He had offended all his life since age 10, was an active football hooligan, and was involved in violent acts from an early age. His last offence occurred when he was aged 51, and his criminal career lasted over 41 years. He spent just over one year in prison. He was a prolific and versatile offender who was convicted for 31 offences. His variety index indicated that he was involved in 12 different types of crime, and four of them were violent and sex offences.

What emerged was that Matthew did not have much hope about being able to do anything to change his life. He died suddenly at age 53, possibly because of a drug overdose and alcohol abuse (according to his wife). His time-line (see Figure 2) is a description of the syndrome of antisociality, which shows that offending was the minor problematic aspect of his life. In adulthood, what represented an impediment to his recovery was a pervasive suffering, a rooted sense of powerlessness and a fatalistic sense of unchangeability. It is evident that this damage was caused by intense experiences of marginalisation, emotional neglect, early institutionalisation and antisocial maladjustment.

Figure 2. Unfolding events in Matthew's life



Conclusion

Jordan's and Matthew's lives provide a picture of the complexity of variables involved in a high chronic criminal career. Their case histories 'breathe life into dull statistics' by describing how negative and traumatic events were strongly associated with a wide range of behavioural problems and clinical symptoms that impaired their personal lives.

In most chronic offenders in the CSDD, and especially in Jordan and Matthew, the representation of their ideas about themselves, their lives, and significant others tended to be rigid, maladaptive and defensive. The world was perceived as a place in which they had to be prepared for combat and attack. They became disincentivised to take another person's point of view arising from the abuse, neglect, abandonment, disappointments, ambivalence and loneliness they experienced.

Mental health and personality disorders are relevant in understanding how Jordan and Matthew functioned in the world and *disregulated* their social behaviour. Their lives were characterised by a constant struggle to solve adaptive tasks relating to identity or self, intimacy and attachment, and prosocial behaviour. It appeared that they were left almost disarmed, and this may have contributed to their failure to establish coherent representations of self and others and respond to them accordingly (Freilone, 2011; Livesley, 2007).

Beyond the individual differences that highlighted the uniqueness of Jordan's and Matthew's stories, a pattern of similarity seems to be present in all of the chronic offenders in the CSDD. Their life development was tainted by rejection, insecure parental attachment, solitude, ambivalence and aggressiveness.

Research shows that it is not unusual for individuals who come from such an environment, and experience systematic forms of family difficulties, to become vulnerable both in terms of adjustment to life and in terms of their *reactive mental state*: they are likely to emotionally rebuff, 'mentally expel, impulsively discharge, refuse, distort, or inhibit what is currently being activated, thus defending themselves against it' (Bouchard *et al.*, 2008: 49).

Jordan and Matthew learned that the way to cope with life events was by denying or dismissing environmental threats. Their interpersonal pattern was characterised by detachment and lack of commitment, and it was no surprise that they had difficulties in establishing long-term relationships. They seemed to exhibit what Bowlby (1980) called

compulsive self-reliance in so far as they reacted as if disclaiming the need for and the importance of close relationships (Lapsley *et al.*, 2000). Moreover, they also appeared to have accepted the burden of continuing to experience a sense of frustration as an inevitable part of their destiny (Bennett, 2005). An underlying pattern of antisociality and maladjustment cast a shadow over their childhood, adolescence and adulthood.

Later life events were also relevant in contributing to ongoing offending and especially to impaired psychological and family life. The level of continuity between the development of antisociality in children and adolescents and involvement in partner violence in adulthood was remarkable, as shown in other studies (Lussier *et al.*, 2009; Theobald and Farrington, 2012b). Even though, in the CSDD, childhood antisociality did not predict intimate partner violence (IPV) independently of offending (Piquero *et al.*, 2014), antisociality that started early, persisted in adolescence and throughout adulthood was the main risk factor that influenced later partner violence.

Jordan's and Matthew's lives were handicapped by their difficulty in gaining emotional mastery and a sense of trust in themselves and in significant others. The void of loneliness became the tunnel that contained their adult lives, and that led them to dramatic and premature ends.

Research (Farrington, 2003; Sanders, 2004; Schindler and Black, 2015; Sherman *et al.*, 1998, 2002; Webster-Stratton and Taylor, 2001; Webster-Stratton *et al.*, 2001, 2004; Welsh and Farrington, 2012; Zara and Farrington, 2014) shows that specific multimodal levels of intervention could be really effective with chronic offenders, given the variety of criminogenic needs burdening their life, and also because 'it takes severe biographical shocks [better described as 'turning points'] to disintegrate the massive reality internalized in early childhood' (Berger and Luckman, 1966: 142).

Desistance from an antisocial life style is not a *private matter* that is accomplished once the risk factors and problematic aspects in the person's life are identified. Assessing the risk is in fact just the first step of planning intervention.

Interventions should not just target antisocial behaviour, but should address the psychosocial reality and the emotionally distressed climate experienced in the family, at the earliest stage. Empirically supported interventions for chronic offenders require active and sustained participation of their families, the school and the social services; they are resource-intensive and they are long-term. The most effective early

intervention programmes include cognitive behavioural skills training, general parent education, parent management training, preschool enrichment programmes, and mentoring (Farrington and Welsh, 2007).

Intervention programmes to promote mental and social well-being, to assist families at risk, to restore a sense of self-confidence, to encourage educational interests, to develop vocational skills, to reduce social isolation, and to treat drug or alcohol abuse contribute to curtailing the chances of people like Jordan and Matthew entering the stark reality of the chronic offender. It is never too late to intervene...

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‘Learning the Basics of How to Live’: Ex-prisoners’ Accounts of Doing Desistance*

Vicky Seaman and Orla Lynch[†]

Summary: In recent years desistance has come to be understood as a life-course process, and has in some instances been compared to the journey out of addiction: a process of recovery. Importantly, desistance is not conceived of as a definitive point in time whereby an offender becomes a non-offender, but as a series of decisions and associated actions that increasingly move a person further away from a life of crime, with relapses common along the way. This paper is concerned with the idea of *doing* desistance; not in terms of the delineation of the process, but in the *experience* of those voluntarily embarking on a desistance journey. Through the analysis of the accounts of ex-prisoners engaged with the Cork Alliance Centre (CAC), the paper explores the personal and social experiences of clients as they reflect on their engagement with CAC. Through a thematic analysis of interview data, key higher order themes emerged: shame, the notion of a new life, relationship management, identity, mental health, hope, trust and safety. Results of this analysis reveal that intangible issues dominate ex-prisoners’ understanding of their desistance journey.

Keywords: Desistance, ex-prisoner, release, resettlement, reintegration, relapse, Probation, prison, shame, identity, mental health, hope, Cork.

Introduction

Glaser laid down a challenge to the emerging discipline of criminology in 1964 by suggesting that the field should shift its focus away from the ‘search for the processes that make for persistence in crime to [the] development [of] a theory on the conditions that promote change from crime to noncrime and back again’ (cited in Maruna, 2001: 22). Glaser

*The opinions expressed in this paper are the authors’ own and may not reflect the views of Cork Alliance Centre (CAC) or their funding bodies.

[†]Vicky Seaman is a Support Worker with CAC and a PhD candidate in Criminology at University College Cork. Dr Orla Lynch is a Lecturer in Criminology at the Department of Sociology, UCC (email: Orla.lynch@ucc.ie).

was in effect describing what has become known as the study of desistance, an undulating process that documents an individual's often tortuous and intricate move from offending to non-offending (Weaver and McNeill, 2007).

In recent years desistance has come to be understood as a life-course process, and has in some instances been compared to the journey out of addiction: a process of recovery (Maruna, 2001). Importantly, desistance is not conceived of as a definitive point in time whereby an offender becomes a non-offender, but as a series of decisions and associated actions that increasingly move an individual further away from a life of crime, with relapses common along the way (Maruna, 2001; Weaver and McNeill, 2007).

This paper aims to understand the experience of *doing desistance* for clients of a project in Cork, Ireland known as the Cork Alliance Centre (CAC). In addition, it aims to elucidate the role of CAC in supporting the desistance process of its clients. Cork is a region in the south of Ireland with over 500,000 inhabitants (CSO, 2016) served by a small male prison with an occupancy of 210 (Irish Prison Service, 2016). Female prisoners are held in one of two dedicated prisons (or wings) in other areas of the country (Irish Prison Service, 2014).

Funding for the CAC is provided by the Department of Justice and Equality through the Probation Service and the Irish Prison Service. CAC works with former prisoners with a view to reducing the likelihood of reoffending in addition to encouraging and enabling positive participation in family and community life. A primary focus of CAC is to facilitate the person on a journey of personal development, whereby they can explore alternatives to offending behaviours and develop skills to manage their lives more positively. Services available at CAC include, but are not limited to, one-to-one support and motivation work, in-house psychotherapy services, access to education, training and employment opportunities, access to housing support, support with access to addiction treatment services and alternative therapies. There are four full-time staff (CAC, 2014). In 2014, 330 people (87% male and 13% female) accessed services provided at the centre (CAC, 2014).

The clients who use the centre do so voluntarily. An in-reach service to prisons in Cork, Limerick, Portlaoise and Shelton Abbey provides an opportunity to introduce CAC to potential clients returning to the Cork area. Referrals come through the Probation Service, the Irish Prison Service, self-referrals, family members and other professional services. For

this paper, research was conducted with ex-prisoners who were clients of CAC with a view to understanding their evaluation and experience of their desistance journey.

Desistance: An overview

Maguire and Raynor (2006) recognise the complexity of social needs among ex-prisoners, particularly those serving short sentences. They refer to the fact that ex-prisoners struggle continuously to overcome social and structural barriers, a process that seriously undermines a person's motivation for change as well as limiting the options available to them. This analysis accurately reflects the situation of ex-prisoners in the Irish context.

In Ireland, 60% of people serving short sentences have a history of homelessness. Overall, prisoners in Ireland are 25 times more likely to come from, and be released back into, a socio-economically deprived area (Irish Penal Reform Trust (IPRT), 2016). A 2014 study by the National Advisory Committee on Drugs and Alcohol (NACDA) shows that the prevalence of drug use among the Irish prison population is significantly higher than that of the general population, with cannabis use at 86%, benzodiazepines at 68%, cocaine at 74% and heroin at 43% (NACDA, 2014: 53). Education levels are low among the prison population, the majority of whom have not sat a state examination and over half of whom left school before the age of 15 (IPRT, 2016). In Ireland 70% of prisoners are unemployed on committal and do not report having any occupation or trade (IPRT, 2016).

The ex-prisoner faces complex personal and social challenges. While these challenges have been documented in the international literature, desistance is inherently local. Supporting desistance involves a nuanced understanding of the dynamics that sustain and potentially encourage the move away from crime in a local area, as 'choices are always influenced by the structural, situational, and cultural contexts in which they are made as well as the background characteristics of the individuals who make them' (Healy, 2010: 439).

While the personal and social needs of ex-prisoners along with access to local services dictate the *trajectory* of a person's desistance journey, the process of desistance is informed by the significant body of work that exists within the disciplines of sociology and criminology addressing offending and crime (Sampson and Laub, 1999; McCulloch and McNeill, 2008;

Bateman and Pits, 2005; Kazemian, 2007; Piquero *et al.*, 2007). Many theories serve to inform our understanding of offending, from the maturational reform theory, focusing on the physical and cognitive changes that happen as a person ages and contribute to a reduction in the likelihood of criminal behaviour (Glueck and Glueck, 1974, cited in Crank, 2014) to social bonds theory, advocating that normative social processes, such as employment or marriage, encourage ‘conformity’ (Bushway *et al.*, 2001).

While both these theories offer insights into the emergence of non-offending, they do little to inform us *how* either maturation or the development of appropriate relationships is linked to the choice to desist from crime (Geiger, 2006; IPRT, 2012). Recognising this, other theories focus on the process of change itself. Giordano *et al.*’s (2002) theory of cognitive transformation focuses on openness to change, particularly a person’s ability to imagine and construct a new identity.

Narrative theory applied to the study of desistance seeks to understand the personal development journey a person takes when trying to effect change in their lives. Maruna (2001) has examined the *narrative* tools used by people who desist from crime compared with those who persist in offending. He refers to identity development in adulthood, and how it involves ‘integrating one’s perceived past, present, and anticipated future’ (2001: 7) in order to give meaning and purpose to life. Maruna highlights that for ex-offenders to move forward with change, they have to ‘develop a coherent, prosocial identity’ (2001: 7). They do this by gaining an understanding of why they committed crimes in their past, and reconciling this with the person they are today and want to be in the future (Maruna, 2001).

Learning a new way of living is how a person ‘does desistance’ (Maruna, 2001; McNeill, 2006; McNeill and Weaver, 2010; McNeill *et al.*, 2012). Desistance from crime is not the only goal for that person, nor can it be separated from all of the other goals that person aspires to (Maguire and Raynor, 2006). The process is complex, dynamic and often unpredictable. Desistance involves developing soft skills including introspection, problem solving, communication skills and relationship building (McNeill and Weaver, 2010; McNeill *et al.*, 2012). It is a process in which some of the most important aspects are intangible and difficult to evaluate (Maruna, 2001; Barry, 2007).

An important element in the desistance process is the understanding of the process of re-entry into society that accompanies release from prison. Increasingly, re-entry and reintegration are receiving attention in

the academic sphere; however, theoretically the area is significantly under-researched (Maruna *et al.*, 2011). Desistance is an invisible process; mainstream society is ignorant of the realities of the journey (Maruna, 2011). Labelling, identity denial, stigma and ostracisation are issues for ex-prisoners and point to the necessary role of mainstream society in supporting those engaged in the process of desistance. Often the inability of ex-prisoners to access and be accepted by local communities is a significant barrier to progression (Healy, 2012).

In an effort to understand the complex process of desistance for clients at CAC, this paper presents the analysis of data drawn from interviews. Based on a thematic analysis of the data, key higher order themes are presented and discussed.

Methodology

The research for this paper was conducted with ex-prisoners who voluntarily engaged with CAC. There were nine participants in total, six male and three female. They ranged in age from 32 to 47 years, and the length of time since release from prison ranged from 12 weeks to 11 years. The participants' most recent prison sentences ranged in duration from three months to five years. Participants had engaged with CAC for a minimum of three months. Sexual offenders were not included in this study as they are not clients at CAC.

The interview data were collected by a staff member of CAC who has a support worker role in the centre. None of the participants were clients of the interviewer. Unstructured interviews were conducted with the participants in a meeting room at CAC.

The study was advertised using a poster displayed in CAC seeking volunteers to take part in research concerning their experience of desistance. Consent was secured in writing and participants were informed that their interview would be anonymised and stored as mandated by University College Cork's Ethics Committee. Interviews were recorded and transcribed. Participants were informed that follow-up support was available through their allocated support worker in CAC and that they could withdraw at any time.

A thematic analysis of the interview data was conducted; the transcripts were coded by hand in a line-by-line process. Particular themes emerged from the coding process and are presented in the results and discussion below.

Ethical approval for this project was given by the Department of Sociology in UCC and CAC. Of ethical significance was the dual role of the researcher as an academic researcher and CAC staff member. As this could impact on the research process, care was taken to ensure that the researcher did not interview any current or former personal clients. In addition, coding was conducted by two people, with an inter-rater reliability measure of over 90%.

There are limitations to the generalisability of the findings of this study. The sample is small, limited to a specific geographic area and is not a representative sample of the ex-prisoner population. The findings are consistent with existing literature and, as such, demonstrate the universality of post-prison needs and also the impact of local experiences and access to services in the process of desistance.

Results and discussion

Desistance, turning points and agency

It's like starting over, pressing a reset button and starting all over again in life, learning the basics of how to live. (Participant A)

As discussed briefly above, desistance is not just about ending criminal behaviour (Maruna, 2001; McNeill *et al.*, 2012); it is a dramatic lifestyle change in which the person has to learn to live in a completely different way, focusing on 'the maintenance of crime free behaviour in the face of life's obstacles and frustrations' (Maruna, 2001: 26). Choosing to end criminal behaviour means making a lot of new, difficult and challenging life choices.

Participants in this study emphasised the process of dealing with the lifestyle changes that accompany their choice to cease offending. As a starting point, the participants spoke about the after-effects of incarceration. They reflected on the impact prison had, not only on their own lives but also on the lives of their families. This impact overshadowed attempts at a *new life* due to the need to manage existing relations with family and friends while coping with the influence of their imprisonment on these relationships.

The biggest thing for me emotionally when I came out of prison would have been trying to deal with the impact of being in prison, how it affected my family, the guilt, the shame. (Participant F)

In addition to the negative experiences associated with incarceration, participants spoke about how, in some cases, imprisonment served to provoke reflection on their problem behaviours. Incarceration was constructed (retrospectively) as a key turning point at which the person sought to initiate personal change.

And in a strange way really, going to jail was a blessing in disguise ... it was really a wake-up call for me in that like ... I realised as well like, this isn't where I'm supposed to be. (Participant E)

Soyer (2013) points out a discord between academic perspectives on the negative life-course impact of incarceration and the ex-prisoner view of the experience as a turning point. While incarceration can lead to both positive and negative experiences for the people involved, it is worth bearing in mind that the reconstruction of life stories in the aftermath of a process of personal change can often be unrelated to the event as it was experienced at the time. Individuals can reimagine experiences in light of their new post-prison identity and seek to make meaning of past events in a coherent manner. Sampson and Laub (2004: 2) say that 'turning points' such as prison are not enough to explain desistance, and that turning points and opportunities are dependent of the person's capacity for 'purposeful human agency'.

Agency can be defined as 'a dynamic interaction between the person and their social world that is directed towards the achievement of a meaningful and credible new self' (Healy, 2014: 874). Healy (2014) explains that people cannot be categorised as either possessing or lacking agency but rather exist on a continuum of readiness for change, with the potential for personal development and agentic action that is most likely to be activated when the 'imagined [future] self is perceived as both meaningful and credible' (Healy, 2014: 873).

For participants the process of desistance was described as a *maze*, involving many steps and many diversions along the way. Navigating the path of desistance was limited by the options available and the suitability of these options for the individual. Giordano *et al.* (2002) talk about *readiness* for change being concurrent with *hooks* for change in order to encourage sustained behaviour modification. Finding and choosing the *right* hook is key. One participant talked about desistance as a maze of choices, with only some of those choices leading to something tangible:

It's a maze. And I reckon it's a maze with about 10 different parts, and I think five of them are dead ends and five of them there's something maybe there. (Participant C)

In addition to the successes, be they by chance or by choice, the process almost inevitably involves relapse to addiction, reoffending and associated problem behaviours. Perhaps ironically, participants described the possibility of progress as occurring simultaneously with the likelihood of relapse. During what they described as a turbulent time, a key issue was consistency. Many participants spoke of CAC's capacity to provide the very necessary but basic support of consistency, which involved a physical space to visit, a dedicated individual support worker and time to figure out their path.

Participants referred to the *continuity of support* in particular as a positive experience in their engagement with CAC. Having someone to talk to was a key issue. In addition, developing a sense of personal awareness was recalled as a significant benefit for participants, particularly the development of thinking skills, problem-solving skills and the ability to reflect on one's own choices. In effect, they were speaking of the positive impact of psycho-education on their daily lives (Smith *et al.*, 2006).

If you're to change you need to know why you're doing what you do ... If I'm not aware of what's ... of why I'm doing what I do, I'll never understand why I do what I do. And this is key to why this place works for me. (Participant E)

A participant spoke about the enormous impact that learning how to work through problems had on her day-to-day life.

By the time you leave [the CAC] ... there's always, y'know there's a circuit around the problem. You feel a lot more better: I often came in here suicidal and I come out and I'm right, it's not that bad. (Participant I)

Shame, relationships and the post-prison experience

When reflecting on their experience of desistance, shame was a constant feature in the participants' accounts. This sense of shame was linked to their status as an ex-prisoner, the crimes they had committed, their problems with addiction, their inability to get or keep a job, their lack of education and the impact their behaviour had on family members. Shame

as a barrier to progress was a recurring theme, in their unwillingness to *expose* themselves and their personal histories through engagement outside a very small community but also as a fundamental feeling of lack of self-worth. Maruna (2001) reflects on the all-encompassing sense of shame experienced by ex-offenders: 'being ashamed of an isolated act or two is one thing, but it is a quite different thing to be ashamed of one's entire past identity, of who one used to be' (Maruna, 2001: 143).

Participant A described his process of moving beyond shame:

A lot of that was born out of shame and I suppose not taking responsibility and stuff like that. Being able to talk about it and being able to recognise it is very important ... that's what Cork Alliance has done to me, it takes away the shame. (Participant A)

Another key theme that emerged was the centrality of relationships in the participant's progress. The ex-prisoners spoke of people they knew as a result of their life in prison or through offending, and separately spoke of new and developing relationships that emerged since they chose to desist from crime.

There was a tension around relationships formed *before* choosing desistance. Many times participants spoke of the *risk* of continuing a relationship with peers whom they met in prison or prior to their imprisonment. For many reasons, existing relationships were expressed as problematic. On one hand, seeing friends relapse into addiction or return to prison was emotionally taxing; on the other, participants recalled incidents where existing friends were instrumental in encouraging them into a support programme such as CAC. Seeing existing friends succeed was a key motivator in attempting to change.

I've seen changes in people like. I've seen people go backwards, now don't get me wrong, and I've seen people going forward and going to college and everything that are coming in here, which is brilliant to see, y'know what I mean. (Participant D)

In addition to the experiences that participants felt they shared with existing friends and how their emotional fates may be intertwined, there was a definite recognition of a need to disengage from those people due to the potentially negative impact they might have on participants' own desistance efforts.

One female participant described how she made friends with people in prison as a means of survival but found it difficult to negotiate separation from this group, who she felt were a negative influence. She described how meeting people from the world she once occupied was a risk to her recovery from addiction as well as her desistance progress.

I tend to not to engage with people who I was in prison with or in the hostel with.

(Participant F)

A girl who is now on the streets and em ... y'know ... with her addiction ... and approached me for money in the shop and I was embarrassed because she looked very dishevelled and y'know the other people in the shop were kind of looking at me then, and I just felt embarrassed and I felt ashamed.

(Participant F)

This issue of past relationships is closely tied to the notion of shame: shame about one's personal identity and also shame about one's social identity. Any association with drug users and current offenders, due to the negative perceptions of such people in society, was a problem for a number of participants. Being treated as a social *other* by virtue of one's own personal history or through association with others is a form of identity denial in that ex-prisoners in the process of attempting change are labelled as deviant and othered, and excluded from a range of roles and alternative identities in society (Cheryn and Monin, 2005). Importantly, change at the personal level was something the participants felt they could control. However, societal acceptance of this change was another issue.

For the participants, managing shame and embarrassment was a key element in ensuring progress on their desistance journey. The ability to resolve and incorporate these feelings into a coherent personal identity was a key skill. The newly learned cognitive skills were very relevant in managing this sense of shame.

I have been approached on the streets by girls and asked for money and cigarettes and I do find it very difficult, but I just ... I talk about it and I know that in time that those situations will dissipate, the longer, the longer I'm around and out of trouble.

(Participant F)

Importantly, as well as being in a place where supports were available, even if only a listening ear, participants spoke of being a *part* of CAC: this sense of belonging was a key element in their new social identity (Tajfel, 2010). They spoke of their *involvement* in CAC as a central element of their emerging identity and how it represented a new community to which they could belong. This facilitated the emergence of new relationships.

I feel part of it and also I've met y'know people who have been in prison but who have now made the suggested changes and who are now em ... turning their life around and who are back in college studying and that's really inspirational to me. (Participant F)

The informal community that exists in CAC is an unstructured, spontaneous entity that emerges based on the participants' desire to share positive experiences with like-minded people. Whether over a cup of tea or in the waiting room, the relationships that emerged among participants were highly valued as part of their desistance experience. The formal relationships that the participants developed with their support worker and other staff were an integral part of this sense of community.

You're cheering each other up, y'know it's not ... nothing got to do with crime or negative things, it's all like they want to get better. (Participant I)

The creation of this community of people attempting to achieve personal change is a significant part of the desistance process. Being ostracised from mainstream society and continually vilified for their past behaviour sustains the shame and loneliness often experienced by ex-prisoners.

When you come out of prison you can feel alone sometimes, coming out isn't easy I found, and it can be very lonely and things. (Participant A)

Addiction, mental health and desistance

The majority of participants spoke about their experience with addiction: drugs, alcohol and/or gambling. In addition, the participants spoke about *mental health*. They used the term to refer to all aspects of their emotional wellbeing. Many participants were not diagnosed with a clinical condition; however, they recognised many of the difficulties they experienced as linked to emotional distress, their experience of victimisation, trauma or their circumstances more generally.

The offender–victim overlap is a well-documented phenomenon (Jennings *et al.*, 2012), as is the role of trauma in the lives of offenders, particularly female offenders (Covington and Bloom, 2006; Covington, 2014). Many participants experienced victimisation and multiple traumas, including being the victim of violent assaults, rape and childhood sexual abuse, and witnessing violence towards others. One participant described how trauma and its ongoing effects fuelled her addiction and put her mental health at risk. She also linked her past experiences as central to what she called *acting out* in dangerous ways.

I was always dealing with my addictions, never dealing with the trauma part. So there was always that in the back of my head and I just, I knew if I didn't get that sorted I would've had a nervous breakdown, I would have either killed myself or killed someone ... If I didn't get that sorted I would have kept taking drugs to block it.

(Participant H)

In terms of mental health, many participants mentioned stress, anxiety and depression. A small number mentioned more high-risk mental health issues such as self-harm and suicide. An Irish Penal Reform Trust study highlighted that the rate of mental ill-health is greater in the prison population than in the general population (Martynowicz and Quigley, 2010). One participant who reported self-harming behaviour talked about how having access to a supportive environment and learning to talk about his day-to-day struggles made a significant positive impact on his wellbeing.

I haven't self-harmed since I started coming here, and that's a hell of a long time really for me, y'know what I mean. (Participant D)

While some clients of CAC also attend psychiatric services, many are linked in with the in-house psychotherapy service. Much of the benefit recalled by participants was attributed to their experience of psycho-education (Smith *et al.*, 2006), particularly in developing introspection techniques in addition to simply having someone to talk to.

An addict on their own is bad company, d'ya know, em ... it's important to me to have support of somebody else y'know. (Participant E)

Trust and a supportive environment

When the participants reflected on their involvement in CAC, trust emerged as a dominant theme, closely related to the ability to build and manage relationships. Participants spoke about their inability to *trust* other people. This issue of trust was also linked to feelings of shame about their past and the likelihood of being judged. This led to a cycle of isolation that was, at times, paralyzing and is recognised in literature as a significant indicator for 'feelings of depression and powerlessness' (LeBel *et al.*, 2008: 137).

Just being very careful about who you let into your life, because obviously trust is a big thing and you feel very vulnerable when you come out of prison. (Participant F)

Learning to trust a support worker was a significant hurdle for the participants given their personal experience of *betrayal* and neglect, particularly by family members. However, participants came to speak of the CAC as *home*: a substitute for a stable family environment.

It feels really nice because it just feels like coming home sometimes and em ... it helps me to em ... connect with people, because sometimes I find it very hard to connect with people 'cause I can isolate. (Participant F)

Participant A explained how the relationships he formed in CAC were how he imagined a family might be. The acceptance and non-judgemental nature of the professional and social relationships he developed at CAC fulfilled a need for him.

It's probably the way families should be ... the way I wish family were with me like, accepting. (Participant A)

Physical and emotional safety

Along with the organised and spontaneous supports available through CAC, participants consistently referred to safety as a central element in their experience of desistance. Physical and emotional safety were issues for all of the ex-prisoners. Physical safety referred to the very low likelihood that they would be exposed to aggressive or violent behaviour at CAC. Emotional safety referred to the relationship with their support

worker as well as the non-judgemental, trusting and confidential atmosphere.

Participants described the process of managing their emotional safety. They spoke of leaving their 'street attitude and behaviours outside the door'. Participants recalled the honesty that emerged in interactions when they were able to act in an unguarded manner. Participant H spoke about the how the 'street' demands that you present yourself in a certain way to survive. Being in a space that removes that need encourages relaxation.

Even though there's no guards on the door or security I just knew that even people when they did come in here, like the attitude was gone. Like d'ya know when you're on the streets and stuff like that you're full of like toughness and stuff like that. (Participant H)

The feelings of safety described by participants extended beyond the physical and emotional protection offered by CAC. A sense of safety, understood as a place of support, was described by Participant A as something that existed even when he was not physically present in the building.

I find it a safe place I suppose first of all, em ... which is important for me because if I don't feel safe I'm likely to resort to other things to make me feel safe em ... like compulsive gambling and drinking and things. (Participant A)

In addition, the emotional education participants received at CAC through formal and spontaneous interaction was described as ensuring their safety. In effect, the participants were speaking of resilience (Hammersley, 2011) and how their experiences at CAC translated into an ability to deal with life outside.

One female participant talked about her feelings of safety regarding the men she met while attending CAC. She spoke about how the relationships she had built up with males at CAC normalised her expectation of male behaviour, in effect serving as a model of appropriate male/female relationships more generally.

Even though I went through a lot of domestic violence and stuff, the group of lads I was in with I felt safe, they never kind of treated me different like, they didn't like, I suppose, disrespect me ... Maybe that's why I kept coming back

... I could actually be friends with a man somewhere without anything else being involved, drugs, sex, violence. (Participant H)

Hope and progress

Participants spoke about their experience of shifting their focus from their immediate environment to the future as a significant element in their desistance. Participants expressed this as a sense of hope for the future, a belief in their ability to enact personal change, and referred to the impact of seeing others succeed as a key motivator. Hope is addressed in the literature on desistance and linked to motivation for change as a key element in achieving successful desistance. McNeill *et al.* (2012: 9) describe the importance of this dynamic whereby 'the development and maintenance not just of motivation but also of hope become key tasks for criminal justice practitioners'. Imagining a future is often a foreign idea for many people *doing* desistance. Rather than a failure of imagination, it is a fact that some people do not know that there is the possibility of another life outside of their current situation.

It can be easy to give in to the fact that when you go to prison that this is your life, this is the way it's meant to be. (Participant A)

Yeah I've seen a different life, there's more to life, there's hope. (Participant B)

Building and sustaining this hope has been shown to be a key issue for desistance-focused services (McNeill *et al.*, 2012), and integral to individuals' development of agency through imagining their possible future self (Healy, 2014). Fostering this hope and the imagined future self needs significant support for the person initially at the personal level and subsequently encouraging and enabling access to education, employment, etc. One female participant described the impact of this process.

It changed my whole thinking on my life ... gave me confidence back ... made me believe in myself that I wasn't stupid and I wasn't thick and ... I just got rid of that label. (Participant H)

Conclusion

This research study was conducted to investigate how people who engaged with CAC, as a desistance supporting service, understood, valued and

evaluated their experience. In unstructured interviews, the participants were free to address all topics that they saw as relevant to their experience.

Similar to findings by Maruna (2001) and McNeill and Weaver (2010), this study demonstrates that desistance is multifaceted and highly individualised, and dependent on the person's agency and self-efficacy (Maruna, 2001; Sampson and Laub, 2004; McNeill *et al.*, 2012; Healy, 2014; Liem and Richardson, 2014), their social world and external structural forces (Maruna, 2001). Issues of shame, relationships, hope, imagining a future and consistency dominated the views of the participants.

The interrelatedness of these concepts in practice demonstrated the need for a holistic, tailored, stable service. It also reinforces the relevance of the academic literature on desistance to *doing desistance*: displaying the importance of theory for practice. The intangible nature of the key themes that emerged demonstrates the inherent complexity faced in any effort to quantify desistance.

That is not to say that desistance cannot be an evidence-based process. 'Evidence-based' does not imply that there is a definitive *desistance guide* that practitioners can follow as a prescription for intervention; it means that an intervention must emerge as a result of and in response to 'practitioners' reflective engagement and continual dialogue with those individuals with whom they work' (McNeill and Weaver, 2010). This approach places the person at the centre of the process and encourages the emergence of a community of scientist-practitioners who can inform practice through reflection and research.

Key themes that emerged in this study related to the regulation of emotion, cognitive skills, a future-focused outlook and safety. Many of these can be understood as interpersonal issues. These interpersonal issues also extend to shame, judgement, labelling, trust and support. A superordinate theme unifying these issues is that of acceptance back into society or, for those who never felt part of a community, learning to engage with society more generally.

The barriers to inclusion or re-entry are set high, and overcoming these cannot be the task of the ex-prisoners alone. Understanding how ex-prisoners negotiate their new roles and identities in the context of the generalised exclusion of ex-prisoners in society is essential if we are to understand how to facilitate this process.

The number of participants in this study was small and the sample comprised ex-prisoners living in the Cork area only. The findings cannot

be assumed to be generalisable outside this population. As a unique study in an under-researched field, it does highlight the experience of ex-prisoners as they attempt the process of desisting from crime. It identifies key issues and areas for future research, such as the importance of social identity for ex-prisoners, emotional regulation and personal growth.

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Understandings, Implications and Alternative Approaches to the Use of the Sex Offenders Register in the UK

Jack O’Sullivan, James Hoggett, Hazel Kemshall and Kieran McCartan*

Summary: This paper reviews the current position in relation to sex offender registration and community notification in England and Wales. It reports on data collected as part of a wider research project evaluating law enforcement perspectives related to sex offender registration and notification and the management of sex offenders in the community. In examining law enforcement perceptions, it discusses issues that have been raised related to information sharing and the efficacy of such schemes. The authors also consider how the sex offenders register and Child Disclosure Scheme could be used more effectively in the future. Given that a similar child disclosure scheme was introduced in Northern Ireland in 2016, issues that practitioners in that jurisdiction may find it useful to consider are highlighted.

Keywords: Multi-agency working, sex offender registration, Child Sexual Offender Disclosure Scheme, police perceptions of registration, VISOR, information sharing.

Introduction

In the past few decades, there has been a growing recognition of the extent of sexual violence globally (World Health Organization, 2014). This recognition is linked to increased investment in sexual violence education, an increase in the reporting of historical cases, the growing recognition that anyone can be a victim or perpetrator, and an increased media profile for sexual violence cases, particularly in the anglophone countries (Tabachnick *et al.*, 2016). Currently there are 49,322 registered sex

* Jack O’Sullivan is a Research Associate at University of the West of England. Dr James Hoggett is a Senior Lecturer in Criminology at University of the West of England (email: James.Hoggett@uwe.ac.uk). Hazel Kemshall is a Professor of Community and Criminal Justice at De Montfort University (email: kemshall@dmu.ac.uk). Dr Kieran McCartan is Associate Professor in Criminology at University of the West of England (email: Kieran.Mccartan@uwe.ac.uk).

offenders (RSOs) in England and Wales (College of Policing, 2016). There are 1465 RSOs in Northern Ireland (PPANI, 2016). The UK¹ has a number of approaches to managing sex offenders in the community, including the use of ‘public protection sentences’, central to which is the sex offenders register and the development and implementation of multi-agency risk assessment and risk management of sexual offenders (Kemshall and McCartan, 2014).

One of the main strategies being used across the UK to monitor the risk from known sex offenders is the use of the sex offenders register. It was introduced in England and Wales as part of the 1997 Sex Offenders Act; that was a period of heightened ‘populist punitiveness’, especially towards child molesters (Thomas, 2010). Such ‘populist punitiveness’ (see Bottoms, 1995) is indicative of late modernity and the New Penalty (Garland, 2001; Kemshall, 2003), and has contributed to a sustained demand for tougher punishments, particularly of sex offenders (Brayford and Deering, 2012). This can be seen by the fact that the Act’s penal stipulations have often been increased, most notably as part of the 2003 Sexual Offenders Act – which extended police powers and registration requirements (Thomas, 2010). Such punitive amendments received support from successive Home Secretaries, with the register ‘strengthened’, ‘toughened’ or ‘tightened’ (Thomas, 2010: 65), resulting in increasingly onerous requirements placed upon sex offenders.

The sex offenders register contains the details of anyone convicted, cautioned or released from prison for a sexual offence against a child or adult since its inception in September 1997 but is not retroactive, so does not include anyone convicted before 1997. The register, which is run by the police, requires individuals to register within 72 hours of release into the community. Initially the register required convicted sex offenders, for a specified period of time, to notify the police of their whereabouts and circumstances, with sanctions applied to those failing to comply (Home Office, 1997). The length of time that a person spends on the register depends on the offence that they committed and their sentence, with offences covering the full spectrum of sexual offences and sentencing parameters. Those with:

- a prison sentence of more than 30 months for sexual offending are placed on the register indefinitely

¹ Please note that there are legislative, policy and practice differences between Northern Ireland, Scotland and England/Wales. The Republic of Ireland has similar legislation to the UK.

- a prison sentence of between six and 30 months remain on the register for 10 years, or five years if they are under 18
- a prison sentence of six months or less are placed on the register for seven years, or three and a half years if under 18
- a caution for a sexual offence are put on the register for two years, or one year if under 18.

The sex offenders register was not intended as a punishment; rather, by keeping police records accurate and up to date, its primary aim was public protection. To assist in this and better manage and preserve the register, a new intelligence database, called ViSOR (Violent and Sex Offenders Register), was developed. ViSOR tells police officers how many RSOs are in their area and the crimes for which they have been placed on the register, and has become a central tool in the administration of the register (Thomas, 2010). It has increasingly been used as the source of information for police decision-making about public disclosure.

Notification and disclosure

Initially developed as an aid to law enforcement, the sex offenders register quickly became associated with public notification, particularly following the Sarah Payne case in the UK, which followed the murder of Megan Kanka in the USA (Jenkins, 1998). 'Megan's law' started in New Jersey; it required state-level sex offender registration and made the whereabouts of those deemed as 'high risk' available to the public (Fitch, 2006). This law was subsequently extended to federal legislature, requiring all states to notify the public of 'dangerous' sexual offenders (Ackerman *et al.*, 2012). However, public notification in the USA actually takes a number of different forms, ranging from full active public disclosure to limited disclosure based on levels of risk with the onus on the public to make an application (see Kemshall, 2008 for a full discussion).

In the UK full public disclosure was initially rejected on public protection grounds, amid fears of sexual offenders 'going underground' (Kemshall *et al.*, 2011). Critical to such resistance were the practical difficulties associated with offender transience foreseen by the Home Office (2007). Additionally, they were concerned by empirical evidence of Megan's law; specifically, public disclosure's lack of efficacy and myriad unintended consequences (Home Office, 2007; Kemshall and Weaver, 2012; Fitch, 2006). Finally, in 2008 the Home Secretary announced that

a pilot of the Child Sexual Offender Disclosure Scheme (CSODS) would be instituted (Kemshall *et al.*, 2011), to enable members of the public to make an enquiry about a person in order to determine whether that person had previous convictions for sexual offending against a child.

The scheme is not a US-type community notification scheme and is actually quite limited (see Kemshall *et al.*, 2010 for a full discussion). An enquiry must be made via the police about a named person, the person must be in contact with or have access to a child or children, and the person enquiring will only be told something if the subject of the enquiry meets certain criteria of risk, and has previous convictions for sexual offences against children. In essence, the scheme has three stages: stage one is an enquiry to the police; if this meets the criteria it is processed as a formal application; and if risk levels and previous conviction requirements are met then a disclosure is made.

On 15 September 2008 a 12-month pilot study commenced across four police force areas. Expected take-up and potential disclosure rates across the four pilot areas were anticipated to be around 2400 based on population size of the police force area, known number of RSOs in the area, known offence rates for sexual offending, and significant media campaigning for disclosure (see Silverman and Wilson, 2002; Thomas, 2011). However, evaluation of the pilots identified low take-up compared to projections (only 585 enquiries from members of the public against the projected 2400). Of these, only 315 enquiries met police criteria and were processed; the number of members of the public disclosed to was only 21 across four pilot areas (see Kemshall *et al.*, 2010). Despite this, the then Home Secretary announced that the scheme would be nationally implemented at the pilot's mid-point. In March 2010 a further 18 forces joined, with the rest following suit in August that year (Kemshall and Weaver, 2012).

On 14 March 2016 a version of CSDOC became operational in Northern Ireland. The scheme is similar to that in operation in England and Wales; however, in Northern Ireland it is not just about sex offenders, as the provisions also enable disclosure about violent offenders who pose a risk to children. At the time of writing the scheme has been in place for four months and a small number of applications have been made.

It is therefore timely to consider the effectiveness of the disclosure scheme in England and Wales, and any lessons learnt in that jurisdiction.

Barriers to disclosure

Figures released by the Association of Chief Police Officers show that application and disclosure rates in England and Wales have been low; indeed College of Policing figures from 2015/16 show a significant reduction in the volume of applications made as well as disclosures. Research suggests a range of barriers to using the scheme: most notably, the hurdle of entering a police station and agreeing to a Criminal Records check before an application is processed; lack of trust in police and 'the authorities'; perceptions of 'stranger-danger' rather than risks within families and networks; and significant under-use in the ethnic minority communities where discussion of sexual matters is taboo (see Kemshall and Weaver, 2012). Additionally, at times there were not sufficient grounds for a disclosure to be made, yet this did not categorically guarantee no future risk of harm. Conversely, when a disclosure was made, it was not necessarily accompanied by a clear risk management strategy (Kemshall *et al.*, 2011). Despite this, user attitudes to the scheme remained positive, particularly among those who had favourable experiences with case officers (Kemshall *et al.*, 2011). This suggests that the disclosure scheme serves a symbolic as well as an instrumental function (Sample *et al.*, 2011). For example, it may provide public and community reassurance as well as individual disclosures (Kemshall, 2014). However, the symbolic and instrumental effects of a policy are not necessarily congruent (Sample *et al.*, 2011). While instrumental outcomes, for example in terms of volume of disclosures, may be low, the perceived policy and political function of such schemes can be high, despite evidence to the contrary (see Kemshall (2014) for a full discussion).

Another criticism that can be levelled at the register and CSODS is that they are largely vested in the criminal justice system, with a focus on response after offending has occurred, albeit with a preventative focus to reduce further offending (a tertiary preventive approach). However, they only target offenders within or known to the system, and have limited efficacy in offence prevention. Over time, these measures have become increasingly restrictive, controlling, punitive and exclusionary (Brayford *et al.*, 2012), with limited, and at times ambiguous, evidence about their effectiveness on long-term offence prevention (Tabachnick *et al.*, 2016). In addition, such measures require resources, for example the administration of the sex offenders register, and multi-agency community management responses can be particularly costly (Hilder and Kemshall,

2013). The data from the 2014/15 MAPPA annual report indicate that the number of individuals being supervised by MAPPA in the community for sexual-related offences is steadily increasing, presenting resource challenges particularly for police and Probation in an era of austerity. With ever-increasing additions to the sex offenders register,² continuing its maintenance as well as fully supporting multi-agency work, and sustaining CSODS, remains challenging.

With this in mind, it is important to understand police perceptions of the workings of the sex offenders register and CSODS.

Methods

This paper reports on data collected as part of a wider research project evaluating law enforcement perspectives related to sex offender registration and notification and the management of sex offenders in the community. It is the first large-scale study of sex offender registration and notification in the UK. The research had two components, as follows.

- *A mixed-methods online questionnaire*, based on research conducted in the USA (Harris *et al.*, 2014) but reformatted to fit context relevant to England and Wales's policy and practice. The survey was sent, via the College of Policing, to the 43 police forces in England and Wales. Within each force it was then distributed to three main groups: senior police leaders; personnel working directly in roles related to registration, community notification and registry enforcement; and personnel engaged in the investigation of sex crimes. A total of 227 responses from 37 of the 43 forces were received.
- *Semi-structured interviews*: The research team conducted 27 semi-structured interviews with a random sample (Robson and McCartan, 2016) of participants who had taken part in the online questionnaire, ranging from police staff to Detective Chief Inspectors, which followed up on issues identified within the survey but enabled participants to discuss in much greater depth and detail their experiences of using and perceptions of the sex offender register and CSODS in England and Wales. This paper presents data from the interview component of the project.

² Evidence indicates a rise in the reporting, recording and prosecution of sexual offences, which, when coupled with the length of time that offenders stay on the register, points to a constantly growing sex offender population that needs to be managed.

A process of thematic analysis (Braun and Clarke, 2006) was used to analyse the interview data, identifying key recurring themes across the interview participants. The data subsequently included in the analysis section of this paper were selected for their representativeness in terms of illuminating the wider body of data within each of the thematic categories.

Results

Four main themes emerged from the interviews, as follows.

- *Information sharing* – the importance of ViSOR for managing those subject to the sex offenders register, specifically as a tool to store and share information on such offenders with other agencies and force areas.
- *Public and professional utility of CSODS* – functioning more as a tool for the public to manage risk, rather than assisting offender managers (OMs) with their core business.
- *Issues with the CSODS process* – participants addressed some of the key reasons why take-up of CSODS has been so low, and considered the potential consequences for OMs should there be an increase in applications.
- *Rethinking how the sex offender register and CSODS could be used* – acknowledging that in the present age of austerity an increase in OMs is unlikely, alternative approaches to deal with the increasing demand are explored.

Information sharing

Although not introduced for eight years following the inception of the sex offenders register, ViSOR is now championed by officers as the principal component in the management of those subjected to the register (78%, $n = 21$). An organisational and information storing tool, it was viewed as part of an OM's core business.

It's essential, absolutely essential. Until they build a new database, that is what we use ... it's how you organise your workloads. (Participant 14)

However, officers complained that it is slow and repetitive, and freezes users out.

it is very, very slow, and very lumpy and you get thrown out all the time, and that causes a lot of problems. (Participant 26)

Despite such flaws, participants suggested that what makes ViSOR so effective is its ability to store so much information (67%, $n = 18$). When an offender is subjected to the register, all information pertinent to their management is uploaded on the database, with OMs updating the system following any contact or intelligence. In turn, such meticulous record keeping ensures defensibility should something go wrong.

It records absolutely everything that we do. It contains all of their information ... Absolutely everything that comes out of their mouths is on there. (Participant 01)

Its primary purpose I would say is to document and make us accountable for how we manage sex offenders. (Participant 21)

Although it was commended as a mechanism for recording data, there was ambiguity regarding ViSOR's capacity to share information with other agencies. Most participants felt that ViSOR was predominantly a police-led tool (70%, $n = 19$), with use by Probation and prison services sporadic at best. Officers generally accepted that these agencies have their own systems, and thus little time to populate ViSOR. Despite this, a number of participants noted that inter-agency information sharing was improving (30%, $n = 8$), although a handful warned of extending access to the database beyond the three lead agencies (19%, $n = 5$).

Some Probation Officers put in their contact with sex offenders actually on the ViSOR, which is great, but obviously it depends on your Probation Officers ... Prisons put in input, they can put nonsense in sometimes ... I don't know if I would be happy about too many people accessing it. (Participant 06)

It's all going in the right direction, and now obviously they are encouraging Probation to have more access to it, and ultimately the prisons have had a lot of training recently and they're doing an awful lot more. (Participant 12)

However, there was conflict concerning its ability to share data with other forces. For instance, a number of participants considered inter-force information sharing to be ViSOR's primary function (41%, $n = 11$), yet a

commonly raised caveat was the lack of consistency of stored information between force areas and individual OMs (41%, $n = 11$).

Its strengths for me are around sharing information across police area boundaries; that's the main issue you know we get a lot of offenders that come in and out of the area, and it simplifies it massively if you can just look at a ViSOR record and you know exactly what they have been up to. (Participant 11)

They all do it [ViSOR] completely differently. When you get a transfer in from another force it's like it's come from an alien planet: it's just completely different. (Participant 05)

The information, or lack thereof, stored on ViSOR was a key issue throughout the study: officers stated that its efficacy was limited by the material held on the database.

ViSOR is only as good as what you put into it. (Participant 06)

Such reservations extended beyond the daily supervision of offenders to other components of offender management, such as the CSODS. Indeed, when deciding whether or not to disclose, officers considered the available information on ViSOR.

We then assess the information that has been given to us, and the offender himself, because it could be that they are subject to the register. (Participant 25)

Public and professional utility of CSODS

The introduction of CSODS was intended to serve a dual purpose: empower members of the public to request information in order to manage risk better; and contribute to the overall risk management of RSOs by extended pre-existing third party disclosures.

Examining CSODS further, 10 (37%) participants explicitly stated that it added little to the management of sexual offenders. Instead, it was viewed as a tool for the public, to help parents or guardians manage risk should they have a concern regarding an individual (81%, $n = 22$).

[CSODS is] not for managing sex offenders, no. For mitigating risk because managing sex offenders is my job and Probation's job, and we already have that information and more. (Participant 01)

Its primary purpose is to empower a member of the public with information that would enable them to safeguard their child. (Participant 02)

Nevertheless, a few participants conceded that at times CSODS highlighted new relationships (22%, $n = 6$). However, this was an occasional occurrence, with some suggesting that when doing their job properly, they would already know of the contact and have disclosed via an alternative route (30%, $n = 8$). This chimes with Kemshall *et al.*'s (2010) findings, where officers felt that CSODS formalised good practice in child protection.

You could come out of it, that there is a relationship that offender has not disclosed. That would be the one benefit, but I have to say in my experience they are fairly rare. (Participant 02)

If we are doing our job properly then we are proactive in establishing who they have contact with, and therefore delivering the disclosures in advance, as opposed to waiting for an application to come through. (Participant 26)

Issues with the CSODS process

Officers (52%, $n = 14$) argued that low take-up of the CSODS was affected by poor public understanding of the scheme, which also contributed to its paltry conversion rate. This supports findings from the scheme's pilot evaluation (Kemshall *et al.*, 2010).

I still think that there will be a large proportion of the community that probably don't know. (Participant 21)

Could it be used more often? Potentially, but I think that it is very borderline whether it is a fishing trip or a genuine concern ... that is why we have the follow-up interview, which I think should hopefully weed that out. (Participant 25)

Despite limited CSODS applications, officers complained that they were time-consuming and impacted on core business (48%, $n = 13$). Beyond

this, it was suggested that should their volume increase, this would overburden already creaking resources.

You know when you're allocated a CSODS there is a lot of work involved; it takes a lot of time away from the day job. (Participant 13)

I think at the moment, as it stands we are coping with the enquiries. I think if it was on a billboard somewhere and it was pushed I think we would go under. We are already dealing with our own case load, managing our 80-odd offenders per person. I think if we were then inundated with enquiries amongst other things I think we would struggle. (Participant 04)

Disquiet surrounding resources was not restricted to CSODS. In particular, there were growing concerns regarding the steady rise in registered offenders, conflated with diminishing public sector budgets. This has led to increasingly precarious offender/manager ratios (52%, $n = 14$).

You're going to get more and more registered sex offenders as time goes on, but we don't get the increase in staff to correlate with that ... because of the cuts to funding and all the rest of it, it's always going to be a struggle to put more people in the department because they haven't got the money. (Participant 23)

Rethinking how the register and the CSODS could be used

This is a growing concern across public protection units and the police force as a whole, as the present age of austerity continues to demand that public services do 'more with less'. Consequently, a number of officers discussed measures to help reduce the strain. It was admitted an increase in number of OMs was unlikely, although preferred; alternatives centred on reducing the number of registered offenders (41%, $n = 11$) and refocusing resources in accordance with risk (44%, $n = 12$). However, support for such initiatives was nebulous.

Either the criteria of the register needs to change, or police forces need to make braver decisions about the rationale about who we are actively going to manage; for example, do we actively [manage] low-risk offenders ... or do we make a brave decision to say we are going to put them on the back burner, so to speak, and we are going to focus our resources on the high-risk people? (Participant 26)

I vehemently disagree with that, and always have done because they are the people that we need to be looking at, because they are the people that we are seeing once a year and it needs to be done right. (Participant 08)

Discussion and an alternative approach

The current research indicates that although the police are supportive of the offender management aspects of the register and the disclosure scheme, they do not believe them to be without issues, especially in light of their continual growth and the impact of austerity on public protection policing (Kemshall and McCartan, 2014). Consequently, alternative approaches, particularly those that emphasise a more holistic and preventative approach to sexual offending, should be considered. Such approaches tend to adopt principles and strategies from the public health arena (McCartan *et al.*, 2015), focusing on three prevention categories based on when the intervention occurs (for a comprehensive review of public health approaches to child sexual abuse see Brown *et al.*, 2011; O'Donnell & Erooga, 2011; Letourneau *et al.*, 2014). These levels include:

- *primary prevention* – approaches that take place before sexual violence has occurred in order to prevent initial perpetration or victimisation
- *secondary prevention* – an immediate response after sexual violence has occurred to deal with the short-term consequences of violence
- *tertiary prevention* – a long-term response that follows sexual violence, designed to deal with the lasting consequences of violence and provide treatment to perpetrators.

The aim of these levels is to effectively position the appropriate interventions to prevent harmful behaviour and the subsequent negative consequences. In regard to sexual violence prevention, the core aim of these three levels is to stop offending and reduce the impact of sexual violence (McCartan *et al.*, 2015; Smallbone *et al.*, 2008). Increasingly, such approaches are seen as complementary to more traditional criminal justice approaches.

The current Second National Strategy on Domestic, Sexual and Gender-based Violence, 2016–2021 drawn up by Cosc, the National Office for the Prevention of Domestic, Sexual and Gender-based Violence in Ireland is an important example of such an approach. The strategy (Cosc, 2016: 2) aims to:

- change societal attitudes to support a reduction in domestic and sexual violence
- improve supports available to victims and survivors
- hold perpetrators to account.

Changing societal attitudes is usually done through public awareness/education campaigns, most recently 'Bystander' campaigns that encourage bystanders to literally challenge inappropriate behaviours or conduct (Fenton *et al.*, 2016). They are most commonly used in schools, colleges and universities (see Coker *et al.* (2011) on effectiveness, and Green Dot³ and the Intervention Initiative⁴), but they can also have wider applicability (Tabachnick *et al.*, 2016). Bystander programmes target both individual attitudes and beliefs (for example victim blaming, denial and avoidance of responsibility) and the relationships and networks within which sexual violence may occur. However, public awareness/education campaigns have to be done with care in order to achieve impact, and Cosc provides guidelines for this (2015). The guidance is particularly useful because it is aimed at: 'smaller organisations who have neither resources nor budget to mount large awareness raising activities or advertising campaigns' (Cosc, 2015: 1), but makes the point that well-conducted and well-targeted activity can have impact.

The wide-ranging body of research literature on public awareness/information campaigns suggests that to be successful they must maximise the relevance of the message to the audience, maximise audience perception of susceptibility to the risk, give a clear message about benefits and promote self-efficacy and key actions that can be taken by the individual (see Tabachnick *et al.* (2016) and McCartan *et al.* (2015) for longer discussion). It is important to note, as Cosc does, that social media, digital marketing and community spaces are also key in delivering these messages.

Similarly, there are campaigns targeting those who may potentially sexually offend (particularly self-identified paedophiles) but have not yet done so. The most recognised internationally is Prevention Project Dunkelfeld,⁵ a social marketing campaign aimed at engaging them in early treatment and prevention which shows positive (although early and emerging) results: the treated group, as opposed to the non-treated group,

³ <https://www.livethegreendot.com/index.html>

⁴ <http://www1.uwe.ac.uk/bl/research/interventioninitiative.aspx>

⁵ <https://www.dont-offend.org/>

have improved emotion functioning and sexual self-regulation and decreased cognitive distortions (Beier *et al.*, 2009, 2015). There are others including Help Wanted, Lucy Faithfull Foundation and VirPed (Virtuous Paedophiles).

Conclusion

Building ‘communities that do not allow sexual violence’ (Banyard *et al.*, 2007) is a long-term and challenging task, and will require more than public awareness/education campaigns or targeting potential/actual sexual offenders for prevention.

Cohen and Swift (1999) have argued for a ‘spectrum of prevention’, which offers a reasonable starting point and is reflected in whole or in part within some emerging policy approaches (e.g. Cosc Second National Strategy, 2016), with six key components.

- *Influencing policy and legislation* – presenting evidence and advocacy for prevention legislation, and social policy responses to sexual offending that emphasise early prevention, treatment and safe reintegration wherever possible.
- *Changing organisational practices* – mandating practices that create safe organisations and environments, for example through safe recruitment, supervisory practices, reporting processes and codes of conduct (Erooga, 2012).
- *Fostering coalitions and networks* – improving partnership work and collaboration between professionals and the public to improve levels of public understanding of sexual offending as well as trust in government organisations. This will result in wider reporting, and greater discussions, of sexual violence within communities.
- *Educating providers* – professionals and providers of services to children and families are seen as critical links in the overall system, often with direct access to known or potential victims, vulnerable families, and persons ‘at risk’ of offending and/or victimisation. Knowledge and appropriate skills are essential for this group, as is a more positive commitment to multi-agency and ‘joined up’ working.
- *Promoting community education* – recent and emerging research into ‘what works’ for community education should be better utilised in the formation of guidance and programmes for awareness campaigning (see Cosc (2015) as a good example of this).

- *Strengthening individuals' knowledge and skills* – utilising the most effective educative and 'bystander' programmes to enhance the knowledge and skills of parents, children and 'bystander' adults. To use such programmes to challenge inaccurate framings and understandings of sexual offending, and to work towards communities that have 'zero tolerance' of sexual offending. Targeting and encouraging actual and potential offenders to come forward for treatment/interventions at the earliest possible stage.

Working in a coherent way across the 'spectrum of prevention', rather than relying on punitive criminal justice measures alone, is more likely to lead to positive outcomes and overall reductions in sexual offending. Primary and secondary prevention can play as central a role in reducing sexual abuse as tertiary prevention can. Given their extensive experience of managing sexual offenders, police and Probation can play a key role in educating and working with 'at risk' populations. Information on the sex offender register, and from other databases, could be used to identify vulnerable families and other communities 'at risk', thus enabling effective targeting for awareness and education campaigns. In addition, criminal justice personnel could contribute to effective outreach and work with those who believe they may be 'at risk' of committing a sexual offence.

By developing policies and practices that can operate alongside existing criminal justice approaches to reduce offending and reoffending, positive outcomes can be achieved and many of the issues identified from the literature and current research about the use and effectiveness of the sex offender register and CSODS overcome. For example, popular punitiveness can be challenged through increased public and political awareness about successes of treatment and management of sex offenders. Partnership working can increase intervention across the 'spectrum of prevention', thereby strengthening data sharing and the management and rehabilitation of offenders, which in turn could increase the accuracy and utility of data systems such as ViSOR.

Finally, in a period of increasing restrictions on police and Probation time and resources, expanding involvement in sex offender management, treatment and rehabilitation to organisations in the public health sector could help to alleviate pressures and reduce reoffending without disproportionately burdening any one organisation.

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Post-custody Supervision in Ireland: From Tickets-of-Leave to Parole?

Christine S. Scott-Hayward and David Williamson*

Summary: This paper examines the history and development of post-custody supervision in Ireland. It begins by reviewing the Crofton System and the ticket-of-leave, generally agreed to be the precursor to modern parole. Next it briefly discusses the emergence of aftercare as a focus of the Probation Service. It then describes the formalisation of four types of conditional post-custody supervision: temporary release from prison, part-suspended sentences, post-release supervision for people convicted of sexual offences, and community return. Finally, it briefly explores the practice and implications of the increasing number of people supervised post-custody in recent years and asks whether, in effect, Ireland now has an ad hoc system of parole.

Keywords: Aftercare, Criminal Justice Act 2006, parole, Parole Board, probation, sentencing, supervision.

Introduction

In 2004 a teenager was convicted of the murder of another teenager and was sentenced to life imprisonment. Because of his age, this sentence was not mandatory but Mr Justice Barry White, the sentencing judge, imposed the sentence due to the ‘premeditated, brutal, [and] callous’ nature of the murder. However, he did note that he would review the sentence after 10 years. In 2014, Mr Justice White did just that and, after a hearing, ordered that the young man be released in July 2016. He ordered post-custody supervision but left the details and length of the supervision period up to the Irish Probation Service (Reid, 2014).

This case raises numerous issues related to early release from prison and post-custody supervision in the Irish criminal justice system. Although

* Dr Christine Scott-Hayward is an Assistant Professor of Law and Criminology at the School of Criminology, Criminal Justice, and Emergency Management, California State University Long Beach (email: christine.scott-hayward@csulb.edu). David Williamson is a Senior Probation Officer based in Dublin, and an associate lecturer on the MSW programme at Trinity College Dublin (email: dgwilliamson@probation.ie).

Ireland does not have parole in name, it does have a variety of statutory and judicial mechanisms for both early release and post-custody supervision, which are sometimes conditional. However, as this paper explains, those mechanisms are complex, and the case referred to above does not fit neatly into any of the categories of post-custody supervision. This paper examines the development of these categories and discusses some of the issues raised by what we conclude is effectively an ad hoc system of parole.

The origins of post-custody supervision

Post-custody supervision first appeared in Ireland in the 1850s as a result of reforms instituted by Walter Crofton. In 1854, after participating in a panel that harshly criticised the management and state of prisons in Ireland at the time, Crofton was appointed chairman of the Board of Directors of Convict Prisons (Carey, 2000: 63–4). After instituting some relatively minor reforms to the system, and to Mountjoy Prison in particular, the Board turned its attention to establishing a system that would, according to the First Annual Report of the Directors of Convict Prisons, restore the prisoner ‘to society with an unimpaired constitution, and with sufficient health and energies to enable him to take a respectable place in the community’ (quoted in Carey, 2000: 66).

The system introduced by Crofton was modelled on the ‘mark system’ developed by Alexander Maconochie on Norfolk Island, Australia in the early 1840s (Heffernan, 2004; Morris, 2001). The mark system allowed people to shorten their sentences in prison through good behaviour. The last phase in the system called for ‘graduated release procedures, including supervision within the community’ (Morris, 2001: 195). However, in part due to the prison’s island location, Maconochie was unable to fully develop this part of his system. A few years later, along with John Lentaigne and Raleigh Knight, the other Convict Prisons directors, Crofton expanded Maconochie’s system and was able to implement the community supervision phase.

Beginning in 1857, after an individual had successfully moved through three custodial stages, starting in solitary confinement and finishing in intermediate prisons focused on labour, he or she was released on licence (Heffernan, 2004: 2). According to Carey, if the inmate wished to emigrate, he or she was unconditionally discharged (2000: 80). Otherwise, he or she would be issued with a ‘ticket-of-leave’ that conditionally released him or her to the community. A conditionally released inmate

was required to immediately register with the local constabulary and thereafter report monthly. He or she could be returned to prison for failing to comply with these reporting requirements, misconduct, committing a new crime, or any 'irregularity' (Heffernan, 2004: 2; Carey, 2000: 80). As Carroll-Burke points out, although the ticket-of-leave was not 'unique to Ireland, the way it was combined with police surveillance was' (2000: 126). In the Dublin area, in addition to this surveillance, those on licence received assistance, primarily with finding employment, from James Organ, variously described as 'a teacher at Lusk', the intermediate prison (Eriksson, 1976: 95), or 'the lecturer of the intermediate prisons' (Carroll-Burke, 2000: 126). Carroll-Burke argues that Organ was the first probation officer in Britain and Ireland, while Petersilia (2003: 57) argues that this was the origin of the 'modern-day parole officer'.

Later knighted for his contributions, Crofton made numerous speeches about his system and encouraged visits by American reformers to Ireland (Heffernan, 2004: 2–3). As a result, the 'Irish system' became well known by penal reformers in the United States, including the New York Prison Association. With the Association's support, Elmira Reformatory – the first prison based on the Irish system – opened in New York in 1876. Led by Zebulon Brockway, Elmira operated an indeterminate sentencing model with parole release. As in Ireland, after a period of good behaviour in prison, inmates were released to the community where they were required to report regularly. Any misconduct could result in a return to prison (Petersilia, 2003: 58). Brockway's model spread quickly and indeterminate sentencing with discretionary parole release was implemented in all states and the federal system by 1942. Despite some changes in the structure of parole release, the vast majority of people released from prison in the United States are still released conditionally with some form of post-custody supervision (Scott-Hayward, 2015). In Ireland, however, Crofton retired in 1862 and 'By the 1890s the last vestiges of his system had disappeared' (Carey, 2000: 112). Despite this disappearance, as we demonstrate in this paper, over the past 20 years, a complex and fragmented version of what is known outside Ireland as the 'Irish system' has re-emerged within Ireland and has become a strong feature of the criminal justice system. In fact, in 2015 for the first time, the Probation Service began presenting the disaggregated data on individuals supervised in the community post-custody as a separate category.¹

¹ Probation Service: Monthly Offender Population Report (March 2015).

The return of post-custody supervision

In the 1960s, references to post-custody supervision began to appear again, with the suggestion that the Probation Service should have a role in this process. In the early 1960s, the term ‘after-care’ began to appear and during debates on the Prisons Bill of 1970, then Minister for Justice Desmond O’Malley repeatedly referred to the ‘probation and after-care service’ as one entity (McNally, 2009: 192–4). Further, McNally (2007) cites evidence supporting the fact that during the 1960s, Probation Officers were supervising individuals after release from prison (p. 21). However, it does not appear that this supervision was conditional. Instead, the Probation Officers who were part of what was then known as the Welfare Service worked with community organisations to provide services for people leaving prison; what are now more widely known as re-entry services (McNally, 2009: 194–5).

During the same period forms of *conditional* post-custody supervision also began to appear. The first form of temporary release was established by the Criminal Justice Act of 1960 and refined in 2003 by the Criminal Justice (Temporary Release of Prisoners) Act. The second, a form that included part-suspended sentences, first appeared in the 1940s, became more common in the 1970s, and was eventually codified in the Criminal Justice Act of 2006. The third form of post-custody supervision applies to people convicted of sex offences and was created by the Sex Offenders Act of 2001. Finally, in 2011, the Community Return Scheme was instituted. The remainder of this section discusses the origins and development of these four types of supervision in more detail.

1. Supervised temporary release

First established as part of the 1960 Criminal Justice Act, temporary release allows the Minister for Justice to permit a sentenced prisoner reviewable release and while not required, the Act allows for conditions to be attached in particular cases.² Initially, temporary release was intended to be ‘granted for short periods for compassionate reasons, or to allow some prisoners to return home for Christmas ... In effect, however, the grant of temporary release came to function for all practical purposes as an early release or parole system’ as unless an individual committed a new offence or breached a condition of release, he or she could expect to

² Criminal Justice Act 2006, Section 2.

remain free (O'Malley, 2010: 249).³ Not all people granted temporary release were subject to supervision, but some were supervised by Probation Officers. According to a 1991 report, this supervision 'may require residence at a hostel, or placement at a workshop, or require the attendance of therapeutic programmes. Offenders may also be released to obtain or sustain employment prospects' (Probation and Welfare Service Report, 1991: 13). It appears that during the 1980s the vast majority of full temporary releases were for the purpose of seeking or taking up employment.⁴

The 1960 statute contained no guidance for the Minister in terms of factors that should be considered in making release decisions. This gap was addressed with the passage of the Criminal Justice (Temporary Release of Prisoners) Act of 2003. As then Minister of State at the Department of Justice, Equality, and Law Reform Brian Lenihan stated, 'the purpose of the Bill is to provide a clearer legislative basis for the [Minister's power] to grant temporary release to a prisoner by amending the Criminal Justice Act, 1960 and setting out the purposes for which temporary release may be granted, the circumstances in which it is to occur and the criteria which are to apply to the process'.⁵ Minister Lenihan also cited decisions of both the High and Supreme Courts that recommended more clarity and transparency as reasons for the introduction of the bill.

For the most part, members of the Oireachtas were supportive of the bill; however, there was some criticism, particularly during the Committee Stage, of the extent of the discretion given to the Minister and the lack of a statutory parole board. For example, Deputy Joe Costello argued: 'The grounds on which prisoners can be released range from humanitarian grounds through to rehabilitation, reintegration, and the good management of the prison etc. The Bill envisages all this happening under

³ Temporary release for Christmas, although generally unsupervised release, has received some attention from scholars. According to O'Donnell and Jewkes (2011), temporary release for Christmas was fairly common between the mid-1960s and the mid-1990s: approximately one in eight people were temporarily released from prison to return home for Christmas. Since then, however, numbers released for that purpose have declined significantly (p. 77).

⁴ Annual Reports of the Probation and Welfare Service between 1980 and 1990 presented information on people released on full temporary release, weekend temporary release, one day temporary release, and day to day temporary release. The reports also noted the purpose of the temporary releases. Interestingly, day to day release was referred to as 'working parole', whereby the individual was allowed out during the day for work or training while being returned to custody at night.

⁵ Criminal Justice (Temporary Release of Prisoners) Bill, 2001: Second Stage, 8 October 2003.

the eye of the Minister and at his sole discretion.’ Another member of the committee, Deputy John Deasy, agreed: ‘We cannot have an ad hoc situation. We need more than the discretion of the Minister. We need experts who will examine each individual case.’⁶ However, despite these concerns, the bill passed without any significant changes to the basic structure of the existing system. As O’Malley (2010) argues, ‘the system remains unaltered’ and the effect of the 2003 Act was simply to lay out in detail the rationales for release as well as factors for determining release. The rationales listed are numerous but include health and humanitarian grounds, rehabilitation, preparation for release, and ensuring the ‘good government’ of the relevant prison.⁷ Factors to be considered before release range from the risk of the person to the views of relevant parties, and the original offence and sentence.⁸

The conditions imposed on those released temporarily vary by case, but under the rules established by the 2003 Act, all those released are subject to three standard conditions: ‘(a) the person shall keep the peace and be of good behaviour during the release period; (b) he or she shall be of sober habits during that period; (c) he or she shall return to prison on or before the expiration of the release period’.⁹ This means that all temporary releases are now ‘conditional.’ Aside from these minimal conditions, the Minister has wide discretion in imposing conditions and, according to O’Malley (2010), courts rarely intervene (p. 259). Temporary release is for the most part unsupervised by the Probation Service unless it is specifically requested by the Department of Justice, or if the person released had been subject to a statutory life sentence: generally, under Section 2 of the 1990 Criminal Justice Act, those convicted of murder. Life-sentenced prisoners are only released with the consent of the Minister for Justice and are always under the supervision of the Probation Service.¹⁰

The Parole Board

As mentioned above, although it is not a statutory body, Ireland does have a Parole Board, the recommendations of which can determine whether some prisoners are selected for temporary release. The board was

⁶ Criminal Justice (Temporary Release of Prisoners) Bill, 2001: Committee Stage, 12 June 2003.

⁷ Criminal Justice (Temporary Release of Prisoners) Act, 2003, Section 1.

⁸ Criminal Justice (Temporary Release of Prisoners) Act, 2003, Section 2.

⁹ Prisoners (Temporary Release) Rules, 2004 (S.I. 680/2004), Section 3.

¹⁰ As of 1 April 2016, the Probation Service was supervising 79 life-sentenced prisoners in the community (Probation Service: Monthly Offender Population Report). For a discussion of the supervision of life-sentenced prisoners on temporary release, see Wilson (2004).

established in 2001, replacing the Sentence Review Group, which had operated since 1989 (although, as Griffin and O'Donnell point out, this was essentially just a change in name) (2012: 615). Despite moves in other jurisdictions to transition parole release decisions 'from a process that was often political, informal and discretionary to an increasingly formalized and judicial one', parole in Ireland remains 'avowedly political' (Griffin and O'Donnell, 2012: 614, 615). Until recently, calls to reduce the discretion of the Minister for Justice and to put the board on a statutory footing had met with little support. However, in June 2016, Fianna Fáil Deputy Jim O'Callaghan introduced the Parole Bill 2016, which would do just that (O'Regan, 2016). During the Second Stage debates, although some concerns were expressed, there was broad support for the bill, including from the Government. At the time of writing, the bill was in the Committee Stage.¹¹

The role of the board is to review the sentences of prisoners referred to it by the Minister for Justice, Equality, and Law Reform (Parole Board, 2015: 7). It reviews only the cases of those sentenced to eight years or longer, which is a small percentage of the total prison population. Cases are only eligible for referral after a certain minimum term has been served; life-sentenced prisoners for example, must serve a minimum of seven years before being eligible for release. Factors taken into consideration in making recommendations for release include the 'nature and gravity of the offence', 'conduct while in custody', risk of reoffending, and 'likelihood of period of temporary release enhancing reintegration' (Parole Board, 2014: 8). Not surprisingly, these factors closely resemble the factors listed in the 2003 Criminal (Temporary Release of Prisoners) Act. Although the details of the recommendations made to the Minister are not available, data from the Board show that between 2010 and 2015, between 89% and 97% of recommendations that were made by the Parole Board were subsequently accepted in full by the Minister (Parole Board, 2015: 17).

2. Part-suspended sentences

Temporary release is not the only form of conditional release that results in post-custody supervision. The second type is what is known as 'part-suspended sentence[s]' (Osborough, 1982: 245). According to Osborough, these sentences began to be issued by judges in the 1940s. Courts in effect gave themselves the power to exercise continued review

¹¹ Parole Bill, 2016: Second Stage [Private Members], 15 June 2016.

of cases after the initial sentence was handed down. As Bacik notes, ‘The practice arose whereby judges would frequently insert a review date into a sentence, in order to give offenders a prospect of rehabilitation. An offender given a review date understood that if he or she complied with prison rules, or availed of the opportunity of treatment for drug addiction, for example, the remainder of the sentence would be suspended upon the review date’ (2002: 350). However, the earliest example cited by Osborough, in the case of *People v. Grey* (1944), did not seem to be imposed for the purposes of rehabilitation. In that case, the judge sentenced the defendant to two consecutive sentences, one of six months and one of three months; however, he essentially provided that so long as the defendant stayed out of trouble, the three-month sentence ‘would not be put into operation’ (Osborough, 1982: 245).

This type of sentence began to be imposed more frequently during the 1970s, although it was almost entirely confined to the higher courts (the Central Criminal Court and the Circuit Court). The practice was for the Probation Service to complete a report for the courts detailing the progress of an offender in custody. These sentence reviews would often include the requirement for supervision by the Probation Service as a condition of the suspended sentence. During the early 1980s, the number of such reports remained fairly static: 28 in 1981, 34 in 1982 and 32 in 1983 (Irish Probation Service, 1984). Post 1983, annual reports did not specifically identify the number of sentence review reports completed.¹² Judges continued to include these review provisions in their sentences while at the same time the Supreme Court and the Court of Criminal Appeal expressed their disapproval of the practice, in terms of both validity and appropriateness. For example, in 1980, in *People (D.P.P.) v. Cahill*, among other concerns, Henchy J. argued that the practice infringed on the function of the executive, which holds the power to remit sentences (pp. 11–12). Henchy J. overturned the sentence, noting that ‘a sentence of a term of penal servitude or imprisonment which is coupled with the reservation to the Court, or to the particular judge, of a power to review the sentence at a future date should not be imposed’ (p. 12). Despite this

¹² In the 1988 Annual Report, the Probation Service started to identify reports completed in prisons for ‘appropriate administrations’ (Irish Probation Service, 1989). However, it does not specify the purposes of those reports; some are identified as prepared for the Sentence Review Group, the precursor to the Parole Board, and it is likely that the remainder were prepared for the Courts. If that is the case, then there was a big increase in the numbers of reports prepared in the 1990s, with over 100 reports completed in both 1995 and 1997.

decision, trial judges continued to impose the sentence, and occasionally on appeal those sentences were overturned. Interestingly, in at least one such case, *People (D.P.P.) v. Sheedy*, such a sentence was overturned because the review provision did not include any need for and corresponding requirement for treatment or rehabilitation. While seeming to approve of the practice in general, Denham J. noted that in the case before her: 'There were no factors such as would render it appropriate to invoke a structure of treatment and then to review the sentence' (p. 194).

It wasn't until 2000, in *People (D.P.P.) v. Finn* that the issue was finally resolved and the Supreme Court ruled, albeit as non-binding *obiter*, that the practice of imposing this type of sentence should be discontinued. The primary rationale for the decision was that at the point of review, if the individual has met the conditions imposed and the Court suspends the remainder of the sentence, the Court 'is in substance exercising the power of commutation or remission which the Oireachtas has entrusted exclusively to the government or the Minister for Justice' (p. 45). Keane C.J. also noted that there appeared to be positive aspects to the practice, but that it was for the Oireachtas to place it on 'a clear and transparent basis' (p. 47). In the 2006 Criminal Justice Act, the legislature attempted to do so.

First introduced to the Oireachtas in 2004, what became the 2006 Criminal Justice Act was a comprehensive criminal justice bill that addressed such varied topics as electronic tagging, firearms, bail, antisocial behaviour orders and mandatory minimum sentences for people convicted of drug offences. It also proposed giving additional powers to the Gardaí and allowing increased detention periods. What eventually became Section 99 of the statute was not in the initial version of the bill and instead was introduced as an amendment on 28 March 2006 upon the bill's referral to committee. As the Minister for Justice, Equality, and Law Reform, Michael McDowell, made clear, the clear goal of the section was to 'put the arrangements for suspending sentences on a statutory footing for the first time'.¹³ He also emphasised the rehabilitative goals of the Act, noting that it would 'enable the court to direct a person to deal with the underlying cause of the offending person through treatment or courses on, for example, substance abuse'.¹⁴

¹³ Criminal Justice Bill, 2004: Second Stage, 8 March 2006.

¹⁴ Criminal Justice Bill, 2004: Committee Stage, 11 May 2006.

Section 99 of the Act permits the suspension of a custodial sentence (either in whole or in part), conditional on the person complying with the conditions of the order of suspension. While the only mandatory condition is to ‘keep the peace and be of good behaviour’,¹⁵ subsection 3 allows the court to impose any other condition that is appropriate to the offence and that will reduce the likelihood of reoffending. In addition, subsection 99.4 lists other possible conditions including co-operation with the Probation Service, participation in treatment programmes, and supervision by the Probation Service. These are commonly referred to as Part Suspended Sentence Supervision Orders (PSSSOs) The Probation Service is given specific authority to request the imposition of any of these conditions. Nothing in the Act specifically excludes the sentenced person from consideration by the Parole Board during the custodial portion of their sentence.

3. Post-release supervision orders

The third type of post-custody supervision is governed by the Sex Offenders Act of 2001, which gave judges the option to sentence individuals convicted of certain sex offences to a period of post-release supervision following their release from prison.¹⁶ This provision was part of a wider effort to regulate this population, and the statute includes other provisions, including notification requirements. The aims of the 2001 Act were: ‘First, to help the offender maintain self-control over his or her offending behaviour and, second, to provide external monitoring of his or her post release behaviour and activities’. The minister noted the particular importance of this provision for ‘those offenders who have undergone sex offender treatment programmes while in prison and who would benefit from a continuation of appropriate programmes following release from prison’.¹⁷

Part 5 of the 2001 Act requires judges, when imposing a custodial sentence on individuals convicted of certain sexual offences, to consider a period of post-release supervision. They are obliged to consider four factors in deciding whether to impose post-release supervision: the need for supervision, the need to protect the public, the need to prevent further

¹⁵ Criminal Justice Act, 2006, Section 99(2). This condition mirrors the first required condition for people released on temporary release. See note 6 above.

¹⁶ Sex Offenders Act, 2001, Section 28(1).

¹⁷ Sex Offenders Bill, 2000: Second Stage, 6 April 2000.

sex offences, and the need to rehabilitate the individual.¹⁸ If the court does decide to impose a supervision sentence in addition to a prison sentence, the total sentence cannot exceed the statutory maximum sentence.¹⁹ The court has the general authority to set conditions of supervision including conditions that protect the public from harm and those that require the individual to receive counselling or treatment.²⁰ However, the statute also makes provision for these conditions to be discharged either in the interests of justice or where protecting the public from harm no longer requires them.²¹

As with the 2006 Act, a person subject to Part 5 of the Sex Offenders Act 2001 can also make application to the Parole Board. It is important to note that people convicted of sex offences can also be released on a part-suspended sentence under the 2006 Act.

4. The Community Return Scheme

The final and most recent form of post-custody supervision is known as the Community Return Scheme (Irish Prison Service, 2014). This scheme is co-managed by the Prison Service and the Probation Service and was instituted in 2011. Individuals serving between one and eight years can be granted temporary release with a form of community service. If the individual is deemed to be of good behaviour and does not represent a significant risk to the public, once he or she has served 50% of the sentence, he or she may apply for Community Return. If granted, the individual is released to the community under the supervision of the Probation Service and is required to engage in unpaid community work, usually for three days a week, for half the time remaining on their prison sentence. Failure to comply results in an individual being returned to custody. A recent evaluation of the programme shows compliance rates of almost 90% among participants, and of those who began the programme in its first year and successfully completed it, as of December 2013, just 9% had been committed to prison on a new custodial sentence (Irish Prison Service and Irish Probation Service, 2014).

¹⁸ Sex Offenders Act, 2001, Section 28(2).

¹⁹ Sex Offenders Act, 2001, Section 29(2).

²⁰ Sex Offenders Act, 2001, Section 29(1)(b).

²¹ Sex Offenders Act, 2001, Section 30(2).

Revocation of release

All of the forms of supervision described above are conditional. Any individual not complying with the terms of his or her supervision order must be returned to the relevant authority for consideration of the violation. For example, those subject to a life sentence who are on temporary release and violate a condition of that release are handled by the executive branch. This means that there is no hearing or appeal mechanism and violations generally mean a return to custody. However, violators are not precluded from applying for temporary release again at a future date.

The options available to courts vary depending on the type of order. For example, until recently, the court had significant discretion in the case of PSSSOs: it could reactivate the whole or part of the suspended portion of the sentence and effectively return the individual to prison, or it could determine that the violation was not sufficiently serious and take no action.²² However, in April 2016, some of the revocation portions of the 2006 Act were declared unconstitutional because of the differential impact the law had on individuals' rights of appeal (*Irish Times*, 2016a). Mr Justice Michael Moriarty declared sub-sections 99.9 and 99.10 of the Act, which allow for the reimposition of the suspended portion of a sentence if a person is convicted of a new crime, unconstitutional. Justice Moriarty noted in his judgment that 'section 99 frequently causes difficulty and was in need of urgent and comprehensive review'; however, the ruling does not appear to affect sub-section 99.17, which covers revocation as a result of a breach of a condition.²³

In the case of the Post Release Supervision Orders (PRSOs) for sex offences, an individual who violates his or her conditions is effectively charged with a new summary offence by the Probation Service and after a court hearing can be sentenced to up to 12 months in custody and/or a fine.²⁴ If an individual does serve time in prison, his or her post-release supervision is suspended while he or she is in prison and recommences upon release. As with section 99 of the 2006 Act, difficulties can arise in practice with the revocation of orders and the imposition of sanctions in the event of violation. Finally, in relation to the Community Return

²² Criminal Justice Act, 2006, sub-sections 99(10) and 99(17).

²³ Some commentators have argued that the April ruling affects all suspended sentences (*Irish Times*, 2016b) but it appears that they are not properly distinguishing between revocation for a new offence and revocation for a condition violation.

²⁴ Sex Offender Act, 2001, Section 33.

Scheme, participants with two instances of non-attendance or lateness are removed from the scheme and returned to custody (Irish Prison Service and Irish Probation Service, 2014: 13).

The use of post-custody supervision

Because data collection and reporting have varied over the years, it is difficult to analyse trends in post-custody supervision. No information is available on either patterns of sentencing involving supervision orders in the courts or the length of supervision orders, and there has been very little empirical research on the conditions of supervision or on revocation causes, rates or consequences.²⁵ However, based on the publicly available data, it does appear that the use of supervised temporary release has declined in recent years, while Part Suspended Sentence Supervision has increased.

The use of full supervised temporary release peaked in 1994, when 228 cases were recorded. Just five years later that number had been cut to just 92 cases, and by 2004 it was down to 79 (Irish Probation Service, 1995, 2000, 2005). On the other hand, in 2007, the year after the passage of the 2006 Criminal Justice Act, no PSSSOs were issued by the courts. In 2008 there were just 141, but the number has been growing steadily and in 2014, the most recent year for which data are available, courts issued 586 PSSSOs, approximately 8% of all supervision orders issued that year (Irish Probation Service, 2008, 2009, 2015). Similarly, although the numbers are smaller, between 2010 and 2014 the number of PRSOs for people convicted of sex offences issued increased from 33 to 40 (Irish Probation Service, 2011, 2015).

In March 2015, for the first time, the Probation Service began presenting monthly snapshots reporting information about the population it supervises. Interestingly, included in these reports is a category entitled 'Supervision in the Community Post Release from Custody'. This includes individuals in all of the categories described above. Between March 2015 and April 2016, this number ranged from a low of 1217 individuals to a high of 1324, averaging 15–16% of all individuals under supervision.

²⁵ An article by Nicola Carr and colleagues (2013) summarising existing research on both the experience and practice of supervision in Ireland demonstrates the lack of research focusing specifically on *post-custody* supervision.

Does Ireland now effectively have parole?

Parole is usually defined as the *release* of an individual from prison followed by a period of conditional *supervision*. In its traditional form, it is discretionary, meaning that after an individual has served a portion of the prison sentence, the parole board determines whether he or she should be conditionally released from prison. If released, he or she must comply with certain conditions or risk being returned to prison (Scott-Hayward, 2015). In general, parole *supervision* is aimed at improving public safety by reducing recidivism and promoting reintegration (Scott-Hayward, 2011). As an early release mechanism, parole is ‘a means whereby a sentence of imprisonment imposed by a court can be operated with a degree of flexibility as regards the proportion of the sentence to be served in custody rather than under conditions of licence in the community’ (Hood and Shute, 2000: 101). Thus in some jurisdictions, at particular points in time, parole can be used to manage prison populations.

Through a series of legislative and executive actions, in particular over the past 15 years, it is arguable that Ireland has moved towards the reestablishment of a system of parole. This almost unseen and little commented on development²⁶ raises a number of questions about the management and supervision of individuals in the community post custody, and how post-custody supervision can yield positive outcomes in terms of reduced recidivism and greater community reintegration. However, without a statutory parole board, what exists now is a complex system where a variety of mechanisms for release from prison determine the type of supervision, the number and types of conditions imposed, the definition of violation, the processes of dealing with violations, and the options available to the court or the executive in the event of a violation.

Further, because all of these mechanisms operate independently, a particular individual might be subject to more than one type of supervision. For example, while courts rarely grant temporary release to people convicted of sex offences,²⁷ such an individual could be granted temporary release, and then, after the sentence expires, be subject to a

²⁶ Although Griffin and O'Donnell (2012) discuss parole and the process of release for life-sentenced prisoners, their analysis is limited to the formal Parole Board, they don't distinguish between conditional and unconditional release, and they fail to consider other methods of early release from prison, which we argue are equivalent to parole.

²⁷ According to the 2009 Department of Justice Discussion Document on Sexual Offenders, ‘Because of the risks attached, temporary release has only been used with sex offenders in a small number of cases.’

PSRO under the Sex Offenders Act of 2001. Similarly, an individual could be sentenced with a PSSSO under the 2006 Act but before the minimum custodial sentence is served, he or she could be released under the Community Return Scheme. If the individual breaches the terms of the programme and is returned to prison, he or she will then be released again under the PSSSO to be supervised by the Probation Service.

The life sentence case described in the Introduction illustrates some of the issues with the current system. By statute, life-sentenced prisoners convicted of murder that are released to the community are on temporary release and remain under the supervision of the Probation Service. If they violate a condition of supervision, they will generally be returned to custody with the executive making the decision. Unlike most life-sentenced prisoners, however, the defendant in this case is not on temporary release and instead is subject to a PSSSO. Thus if he violates a condition of release, he is entitled to a hearing at which a judge will determine what action should be taken. Further, the recent decision by Mr Justice Moriarty demonstrates some of the legal implications of the current situation, but what has yet to be studied is the practice implications of the development of such a wide range of post-custody supervision options. Although research on probation practice has increased over the past 10 years, none of this research examines the implications of the context of that supervision, including whether practices are (or should be) different for individuals on community supervision as a true alternative to custody and individuals who are on post-custody supervision.

In recent years, committals have increased significantly as a result of both longer sentences and an increased number of admissions.²⁸ If the prevailing drive is to seek to contain prison numbers, and one can debate at length the interplay between economic, political, and practice drivers in this reality, then early release, whether through temporary release, community return, or PSSSOs, has the potential to become of increasing significance for population management. Further, to ensure that decisions about temporary release and post-custody supervision are made rationally, co-operation between the relevant parties is vital. The importance of co-operation was recognised by the Probation Service and the Prison Service in their joint strategy in 2013: 'Both organisations have as their primary goal the maintenance of public safety through the reduction in offending

²⁸ For example, in 2007 there were 9771 committals to prison; by 2013 this number had increased to 13,055. Virtually all of this increase is explained by committals of individuals serving sentences of at least one year.

of those in their care. Increasingly people are sentenced to periods in custody followed by periods under supervision in the community after release.’ This co-operation is evidenced in particular by the co-location of Prison Service staff in the Probation Service Headquarters in order to manage the Community Return Scheme and the Joint Agency Response to Crime (J-ARC) initiative.²⁹ However, the various forms of release and post-custody supervision have developed almost independently of one another, with different actors playing different roles depending on the mechanism of release. Thus, both the courts and the executive also play important roles in this area. The proposed statutory parole board might go some way toward streamlining the management of release and post-custody supervision and towards achieving the shared goals of safer communities and effective community reintegration.

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Resettlement Outcomes for 18–21-Year-Old Males in Northern Ireland*

Catherine Maguire[†]

Summary: Transition from custody to the community is an important stage in the sometimes lengthy and complex journey towards successful resettlement and desistance. This research focuses on resettlement outcomes for young adult males who have been sentenced under the Criminal Justice (NI) Order (2008) and supervised by PBNI in the community. This is a retrospective study using quantitative methods to gather and analyse data from agency records. The results from this study contribute to our understanding of the significance of variables associated with recall for young adults in Northern Ireland.

Keywords: Custody, community, resettlement, desistance, young adult males, Criminal Justice (NI) Order (2008), recall.

Background

Since its inception in 1982, the Probation Board for Northern Ireland (PBNI) has worked within prisons in Northern Ireland and supported prisoners on release (O'Mahony and Chapman, 2007). Before 1996 this was on the basis of a voluntary contract as, with the exception of life sentence prisoners, PBNI had no statutory authority to supervise released prisoners.

The Criminal Justice (NI) Order 1996 introduced post-custody supervision in the form of a sentence specific to Northern Ireland (Custody Probation Order) and supervised licence for sexual offenders (Fulton, 2003). Custody Probation Orders required the consent of the service user, and most prisoners were released without a requirement for post-release supervision or support (O'Mahony and Chapman, 2007).

* The full report will be available at <http://www.socsci.ulster.ac.uk/irss/daremsc.html>

[†] Catherine Maguire is an Area Manager with the Probation Board for Northern Ireland (PBNI). Email: Catherine.Maguire@pbni.gsi.gov.uk

The Criminal Justice (NI) Order (2008) introduced Determinate Custodial Sentences (DCSs), Extended Custodial Sentences (ECSs) and Indeterminate Custodial Sentences (ICSs), all of which involve periods of imprisonment followed by supervised licence. This legislation led to PBNI having statutory supervision responsibility for a significantly increased number of released prisoners, their compliance and enforcement actions.

Enforcement of licence conditions and recall of licensees have contributed to an increase in the prison population in Northern Ireland. Reoffending rates following imprisonment have remained high and demonstrate the challenge for people leaving custody and the organisations charged with engaging with them.

Northern Ireland conviction data reveal that 84.3% of those convicted of an offence during 2012 were male and that the highest percentages of convictions were handed down to persons under the age of 24 (29.7%) (Department of Justice (DOJ), 2014a). In addition, 46% of the prison population in 2013 was under the age of 29 (DOJ, 2014b).

The most recent reconviction data available show that 70% of 18–20-year-olds leaving custody were reconvicted within two years, compared with 33% of those aged 35 and over (DOJ, 2011). It is documented internationally that the majority of imprisoned youth will return to the criminal justice system following release (Spencer and Jones-Walker, 2004).

As part of the Hillsborough Castle Agreement that led to the devolution of policing and justice powers in Northern Ireland, a review of prisons was established (Northern Ireland Office (NIO), 2010). The review, led by Dame Anne Owers, reported in October 2011, making 40 recommendations for change.

The review described the young adult male population as a ‘forgotten group’ (Owers, 2011: 70) who had attracted much less political, media and academic interest than their female counterparts and recommended that ‘A community-based pilot project should be set up for young adult offenders, on the model of the Inspire project, as a statutory, voluntary and community partnership offering an alternative approach and providing community support for young adult offenders’ (Owers, 2011: 37). The DOJ *Strategic Framework for Reducing Reoffending* (2013) also identifies a need for more effective rehabilitative support for young male offenders as a priority (DOJ, 2013: 33).

The Owers Report captures the issues for young adults post-custody in their journey towards desistance from offending and successful

resettlement in the community (Owers, 2011). A specialist community-based pilot project for young adults is suggested. There was, however, little reliable knowledge on resettlement outcomes for this group in Northern Ireland.

This research project comprised a quantitative study examining resettlement outcomes. While a range of variables contribute to successful resettlement, or otherwise, it was decided to focus, as measures, on outcomes related to accommodation, employment, education and training, alcohol and drug use and some elements of community integration. The important role of families in supporting resettlement has been identified in other studies; however, a detailed examination of the particular contribution of family was beyond the scope of this study (Edgar *et al.*, 2012; Ministry of Justice, 2010).

Research

The aim of this study was to identify and examine factors contributing to the successful resettlement of 18–21-year-old males leaving custody in Northern Ireland and to consider the implications for the implementation of Prison Review Team recommendation 37 in relation to a community-based pilot for young adult offenders, and PBNI policy and practice.

Methodology

This was a retrospective study examining data from agency records on key social variables. Service user files were reviewed to gather data in relation to static risk factors, accommodation, education, employment and training, community, and alcohol and drug use, and the relationship to licence recall was examined.

Data were collected from the ACE (Assessment, Case management and Evaluation)¹ instrument and from case records, pre-sentence, recall reports and other sources of data available on the Probation Information Management System (PIMS) using a data extraction tool designed specifically for this study.

¹ ACE (Assessment, Case Management and Evaluation) assessment tool developed by Colin Roberts and used by PBNI to assess likelihood of reoffending, incorporating a risk of harm filter (Best, 2007).

Results

A sample of 162 case files relating to 18–21-year-old males released from custody, and subject to post-release licence supervised by PBNI, between April 2011 and March 2014 was examined.

The relationships between recall to custody as the dependent variable and the independent variables were analysed under the following headings:

1. sentence type
2. static factors
3. risk profile
4. independent variables
5. licence
6. cross-tabulations and tests of association.

1. Sentence type

Of the sample, 96.3% (156 people) were subject to Determinate Custodial Sentences and 3.7% (six people) to Extended Custodial Sentences. None were subject to an Indeterminate Custodial Sentence. Almost half of the sample (45.7%, 74 people) had experienced previous remand or sentenced custody.

2. Static factors

Age at first conviction

Age of first known criminality was noted by the Pre-Sentence Report author or recorded in the Risk Assessment Inventory (RAI) assessment.²

Data were not available in relation to seven cases (4.3%). Of the 155 cases where data were available, 26.9% were aged 10–14 years ($n = 42$), 27.6% were aged 15 or 16 ($n = 43$), 33.3% were 17 or 18 ($n = 52$), and 12.2% were 19 or 20 ($n = 19$) when they were first formally convicted.

Previous convictions

Data in relation to previous convictions were gathered from the Pre-Sentence Report or recorded in the RAI assessment. Data were not available in 1.9% ($n = 3$) of case records reviewed. Half of the sample (50.6%, $n = 82$) had more than 11 previous recorded convictions, 28.4% ($n = 46$) had 30+, 22.2% ($n = 36$) had 11–30, 33.3% ($n = 54$) had

² RAI is a risk of harm assessment tool for use with those who were identified via the ACE screen as having the potential to cause serious harm to others (Best, 2007).

between one and 11, and 23 (14.2%) had no previous recorded conviction at the point of sentence.

Age at sentencing and release

Of the sample, 5.6% ($n = 9$) were under the age of 18 years at the point of sentencing and 13.6% ($n = 22$) were aged 18. The majority of the sample was aged 19 or 20 (64.2%, $n = 104$); 16.7% ($n = 27$) were aged 21.

Index offence

The data relating to index or principal offence were extracted from the Pre-Sentence Report. Just over half (51.5%) of the sample were sentenced for offences of robbery and violence against the person (85 people).

3. Risk profile

The ACE tool is a third-generation actuarial assessment instrument that generates a 'likelihood of general reoffending within the next two years' score. Of the young adult cohort subject to licence in this sample, 69.1% ($n = 112$) were assessed as high likelihood of reoffending. Almost a quarter ($n = 40$) were assessed as medium likelihood of reoffending, and 6.2% ($n = 10$) as low likelihood of reoffending.

In addition to the likelihood of reoffending assessment, Probation Officers assess whether or not service users represent a significant risk of serious harm (ROSH) to the public.³ PBNI assesses an offender to represent a significant ROSH if there is a high likelihood that they will commit an offence causing serious harm. In the study, 23 people (14.2%) were assessed as ROSH.

4. Independent variables

Accommodation

Data in relation to accommodation status were collected at four points: pre-custody, day of release and at three and six months post-release.

It may not be surprising given their age that pre-custody 64.8% ($n = 105$) of the sample resided with a parent or other family member; also, 2.5% ($n = 4$) were accommodated in PBNI-approved hostel accommodation and 5.6% ($n = 9$) in other direct access hostels; 9.8%

³The PBNI ROSH assessment is an evidenced-based judgement by a risk management meeting triggered following completion of the RAI.

($n = 16$) were living at other temporary addresses, usually with friends; 7.4% ($n = 12$) lived in permanent accommodation with a partner.

Most people returned to live with a parent or other family upon release (61.1%, $n = 99$), representing similar levels to pre-custody. However, at the three and six months post-release points this had reduced to 49.4% ($n = 80$) and 38.9% ($n = 63$). Some of this reduction is explained by those recalled or remanded in custody.

By the six month post-release stage just 9.9% ($n = 16$ people) were living independently in their own accommodation and few were accommodated in direct access hostels.

The numbers residing at PBNI-approved hostels increased to 22.8% ($n = 37$) at release, before reducing to 9.3% ($n = 15$) and 3.7% ($n = 6$) at the three and six month post-release point, mainly due to recall to custody. The number of young adults residing with a partner remained fairly constant from pre-custody through to the period immediately post-custody and beyond at 6.1% ($n = 10$).

Employment

Data from Pre-Sentence Reports indicated that 82.7% ($n = 134$) of the sample were unemployed when the report was completed, usually in the month prior to sentencing. There was anecdotal evidence that some young adults had previously been employed but opportunities had been negatively impacted by the economic downturn. Just 2.5% ($n = 4$) were engaged in full-time education and a further 6.2% ($n = 10$) in temporary, part-time employment or training.

The rate of young adults unemployed post-release increased to 92.6% ($n = 150$), with only six (2.5%) having full-time employment at the point of release. As many of the employment data were in single figures and could not be used for further statistical analysis, the variables were grouped by recoding to capture those in employment, training or education and those not in employment, training or education (NEETs) at each point in time. By the three months post-release point the rate of those in education, employment or training had exceeded the pre-custody figure and it further increased to 25.9% ($n = 42$) at six months post-release.

Community

Information from Pre-Sentence Reports, the community domain of the ACE and case records indicated that in 84.0% ($n = 136$) of the cases

reviewed there was no recorded evidence of involvement in community activities at the Pre-Sentence Report stage. The most frequently recorded activity was sport, at 11.1% ($n = 18$ people). Post-release sport remained the most frequently accessed community activity at 12.9% ($n = 21$ people); however, the number of people accessing more than one community activity had increased from 3.0% ($n = 5$ people) to 9.8% ($n = 16$ people) post-release.

Almost a quarter (22.8%, $n = 37$) of the sample had been subject to what is euphemistically referred to as ‘community justice’ by way of threat (17.8%, $n = 29$), exclusion (1.2%, $n = 2$), physical punishment (0.6%, $n = 1$) or more than one of these (3.1%, $n = 5$) at some stage prior to their sentence (McAllister *et al.*, 2009). 4.3% ($n = 7$) were unable to return to their community of origin due to a threat. The frequency of young adults coming to the attention of paramilitary organisations appears to reduce significantly post-custody, reaching just 4% ($n = 7$) by the six month stage.

Alcohol and drug use

Data relating to the age of commencement of substance use were collected from Pre-Sentence Reports and ACE documents. They were based on the person’s self-report and recorded by the Probation Officer. Information was not available in 23.5% of the sample ($n = 38$). 25.8% of the valid sample ($n = 124$) had commenced substance use by the age of 12 years, and by age 14 years 62% of the sample had used substances, rising to 89.5% by the age of 16 years.

Alcohol and/or drugs were a factor in the index offence in 88% of cases. In 27.8% ($n = 45$) of the total cases alcohol alone was a factor in the index offence, and in 16.0% ($n = 26$) of cases drugs alone were a factor.

The ACE assessment instrument allows Probation Officers to separate assessment of criminogenic need, or Offending Related Score (ORS), in relation to alcohol and drugs. In ACE assessments completed closest to release, 15.4% ($n = 25$) of the sample were assessed *not* to have a criminogenic need relating to alcohol. 14.2% ($n = 23$) were assessed to have a small problem, 30.9% ($n = 50$) to have a medium problem and 39.5% ($n = 64$) to have a large problem.

Regarding drug use, 18% were assessed *not* to have a criminogenic need whereas 117 people (72%) were assessed to have a large or medium problem.

5. Licence

All persons released under the Criminal Justice (NI) Order are subject to standard licence conditions, with a suite of 52 additional licence conditions available. 92% ($n = 149$) of the sample were subject to additional licence conditions. Alcohol and drug counselling was the most frequently applied additional requirement, with 118 young adults (73%) required to complete this work. The external controls provided by a curfew and electronic monitoring (EM) were applied in less than one-third of cases (curfew 29% ($n = 47$) and EM 28% ($n = 46$)). 47% ($n = 77$) of the sample were recalled to custody. Of the cases subject to recall, length of time in the community prior to being recalled ranged from one day to 511 days. The median time in the community was 98 days. 25% of recalls had taken place within the first 40 (39.5), days on licence, 50% by 98 days and 75% by 169 days.

Discussion

The purpose of this research study was to add to our understanding of what contributes to the resettlement or recall of young adult males to custody.

Risk and static factors

Almost 70% of the sample was assessed as having a high likelihood of reoffending and 14% as a significant ROSH. It is not surprising that recall rates among these groups were higher. 62% ($n = 69$) of those assessed as having a high likelihood of reoffending and 78% ($n = 18$) of those assessed as ROSH were recalled. Despite the high rate of recall it is of note that 31% ($n = 50$) of those assessed as having a high likelihood of reoffending were not recalled to custody. Further analysis of this group could help in identifying factors supporting successful desistance.

Age of first known criminality is one of a number of key lifetime criminological variables in relation to the retrospective identification of life-course persistent offending, and has been strongly related to early disadvantage (Moffitt, 1996; Bottoms and Shapland 2011). In this study 25% of the valid sample had a conviction aged 14 or under. 66% of this group were recalled to custody compared with 16% of those aged 19 or older when first convicted. The relationship between age of first known criminality and recall to custody was significant.

Accommodation

Most young adults in the sample, 65%, were living with a parent or other family pre-custody and returned to live with a parent or other family on release. Despite having this support at release, 35% of this group were recalled to custody.

Services are in place within Hydebank Wood College to support inmates who are parents and to involve families in resettlement planning (Owers, 2011). However, there is currently no dedicated service available to support the family of young adults returning home post-custody or to help deal with the impact of imprisonment (Criminal Justice Inspectorate NI, 2013). A Criminal Justice Joint Inspection (2014) reported that prisons in England and Wales had carried out limited work with offenders and their families to support or maintain relationships. Further research is required to understand and address the dynamics of young adults returning to their family post-custody.

Over a third of the sample (35%) was released to temporary accommodation; 23% ($n = 37$) went to PBNI-approved accommodation. Those residing in PBNI-approved accommodation had reduced at the three and six month post-release stages, with 84% of this group being recalled to custody.

Those accommodated in PBNI-approved hostels are likely to be assessed as higher risk and to have more restrictive licence conditions, thereby increasing the potential for non-compliance (Weaver *et al.*, 2012). Young adults may find such environments particularly difficult given their developmental stage. Practice experience has been that such placements quickly break down. The level of external control in PBNI-approved hostels is unlikely to be the only explanation for the high level of recall, as 71% of those released to any temporary accommodation were recalled to custody.

It is widely accepted that resettlement planning should begin at the point of entry to a custodial establishment and that a firm plan should, where possible, be in place three months pre-release to support positive outcomes (Lewis *et al.*, 2007; Burnett and Santos, 2010). The importance of suitable accommodation, as a predictor of recalls or otherwise, was affirmed in this study.

Education, employment and training

Data from Pre-Sentence Reports indicated that 83% of young adults in the sample were NEET, with many likely to have been excluded from

school at an earlier stage. While the number of NEETs at release had increased to 93%, the frequency of those in education, employment or training increased incrementally at three and six months post-release.

The young adults in this sample had access to support services in relation to employability, but the review of case files suggested that it was those who were able to maintain their motivation and overcome obstacles to employment such as having to disclose a conviction who were successful in accessing opportunities (Edgar *et al.*, 2012). Accessing education, employment or training post-custody remains a challenge.

Of those in employment, training or education pre-custody, 25% were recalled compared to 52% of those who were not. While there was a significant relationship between employment status pre-custody and recall to custody, that relationship was weaker than for accommodation at release.

Community

There was little recorded evidence of access to informal social supports such as involvement in sport or other community activities. However, it is not clear if this was an reflection of activity levels or of probation staff not valuing or recording such protective factors. Further research is required to understand how probation staff can support the development of social networks.

Almost a quarter of the sample studied had been subject to threat, exclusion or physical punishment from within their community by the time they were sentenced. There was a significant relationship between prior experience of threat, exclusion or physical punishment pre-custody and recall to custody. Young adults in Northern Ireland, as a society emerging from conflict, have faced particular challenges in relation to sectarianism, transgenerational trauma and 'community justice' that can impact on successful resettlement post-custody (Mc Allister *et al.*, 2009). In these circumstances it difficult to draw firm conclusions about the impact of rejection by community of origin. At the very least, it may represent an obstacle to accessing the bonding or bridging social capital necessary for desistance (Bottoms and Shapland, 2011).

Alcohol and drug use

Having a drug or alcohol problem increases the chances of an individual committing a further offence and may negatively impact on their capacity to comply with externally imposed controls such as licence conditions

(MOJ, 2015). In the current study alcohol and/or drugs were a factor in the index offence in 88% of cases. In 28% of cases alcohol alone was a factor in the index offence and drugs alone were a factor in 16% of cases.

Of those with a medium or high alcohol and drug ORS combined, 66% were recalled to custody compared to 46% of those with a medium or high ORS for drugs but low or none for alcohol. The recall frequency for those assessed with no or little alcohol and drug ORS was lower at 13% ($n = 21$).

These results suggest that the combined use of alcohol and drugs, for this young adult group, is a significant factor in recall to custody. This is consistent with Home Office (2015) findings that young people are the most frequent users of drugs and that men are more likely to use drugs than women. In addition, the use of new psychoactive substances (NPSs) is believed to be concentrated among young people and a concern for professionals working with them (Home Office, 2015).

Licence

This study shows that 77 (47%) of the young adults released on licence between April 2011 and March 2014 were recalled to custody.

The purpose of licence conditions is public protection and the conditions imposed should be proportionate to the assessed level of risk. PBNI staff in prisons complete a release plan recommending licence conditions and attend a release panel convened by the Department of Justice.

Weaver *et al.* (2012) note that the shift towards risk aversion in criminal justice has influenced enforcement practices and has contributed to a change in social workers' tolerance of non-compliance. Probation Officers, supported by their managers, make complex decisions about practice and the enforcement of licence conditions on a daily basis with processes to ensure balance and proportionality. However, sentences do need to contribute to rehabilitation and interventions to support desistance to ensure the longer term safety of the public (Owers, 2011).

The frequency of recall among the young adult group must be considered by authorities in decision-making on appropriate conditions, requirements and enforcement.

Conclusions

This study examined resettlement outcomes for 18–21-year-old males released between April 2011 and March 2014 and subject to licence

supervision by PBNI. Return to the community following a period in custody is daunting for some as they attempt to establish or re-establish themselves in the community and deal with the impact of institution-alisation and a criminal record (MOJ, 2015). This is an especially difficult challenge for the young adults transitioning to adulthood.

Research shows that young adult offenders are more likely than the general public to have experienced multiple adversities in childhood and are one of the more marginalised groups within society (Farrington, 1996; Owers, 2011; Bottoms and Shapland, 2011; Shapland *et al.*, 2012). In these circumstances, they are unlikely to have acquired the social capital (Lin, 2001) necessary to achieve desistance and may even be excluded or marginalised in their own community.

The frequency of those classified as NEET at the point of sentencing is significant. While it may in part be explained by the economic downturn, it reflects failures in education, employment and other services up to that point and reinforces the requirement for post-custody support in this respect. Given recent cuts to specialist offender employability services, PBNI is in the process of establishing new relationships with providers, but such developments will take time to bed in.

Binominal logistic regression confirms the importance of appropriate accommodation in successful resettlement. 35% of the sample was released to temporary accommodation with high rates of recall. Probation Officers in prisons are familiar with the challenges in accessing appropriate accommodation at the point of release. Addresses are often not confirmed until the day of release due to housing provider policy driven by funding arrangements. PBNI had initiated discussions with housing providers to change policy and practice in this regard.

Efforts are made to involve families in sentence planning but this work is constrained by resource pressures. If supports were available to build capacity, resilience and repair relationships within the family, it may be that more young adults could return to family on release. Support for families with young adults returning home might also reduce the frequency of recalls for those who do return home.

The study reveals high levels of alcohol use, but more significantly drugs or a combination of the two, contributing to offending. 73% of the sample in this study had a licence condition requiring them to attend alcohol or drug counselling now funded by the Public Health Agency. This is consistent with other research suggesting that young people are the most frequent users of drugs and that men are more likely than women to use

drugs (Home Office, 2015). The use of new psychoactive substances that are not currently detected by drug tests presents additional challenges in custody and in the community. High levels of drug and alcohol misuse can contribute to a chaotic lifestyle where compliance with licence conditions is less sustainable. In these circumstances the level of recall among the sample studied was exceptionally high.

Managing licence conditions can be challenging for both the Probation Officer and the service user. Probation Officers have to manage the balance between risk, licence compliance and supporting desistance. As the developing literature on transition to adulthood (Steinberg, 2016; Prior *et al.*, 2011) indicates, young adults may need additional supports into their mid-twenties. Supervisors and persons subject to supervision need to be able to reconcile this development process with the obligations and requirements of up to seven demanding licence conditions.

Recommendations

Taking on board the findings of this study, the author has made a number of recommendations in order to improve outcomes for young males transitioning from custody to the community, as follows.

- The static risk factor data in assessment has important research value in measuring performance against static predictors of reoffending. Supervising bodies should routinely gather and review static risk factor data.
- Appropriate accommodation at release is significantly related to successful resettlement. It should be a priority to engage with accommodation providers and services to improve service provision for young adults post-custody.
- A pilot project should be initiated on the efficacy and effectiveness of support provision for parents, families and partners of young adults in custody or returning home after custody.
- In light of the emerging body of research relating to the specific needs to young adults, the package of sentences and conditions introduced under the Criminal Justice (NI) Order 2008 should be audited and reviewed to identify key issues and factors to be addressed.
- The recommendation of additional and other licence conditions at PSR and licensing stages should be reviewed.
- Additional training and support should be provided for Probation Officers supervising young adults after custody on the development of

human and social capital, its role in desistance and how supervisees can be helped to access and build social capital.

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Reset: An Opportunity to Enhance Offender Resettlement and Rehabilitation through Mentoring

Stephen Hamilton*

Summary: Reset, also known as the Intensive Resettlement and Rehabilitation Project, is a paid mentoring scheme for prisoners leaving custody introduced by the Probation Board of Northern Ireland in March 2014 and funded through the Northern Ireland Executive Change Fund. The mentoring service, which is delivered by NIACRO, supports the work of Probation Officers and specifically assists mentees at the critical stage of transition from custody to the community. It offers practical support, bespoke to each mentee, supporting an explicit desistance approach. This paper describes the development of Reset and its implementation in Northern Ireland from 1 March 2015 to 31 March 2016, and outlines the results of an independent evaluation carried out by the Northern Ireland Statistics and Research Agency.

Keywords: Imprisonment, releases, resettlement, rehabilitation, mentoring, community service, reparation, victim needs, probation, prison, Northern Ireland.

Background

Leaving prison and the transition to resettlement is a critical point in a prisoner's life. We know that a significant proportion of prisoners released are recalled to custody either as a consequence of failing to comply with the supervisory requirements of release or because of reoffending, and this often happens within the first three months of release (Department of Justice, 2015a). According to the Department of Justice Offender Recall Unit, 197 recalls to prison were made in 2013 and 187 in 2014. There is a significant financial cost and pressure to the criminal justice system when people fail to comply with court orders, but more importantly there is a human cost when mentees go on to reoffend.

* Stephen Hamilton is Assistant Director in the Probation Board for Northern Ireland, with lead responsibility for the Intensive Resettlement and Rehabilitation Project (RESET). Email: Stephen.Hamilton@pbni.gsi.gov.uk

Development of Reset

The Probation Board of Northern Ireland (PBNI) is the statutory organisation that works at every stage of the criminal justice process: at court, in custody, in the community and with victims of crime. Every Probation Officer in Northern Ireland is a social worker, professionally qualified and trained in risk assessment and risk management. Raynor and Vanstone (2015) and Doran and Cooper (2008) show how having professionally qualified staff is an important reason why Probation is so effective in rehabilitating mentees, holding them to account and helping them change their lives. The unique skill and value that Probation Officers bring to the criminal justice system is their ability to engage positively with mentees, thereby supporting their desistance from crime. PBNI has a long history of working in partnership with the criminal justice organisations and community and voluntary sector to assist in changing lives for safer communities.

Desistance theory emphasises the need for a dynamic, person-centred approach to supervise and support individuals who have offended. The challenge of the desistance journey is one that transcends the boundaries of criminal justice institutions and organisations, incorporating the need to support and repair relationships within families, communities and society. Maturity, building social bonds/capital and the development of a crime-free identity are important parts of desistance (Maguire and Raynor, 2007; McNeill and Whyte, 2007).

PBNI had been exploring ways in which it could enhance prisoner rehabilitation and resettlement. It was clear that there was a need for further support to prisoners from the moment they left the prison gate to prevent reoffending and assist in rehabilitation. Evidence suggests that individuals are less likely to reoffend if they can access appropriate, practical support and develop pro-social bonds. Lewis *et al.* (2007) found that positive results regarding attitudes to crime and reconviction rates support the suggestion that pre-release work by professionals trained to address thinking skills and practical problems may be central to resettlement. Desistance research acknowledges generating and sustaining motivation as vital to the process of change and it may be that, along with assistance to resolve practical problems, the relationships noted above play a key role (Maguire and Raynor, 2006; McNeill and Whyte, 2007).

PBNI sought to explore ways in which practical support could be delivered to assist in the desistance journey. At the same time the Department of Justice was consulting on its 'Supporting Change: A Strategic Approach to Desistance' document. This document, published in September 2015, has the objective 'To provide focused support of individuals in the criminal justice system increasing the likelihood of living a life free from further offending'. It states that it is recognised that continuity of care and practical support are two key issues that affect the process of desistance. The process of resettlement from prison and through care support for individuals returning to the community was identified by those consulted as being particularly important.

It was against this background that an application was made to the Northern Ireland Executive Change Fund – a fund set up to deliver new initiatives with a preventative focus which will contribute to longer term savings to the public purse. The application was successful, and PBNI was awarded £472,000 to pilot the Reset project. PBNI then carried out a competitive tender process, and NIACRO was appointed to provide the mentors.

The primary objectives of the Reset programme were defined as:

- reducing the number of recalls to prison in the first 12 weeks following the release from custody of prisoners who PBNI assessed as a medium or high risk of reoffending through the Assessment, Case Management and Evaluation (ACE¹) score
- reducing the ACE scores of participants
- improving mentee outcomes in relation to accommodation, employment, training/work experience, self-esteem/confidence and social/family integration.

In the bidding process assumptions were made about the criteria for the scheme, with initial numbers seeming to restrict the scheme to high-risk male mentees. However, due to lower prison numbers than predicted, a case was made, and accepted, to extend the criteria to include all men and women leaving prison, on post-custody supervision, who are assessed as having a high or a medium likelihood of reoffending. The mentoring relationship commenced four weeks prior to their leaving custody and continued for a maximum of 12 weeks after release.

¹ ACE Risk Assessment Instrument. For more information see Cooper and Whitten (2013).

The appointment of the Reset partner, NIACRO,² was managed through the Department of Finance and Personnel's Central Procurement Directorate (CPD) during April 2015. NIACRO then, in an impressive turnaround time, conducted a recruitment process for the seven mentors. NIACRO's bid design also incorporated a part-time post for specialist benefits and debt advice and the equivalent of one subcontracted post with Housing Rights, another community voluntary sector organisation, which focused specifically on accommodation support needs.

PBNI retained funds for an Area Manager to project manage the initiative, which proved to be an essential resource, not least for the intense level of communications required with a wide range of stakeholders, and also to undertake the work required to develop the range of new processes to support NIACRO in the operation of the project. Funds were set aside for evaluation and data collection, which included an interim report and a final report by NISRA (NISRA, 2015).³ This paper references the interim evaluation, with the final report due for publication in 2016.

Mentoring

Reset commenced operationally in mid-June 2015, working with those due for release from 1 July 2015, and aiming to work with approximately 200 mentees throughout the year. In order to assist voluntary take-up of this project, mentors approached all those who met the project criteria in prison, to encourage engagement. NIACRO had structured its staffing so that each of the three prison establishments in Northern Ireland had a mentor who formally spent part of their time each week physically based in a prison. This was key to the high uptake levels.

Mentors met the consenting mentees on their day of release, and supported them during their first day out. They saw them on a daily basis for the first week, and if required for longer, to provide practical support related to the personal and social factors identified by their Probation Officer (PO). This has included sourcing and maintaining accommodation for homeless mentees, accompanying them to resettlement appointments, and providing social access support to help keep them free from offending. The support lasted a maximum of 12 weeks.

² NIACRO is a charitable company limited by guarantee which has been working for more than 40 years to reduce crime and its impact on people and communities (<http://www.niacro.co.uk>).

³ NISRA: Northern Ireland Statistics and Research Agency (<http://www.nisra.gov.uk/>).

Evaluation of RESET

The interim evaluation by NISRA of Reset involved an analysis of the data recorded in the Probation Board Management Information database (PIMS), data logs the mentors completed each time they met with their mentees, and mentee questionnaires administered at the start and end of the programme. In addition, interviews were held with stakeholders and randomly selected mentees, and input from mentors was gathered through focus groups, telephone interviews and mentor case closure questionnaires. Due to timing constraints the interim evaluation covered the operational period until the end of October 2015. A final evaluation report will be completed by NISRA and will be publicly available when published.

From 1 July to 31 October 2015, 160 eligible individuals were offered a place on the Reset programme, 98 of whom agreed to take part. By 31 October 73 were engaged, post-release, in Reset, 18 had successfully completed the programme, and seven had been recalled to prison, either for non-compliance with licence conditions or for further offending. Over half (54%) of the Reset mentees were aged 30 and over. In terms of ACE score, just under three-quarters were assessed as having a high likelihood of reoffending and the remainder as having a medium likelihood. Just under one-fifth of mentees were considered a significant risk of serious harm to others (ROSH) and 16% were part of the Reducing Offending in Partnership (ROP) initiative (Doherty and Dennison, 2013). The majority of mentees were subject to determinate custodial sentences (DCSs).

The interim evaluation showed that both mentors and stakeholders felt that the intensive support provided by Reset positively complemented the Probation Officer role, particularly during the first week post-release when basics such as accommodation, health care and finances were being put in place, and was highly beneficial to mentees. The project was seen as especially important for those who were high risk, ROSH or sex offenders, and those who had no other support. The through-the-gate model was seen to reduce anxiety and, while other programmes were available, the fact that Reset was 'a voluntary open offer of help' made it highly effective. In addition, close working with PBNI and the Probation Officer's case management role including establishing an initial tripartite was seen as critical.

In terms of benefits to mentees, stakeholders noted:

- the valuable role that mentors have had with mentees also known to PSNI⁴ ROP teams
- interviewees generally felt that the right mentees were being targeted
- tailored support, especially in those early days, to meet mentee needs
- also valuable for mentees who have lost all support in the community or whose family/friends have turned their back on them – someone for both practical help and emotional support.

Mentees themselves reported that the main reasons for participating in Reset were support and practical help. They identified a range of challenges they faced following release from custody including accommodation, health care (particularly mental health), benefits, keeping appointments, bureaucracy, substance abuse and addictions, and others' perceptions. Several mentees said that without Reset they would have found these challenges difficult to cope with, and many said they would have preferred the scheme to last longer than 12 weeks post-release.

The application for Reset funding was based on a recall rate of 28% DCSs and 72% extended custodial sentences (ECSs). Of the 98 Reset participants, there were seven recalls to prison, two of which were ECS and five of which were DCS cases. Of the total Reset cases this equates to 20% recall in ECS cases and 7% in DCS. While the report cautioned that it would not be appropriate to fully calculate and compare recall rates at this early stage, nevertheless 'feedback from stakeholders would suggest that this number of recalls supports the indication of a reduction'.

In addition, some stakeholders informed the researchers that while recalls had occurred, they felt that in some instances they would have happened sooner in the absence of the programme. Probation Officers also commented that recall should not be seen as a definition of failure, as in some cases it is entirely appropriate and unavoidable for public protection reasons. Mentees, mentors and stakeholders all reported that progress was being made in keeping mentees from reoffending and preventing avoidable returns to prison.

Mentees exiting Reset were asked to write three words describing their experience of the programme. The words used most often were: 'helpful, supportive, good'. The researchers concluded that 'the qualitative and quantitative evidence highlighted in this interim evaluation provide an early indication that Reset is making good progress towards meeting its

⁴ Police Service of Northern Ireland (<https://www.psni.police.uk>).

objectives. The costs incurred by NIPS [Northern Ireland Prison Service] and the wider Criminal Justice system could potentially be reduced if progress continues and the level of recalls to prison are significantly reduced.'

Conclusion

The project was very positively endorsed by the Northern Ireland Minister for Justice in his address to the Public Protection Advisory Group in Belfast City Hall on 20 November 2015 (Donnellan and McCaughey, 2010). It fits within the spirit of the NI Executive's Strategic Framework for Reducing Offending (Department of Justice, 2013), along with current Programme for Government aims (Northern Ireland Executive, 2012). It is consistent with a number of recommendations in the Owers Review of prisons (Department of Justice, 2011), the desistance work being led by the Reducing Offending Directorate and the Prison Population Review (NIPS, 2014), which highlighted the high number of recalls as a concern. It also supports the positive resettlement findings highlighted in recent Criminal Justice Inspection Northern Ireland (CJINI) prisons inspection reports (CJINI, 2015a, 2015b). At the time of writing the hope, backed by evidence, is that funding can be found to enable extension of this innovative programme, which has the potential to generate savings across the criminal justice sector.

The project is perhaps best summed up in the words of one of the mentees. Simon spent ten months in custody and was released on licence. He was one of the first offenders to be supervised through the new Reset mentoring project, and when asked about it he said:

When I came out of prison I was really worried about not being able to find employment. My mentor was William and he has been very supportive in helping me take steps back into employment. He helped me write a disclosure letter to future employers, which is something I was really concerned about. He has also helped me access training and write a CV. William also works closely with my Probation Officer which was important. I have no doubt that Reset will help me stay out of custody. When you surround yourself with positive people it gives you a more positive outlook. This project is fantastic. The support and encouragement I have received has been so important. I won't be going back to custody. I am determined to stay away from crime. I would go as far as to say Reset has been life changing for me.

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Service User Involvement in Service Planning in the Criminal Justice System: Rhetoric or Reality?

Nicola Barr and Gillian Montgomery*

Summary: It is now widely accepted that involving service users in the management, design and delivery of services is essential, because it helps service providers to get things right, and enables service users to participate, take responsibility and have ownership of the services being provided.

Keywords: Probation, service users, relationships, consultation, engagement, participation, citizenship, desistance, social justice, inclusion, rehabilitation.

Introduction

Within criminal justice the relationship between service users and those delivering services can be complex, particularly when the relationship is 'involuntary'. However, 'effective user involvement and partnership working must be based on values such as respect, humanity, partnership, inclusion and a commitment to respecting the right to consultation and involvement' (Duffy, 2008: vii).

The desistance perspective highlights the need for staff working with offenders to have the relevant skills to build relationships, enhance positive strengths and encourage responsible citizenship. Therefore this paper explores the background to service user involvement in probation in the UK, and the current opportunities to increase service user involvement within the Probation Board for Northern Ireland.

The definition of 'service user' differs across a range of services but is often referred to as PPI (personal and public involvement). This is simply defined as 'involving those who use services, or care for those who use

* Nicola Barr is an Area Manager for the Probation Board for Northern Ireland (PBNI) covering the North West area (email: Nicola.Barr@pbni.gsi.gov.uk). Gillian Montgomery is an Area Manager for the PBNI based in HMP Maghaberry (email: Gillian.Montgomery@pbni.gsi.gov.uk).

services, with those who plan and deliver services. This involvement can relate to individuals or part of a group (personal), or voluntary groups or the wider community (public)' (Duffy and McKeever, 2014).

Jo Phillips from Glasgow Homelessness Network (2004) states that the 'trouble' with service user involvement is that it is a remarkably simple concept, but its apparent simplicity is the key to its complexity. As the coordinator of Glasgow Homelessness Network with responsibility for promoting service user involvement, she says that the definition should encompass the full range of people's experiences – not just the things that workers or planners think are important – and operate at various levels of involvement. She states that giving people information is a start, but involvement can develop into service users planning work themselves or delivering services. For example, principles of service user involvement are absolutely applicable to operational tasks such as making and taking referrals, doing assessments and forming care plans – a 'person-centred approach'.

The benefits of service user involvement are well documented (Burns *et al.*, cited in Ramrayka, 2010) and include promoting social inclusion and ensuring that services better meet the needs of those who use them (Scottish Executive, 2006). However, while 'some areas of service user involvement appear to be relatively well advanced, other areas, such as in the field of criminal justice, are markedly underdeveloped' (Duffy, 2008: 12). As managers for the Probation Board for Northern Ireland (PBNI), we see the under-utilisation of the involvement of offenders as an opportunity for development.

Therefore this paper considers how service user involvement has developed in Great Britain, examples of what works in other probation organisations and the benefits of implementing service user involvement in probation. Finally it considers opportunities for development of service user engagement and involvement in PBNI.

The evolving legislative/political journey

Gallagher and Smith (2010: 4) suggest that 'service user engagement is not entirely user driven, but is also politically charged'. Etzioni and George (1999) propose that the underlying political ideology relating to service user engagement sits between neoliberalism (an approach to economics and social studies in which control of economic factors is shifted from the public to the private sector) and social democracy (a political

ideology that supports economic and social interventions to promote social justice, and a policy regime involving welfare state provisions, regulation of the economy in the general interest, and measures for income redistribution).

It can be suggested that the current emphasis on service user engagement owes much to the New Labour agenda of public sector reform and modernisation. The focus of the Thatcher government was 'consumerism' through the marketisation of public services, allowing service users the element of choice (Kessler and Bach, 2011). It was following Prime Minister John Major's term in office that the modernisation agenda came to the fore. Central to this was the concept of 'governance' which was argued to be concerned with 'efficient, accountable public services, partnership across and between different agencies and professionals, and between professionals and users of public services'.

The governance agenda brought a different emphasis to the social work relationship, placing increased importance on the views of users and carers in the delivery of services (Carey, 2009). This is reflected in the proliferation of legislative and policy developments within the UK since the 1990s in relation to user involvement: 'the drive towards increased user and carer involvement in both health and social services provision has become well embedded in legislation and policy both in Northern Ireland and the rest of the UK over the past 20 years' (Department of Health, 1997). Within Great Britain, the NHS and Community Care Act 1990 was the first piece of legislation that formally required local authorities to consult with users and carers in relation to service planning (Farrell, 2004). In Northern Ireland, the first key document was 'People First' published in 1991, which outlines that 'services should respond flexibly to the needs of individuals and the relatives and friends who care for them' (Department of Health and Social Security, 1991: 5). It would appear, however, that despite this plethora of legislation and policy documents involving service users, practical guidance has been slower to develop.

Service user involvement within Probation

One of the difficulties often mooted about service user involvement within criminal justice is that there are tensions and contradictions inherent in working with involuntary service users (Smith *et al.*, 2012). 'Such clients,

if consulted about their views, might well express the wish that social workers simply leave them alone' (Gallagher and Smith, 2010; 8). Involuntary clients do not freely enter into the working relationship and many are mandated by law to do so. Beresford (2005) coins the term 'service refusers' and this applies to many clients in the criminal justice system. McLaughlin (2009: 1109) identifies the central issue: 'there is a point where the social worker is expected to act on their own professional assessment of the situation, informed by agency policy, legal mandates and research, irrespective of what the service users' choices or views are'.

Another issue, of course, is the public perception of enabling offenders and those within criminal justice to be involved in service delivery. While some may argue that empowering offenders could be regarded as 'morally questionable and politically dangerous', it is believed that when given the chance to speak, the user of the criminal justice system can add insight, value and answers to the current problems and failings (Aldridge Foundation and Johnson, 2008).

In recent years there have been a number of developments in user involvement in Great Britain. Clinks is an organisation operational in England and Wales that works with groups within the voluntary and community sector working with offenders. Its aim is to ensure that the sector is informed and engaged in order to transform the lives of offenders and their communities. Clinks carried out a review of service user involvement in prison and probation in England and Wales in 2011, and found that in recent years there had been efforts in the criminal justice system to promote and develop the involvement of offenders in the services with which they engage: 'Desistance theory supports the view that playing an active role in one's community and taking on a measure of responsibility can assist in the offender's journey away from crime' (Clinks, 2011). The report found that service user involvement was generally more developed in the prisons than in the Probation trusts, and that the challenges to effective service user involvement include staff apprehension, the prevailing culture of criminal justice agencies, knowledge and understanding of the service users, reluctance of offenders to be involved, and decreasing resources. It also found that there is very little research on the outcomes of service user involvement in prisons and probation.

There are a number of practical ways in which service users have become involved in probation in Great Britain, and we will consider these now.

User-led organisations

Founded in 2009, User Voice is led by ex-offenders. It works with people to design projects aimed at accessing, hearing and acting upon the insights of prisoners, ex-offenders and those at risk of crime. It also undertakes advocacy work aimed at engaging the media, the public, practitioners and policy-makers.

UNLOCK is the National Association of Ex-Offenders, led by ex-offenders. Its objective is equality of opportunities, rights and responsibilities for reformed offenders by challenging the discrimination they face. Founded in 1999, it is a campaigning group concerned with changing systems, practices and processes that inhibit people from making positive contributions and that marginalise the voices of those who are, or were, involved in the system.

Councils and forums

A number of Probation Trusts in England have formed Service User Councils, with a user involvement organisation, Users Voice, to facilitate. The purpose is to provide a structure for staff to meet with service users in order to gain a better understanding of their experiences, with the ultimate aim of reducing reoffending

An example of existing community-based councils is in West Yorkshire Probation Service. It has three separate groups helping to achieve effective offender involvement in its service development, including a Service User Representative Forum, where offenders are voted as representatives to meet with Probation staff and treatment agencies. They are represented at a joint commissioning level and can help to influence real changes in offender treatment programmes.

Christopher Stacey, Head of Projects and Services for Unlock, examined a number of service user initiatives; his most interesting findings include the fact that, since the Users Voice Council was set up at HMP Isle of Wight, there has been a 37% reduction in the number of complaints within the estate and the average time prisoners spend in segregation units has declined from 160 to 47 days. This is ascribed to a reduction in conflict and increased prisoner satisfaction (Stacey, 2012).

Mentoring and peer support

A Prince's Trust survey (2008) established that 65% of offenders under the age of 25 said that a mentor would help them stop offending; 71% indicated that they would like a mentor who was a former offender.

A number of mentoring schemes within England and Wales have proved successful. For example, the Listeners scheme launched in 1991 in HMP Swansea is now widespread throughout the prison estate and is available in the Northern Ireland Prison Service (NIPS). Listeners are prisoners trained and supported by Samaritans to offer a confidential listening service to fellow prisoners. In a similar vein, the St Giles Trust runs a programme in England called Through the Gates. This project employs advisers who provide intensive resettlement support for those recently released from prison, helping with practical issues such as financial, housing and employment matters. Nearly a third of the St Giles staff had previously offended. This intensive programme of support was estimated to have reduced reoffending by 40%, saving the taxpayer in the region of £10m.

Developments within PBNI

There are very few statutory requirements in place to ensure input from offenders to the services delivered by Probation. However, Section 75 of the Northern Ireland Act requires public bodies such as PBNI to consult with people who are directly affected by their policies and by any change to service delivery.

In the Strategy for Social Work in Northern Ireland (Improving and Safeguarding Social Wellbeing Social Work Strategy 2012–2020), service user engagement is one of the key principles and the recently published Social Work Research and Continuous Improvement Strategy (2015–2020) includes specific reference to service user engagement. Social work as a profession ‘promotes social change, problem solving in human relationships and the empowerment and liberation of people to enhance well-being. Utilising theories of human behaviour and social systems, social work intervenes at the points where people interact with their environments. Principles of human rights and social justice are fundamental to social work’ (NISCC, 2003: 12).

PBNI has retained the requirement for its front-line staff to be qualified social workers who have the knowledge and skills, values and ethics to manage risk, promote desistance from crime and effectively engage with their service users to inform practice initiatives. Therefore, despite the lack of statutory guidance, PBNI is clear that every offender is also a citizen, and promoting responsible citizenship through involvement in developing and being responsible for local services is a key element of our work.

PBNI carried out service user surveys in 1996, 2005 and 2009 to gather feedback in relation to service provision to inform policy and improve practice (Doran *et al.*, 2010; Rooke, 2005). A further service user survey was undertaken in 2015 and the results will be published in 2016. PBNI's commitment to service user engagement is reflected by the 2015/2016 Business Plan objective 'to develop and implement a strategic approach to service user engagement that better informs Probation practice'. Carr (2004) suggests a distinction between 'consumerist' and 'democratic' approaches to service user involvement. 'Democratic initiatives involve service users influencing and making decisions, while consumerist approaches focus more narrowly on consulting people about the services they receive' (Carr, 2004: 5). PBNI has historically taken a 'consumerist' approach to service user participation, which is arguably understandable given that it is a court-mandated service with certain expectations to fulfil. A 'consumerist' approach reflects the power imbalance that exists with an involuntary service user, as this approach does not promote user-led change.

'For too long social workers and probation officers have been compelled to support a narrow form of rehabilitation' (McNeill *et al.*, 2012: 10). Maruna *et al.* (2012) suggest that the top-down processes of evidence-based practice inspire neither practitioners nor service users, as this knowledge is imposed on them from research findings they barely understand. There has been some criticism of established cognitive behavioural programmes, born from the 'What Works' agenda, in that they do not reflect individual motivations and service user circumstances (Hughes, 2012). While Doran *et al.* (2010) found that 97% of offenders were aware of the requirements of their orders, the study did not look specifically at offenders' understanding of the work they were required to undertake or why. Overall the reported findings suggest that the questions asked in the study were largely prescriptive and dominated by themes of offender assessment, risk management and approved intervention programmes (Hughes, 2012).

The implementation of the Criminal Justice Northern Ireland Order 2008 resulted in changes to PBNI's responsibilities with the introduction of a new risk-based sentencing approach. This legislation has also impacted on the service users subject to the new sentencing framework, who no longer have to provide informed consent to engage in a programme of work deemed appropriate to manage their risk in the community. Therefore balancing legislative and organisational responsibilities with offender engagement becomes more difficult.

Desistance theory moves away from the ‘What Works’ approach, stemming from the meta-analytical studies from the 1980s and 1990s, and focuses on ‘how’ the processes work and ‘why’ in terms of understanding the dynamics of what helps individuals stop offending (Maruna *et al.*, 2012). Doran *et al.* (2010) found that 88% of participants strongly agreed/agreed that their Probation Officer will help them sort their problems out, which is positive. The desistance paradigm highlights the importance of constructive engagement between offenders and their Probation Officer (McNeill, 2009) and sentence planning for those subject to supervision has been seen as significant in terms of engaging and building relationships with offenders. However, as Hughes (2012) argues, sentence planning practice has never been subject to rigorous evaluation and therefore its impact on engagement, compliance and reoffending remains unclear. Offenders’ motivation and their response to services remains a key component in rehabilitative success. However, reducing resources in an organisation that has standardised approaches to assessment, planning and targeting may inhibit dynamic practice, which will impact on offender engagement. Farmer *et al.* (2015) propose that desisting from crime requires changes in offenders’ personal circumstances as well as their thought processes, suggesting that the principles underpinning desistance coexist with cognitive behavioural approaches advocated by the What Works literature.

There are a number of areas where service users are beginning to engage more effectively with Probation. The Reset programme, a mentoring and intensive rehabilitation scheme, was launched in PBNI in 2015. At present the mentors are from the voluntary and community sector. Offenders who were part of the project were asked in November 2015 to record a video diary of the impact Reset had on the early days following release from prison. The videos show the positive impact that mentoring has had as they readjust to life in the community. A number of those interviewed have expressed a desire to become mentors themselves, and this is an area that should be explored by PBNI.

A number of service users have told the stories of how their lives have changed to a range of stakeholders and the media. The feedback has been overwhelmingly positive and inspiring, and it is clear that service users have an important role in explaining to both the public and stakeholders the impact Probation can have in changing lives. It is clear that service users who tell their stories are deeply impactful. PBNI’s Communications Strategy for 2016–2019 contains an objective to develop a narrative around this success.

PBNI provides volunteering opportunities for members of the public, including those who have offended. The role of volunteers is to complement the role of the Probation Officer by supporting offenders to work towards specific and agreed personal goals. Volunteers are expected to promote responsible citizenship, encourage and enable service users to take responsibility for their actions, and work with them to find solutions and encourage and motivate service users in their personal development. A number of former offenders are currently working in a volunteering capacity.

Opportunities for development within PBNI

As previously mentioned, in 2015–2016, under the strategic theme of developing Probation practice, PBNI plans to develop and implement a strategic approach to service user engagement that better informs Probation practice (PBNI Business Plan, 2015–2016). To this end PBNI undertook a further service user survey in 2015, based on the Offender Management Feedback Questionnaire (OMFQ) issued by the National Offender Management Service (NOMS) for Probation Trusts in England and Wales. The OMFQ was produced as a result of research, development and testing, and has been found to be an effective tool for measuring offenders' engagement, to ascertain whether they are actively engaged in the sentence planning process and whether their relationships with Probation staff are supportive of rehabilitation and resettlement (Ministry of Justice, 2010).

Themes from desistance theory are evident throughout the questionnaire, which is aligned with the Department of Justice's (DoJ) vision of embedding desistance principles in policy and practice to reduce reoffending and create safer communities (DoJ, 2011). One of the key objectives for supporting change using a desistance approach is to 'collate information and evidence to reform and refine service delivery and deliver an evidenced based approach to desistance' (DoJ, 2011: 45). Therefore the starting point for PBNI is to seek service user feedback and utilise this information to develop the capability and capacity of staff to support rehabilitation and reduce the risk of reoffending.

However, in today's climate of financial austerity, implementing a desistance agenda requires investment in staff relationships, supporting families and individualising approaches (Annison and Moffatt, 2014). Public protection remains central to criminal justice policy, which may

come into conflict with the principles of desistance, and where staff are responsible for those deemed to present the highest risk, adopting a strengths-based approach to their management may create anxiety in services driven by bureaucracy (Annison and Moffatt, 2014).

The growing criticism of the idea of ‘risk’ and the ‘target-driven’ nature of criminal justice has resulted in a (re-)emergence of a more holistic assessment of the individual and a strong belief in the therapeutic relationship between offender and practitioner (Walker, 2012). The knowledge, skills and values gained through social work training are entirely congruent and compatible with PBNI’s risk management role. Assessing complex situations and people holistically is key to understanding presenting risks. ‘Since the process of giving up crime is different for each person, criminal justice responses need to be properly individualised. One-size-fits-all approaches run the risk of fitting no-one’ (McNeill and Weaver, 2010: 6). It is vital therefore that PBNI use the findings from the survey in a way that engages service users in planning for service delivery.

Recommendations

We believe that PBNI should consider the following recommendations in order to enable greater service user involvement within the organisation.

1. PBNI should establish a project group to scope out opportunities for greater service user involvement in the organisation.
2. PBNI should ask service users how they would like to be involved and what shape that involvement would take.
3. PBNI would benefit from examining the Probation Trusts in England that have already embarked on the formation of service user forums. Adopting such a model could provide a more ‘democratic’ approach to service user involvement in order to help PBNI shape policy and practice for the betterment of service provision.
4. PBNI should consider developing the current mentoring that takes place through the Reset programme to include mentoring by former offenders. PBNI should develop its volunteering opportunities to ensure that ex-offenders are encouraged to participate.

Conclusion

Desistance research suggests that the quality of the professional and personal relationships is pivotal in helping offenders desist from crime (McNeill, 2009; McNeill and Weaver, 2010; Maruna *et al.*, 2012). However, little is known about the complexities of those interactions between the Probation Officer and the offender and how these can influence desistance from offending. Service user forums can facilitate an exploration of these relationships to ultimately inform practice changes that will increase the likelihood of an offender's desistance from crime. PBNI's service user survey and the outcomes therein could be the beginning of an agency response to meeting the objectives outlined in the 'supporting change' desistance agenda for reducing offending and securing safer communities.

There are opportunities to enhance service user engagement within PBNI. We authors believe that as social workers within criminal justice, Probation is in a good position to support service user involvement and collaborate with others to find opportunities to further develop this area of practice. 'Service user participation exercises can be an opportunity for often excluded and disenfranchised people to have a say in matters of direct concern to their lives' (Carr, 2004: 8).

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What Does Justice Require? Participant Views of Restorative Justice

Emily Sheary*

Summary: This paper presents findings from research undertaken with participants in restorative justice in a criminal justice context in Ireland as part of a Master's degree. The research demonstrates that restorative approaches can deliver on the key elements of justice that matter to victims of crime and can communicate censure effectively to offenders in a way that their courtroom experience may not.

Keywords: Restorative justice, restorative practice, criminal justice, victims, punishment, community.

Introduction

Facing him and understanding was justice for me ... having him sit across from me and cry at me and that's what he done. [That] was justice for me.¹

In a criminal justice context, the relationship between restorative justice, punishment and justice is complex. This research sought to bring the justice debate to those who have experienced restorative justice in Ireland. It engaged with adult victims of crime and offenders to consider whether they perceived their restorative experience to be an experience of justice.

In what follows, a sample of the literature that informed this research will be reviewed and the position of restorative justice in Ireland will be considered, particularly the framework of the restorative justice project from which research participants were drawn.

* Emily Sheary is Manager of Restorative Justice in the Community, Nenagh, Co. Tipperary (<http://rjc.ie/>) (email: emily@rjc.ie).

¹ Research participant 'Anne' during research interview.

Restorative justice

It is not practical to give a full account here of the literature that informed this research. Rather the intention is to touch on certain areas of restorative justice: firstly, conflicting efforts at definition and secondly, the role of punishment in justice and the quandary this presents for restorative proponents.

Defining restorative justice has proved difficult, not least because its advocates themselves adhere to different conceptions of restorative justice and what it should achieve. Some describe restorative justice as a process-focused rather than outcome-driven approach wherein a (properly conducted) participatory encounter between victim and offender is key (Marshall, 1999; Zehr, 2002). Others acknowledge the potential of the restorative encounter but suggest that there are broader opportunities for reparative outcomes if we focus on efforts to do justice by repairing the harm caused by crime and do not confine 'restorativeness' to circumstances where encounter is possible (Bazemore and Walgrave 1999; Dignan 2003). Still others find appeal in restorative justice as a philosophy for societal transformation (Sullivan and Tifft, 2006).

Despite debate as to the meaning of restorative justice, there are areas of overlap and opinions shared by restorative advocates, and key themes in literature that characterise restorative thought. Themes include a belief that the traditional retributive response to criminality is flawed and that its development brought the loss of traditional community responses to conflict; that the focus in the aftermath of crime should be on what can be done *for* the victim rather than what should be done *with* the offender; a focus on offender accountability, reintegration and the important role of community in supporting victims and offenders to resolve conflict (Johnstone, 2011).

Restorative justice literature reports victim and offender satisfaction. Offenders cite increased awareness of harm caused and a feeling of fair treatment following restorative justice. Victims report increased satisfaction, less anger and less fear of re-victimisation (O'Mahony and Doak, 2008). Studies have shown that victims and offenders who experienced restorative conferencing were more satisfied with their experience than those who experienced the standard criminal justice response (Shapland *et al.*, 2007, 2008, 2011).

Punishment, censure and justice are areas of debate in retributivist and restorative literature. The two sides share the assumption that crime leads

to anger, resentment and a sense of injustice for crime victims and society. When a law or social norm is broken, a victim has been deprived of something that is due to them and usually feels that 'in the name of justice, something must be done' (Johnstone, 2004: 9). Retributive and restorative proponents agree that censure is a key component of a 'justice' response, but differ as to how best to achieve that censure (Duff, 2011; Walgrave, 2004).

Traditional criminal justice seeks to achieve censure and justice through criminal trial and sentencing. Punishment is justified only for those shown to be guilty and only to the extent that it is deserved (Roche, 2007). The rationale for punishment takes varying forms: deterrence, rehabilitation, incapacitation. It is also valued by some for its communicative potential: the communication of formal censure to the offender and communication of the apology that the offender owes the victim and the community whose values and relationships have been violated. By imposition of a burdensome punishment it is hoped that the message of censure is harder to ignore (Duff, 2011).

However, for some restorative justice advocates, retributive ideals and justifications for punishment are flawed and can never deliver an experience of justice as rich as that which can be delivered by restorative justice (Zehr, 1985, 1990, 2002). They assert that traditional retributive punishment fails to communicate censure effectively, fails to communicate with the victim and offender directly, and encourages the offender not to listen to the moralising message that accompanies their punishment but to focus instead on trying to get as lenient a punishment as possible (Walgrave, 2004).

As such, the role of punishment in restorative justice is widely debated. Some argue that if participants in restorative justice experience a reparation agreement as burdensome or an encounter with the victim they have harmed as painful, such approaches are a type of punishment. They are intentionally painful and burdensome, but trying to induce an 'appropriate kind of pain', remorse, censure and reparation (Duff, 2002: 97). Others disagree, and while acknowledging that participants in restorative justice may find elements of their experience painful, they suggest that this does not amount to punishment because the experience lacks punitive intent. From this viewpoint it is the intention of the punisher that is important and not the experience of the person punished. If it is not 'imposed with the intention to cause suffering', it is not punishment (Walgrave, 2003: 63).

Both retributive and restorative approaches value censure, vindicating a victim and encouraging offender accountability. Restorative advocates suggest that such outcomes are best achieved through restorative means, while critics highlight gaps between restorative ideals and reality, and question the centrality of victims' needs within restorative processes and the ability of restorative justice to respond to serious victimisation (Zernova, 2007; Daly, 2005). Even the name 'restorative justice' has been criticised as misleading for the implication that restorative approaches are a form of 'justice' (Robinson, 2002).

Johnstone (2014a, 2014b) suggests that our existing way of doing justice after crime – punishing offenders – is limited. However, he contends that restorative advocates have not made a clear case as to why or whether restorative justice can be seen to deliver a better justice experience than retributive justice. He notes the contested and subjective nature of justice, and the potential, regardless of how positively restorative processes are perceived by their participants, for conflict with universal principles of procedural or natural justice that are protected by the court process. He suggests that if we are serious about justice we need to focus not on whether restorative or retributive justice is superior but rather on how we can do as much justice as possible.

Restorative justice in Ireland: the framework of a restorative justice project

In Ireland, restorative justice is a relatively new concept, entering discourse on crime and punishment in the 1990s (Gavin, 2015). However, some would suggest that it also has historical relevance to Ireland, highlighting its similarity to Brehon law (Consedine, 1995).

Restorative justice in Ireland operates to differing extents within and outside of the criminal justice system. The provisions of the Children Act 2001 facilitate the use of restorative justice although it is not explicitly referenced. Section 29 of the Act provides for the convening of a conference in respect of a child who is subject to the Garda Diversion Programme. Court-referred family conferences are organised by the Probation Service as provided in Section 78 of the Children Act 2001. Restorative practices have become popular in schools and communities and the Irish Prison Service (IPS) has commenced restorative programmes with staff and prisoners at selected sites (IPS, 2012). The

Victims' Directive,² to which Ireland is a party, provides best practice guidance for the use of restorative justice. The Criminal Justice (Victims of Crime) Bill, 2015 to transpose the requirements of the Directive into national legislation is currently being drafted.

In 2009 the National Commission on Restorative Justice (NCRJ) published its final report. Having considered restorative justice internationally and within Ireland, it was 'unanimous in its recommendation to the Minister for Justice, Equality and Law Reform that a restorative perspective be introduced into the Irish criminal justice system' (2009: 3).

In an Irish context, the NCRJ defined restorative justice as 'a victim-sensitive response to criminal offending, which, through engagement with those affected by crime, aims to make amends for the harm that has been caused to victims and communities and which facilitates offender rehabilitation and integration into society' (2009: 34). This definition reflects many key restorative themes. It places focus on victim, offender and community involvement. It highlights engagement with those affected by crime, suggesting a focus on the restorative process, but also emphasises restorative outcomes – making amends, offender rehabilitation and integration. It defines restorative justice as a response to criminal offending and suggests that the NCRJ saw a place for a broad conception of restorative justice in an Irish context, valuing both restorative processes and reparative outcomes.

The NCRJ identified the Probation Service as the lead agency for delivery of restorative justice in Ireland. In July 2013 the Probation Service published its Restorative Justice Strategy. It stated a commitment to maximising the use of restorative approaches in Probation work and continuing to innovate and develop programmes and practice within a restorative framework (Probation Service of Ireland, 2013).

Restorative justice in Ireland has thus been gaining momentum in recent years, with Irish research recommending its further advancement. In a juvenile justice context, an evaluation of the caution and conferencing of juvenile offenders carried out by the Garda Research Unit (O'Dwyer, 2001) encouraged expansion. In the context of sexual offences, recent Irish research has recommended the provision of restorative justice services to respond to the needs of those impacted by sexual crime as a matter of urgency (Keenan, 2014). The current research sought to add to existing Irish scholarship by exploring participant views of an adult

² Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

restorative justice programme in Ireland, operating within a criminal justice context.

The Probation Service, under the auspices of the Department of Justice and Equality, provides funding and support for two dedicated, adult-focused, restorative justice projects – Restorative Justice in the Community (RJC) and Restorative Justice Services (RJS). Participants in this research were invited from RJC. The project operates as a partnership between the judiciary, An Garda Síochána, the Probation Service and community members. Referrals are received from court at pre-sanction stage following establishment of guilt.

Should the parties wish to engage in a restorative encounter, the project offers victim offender mediation and restorative conferencing. The former involves a facilitated restorative encounter between victim and offender and the latter enlarges that encounter to include the victim, the offender and their family or supporters.

If the victim wishes to engage with the restorative project and the development of a reparative agreement but does not (at that time) wish to encounter the offender, an indirect approach is adopted whereby the victim's views and desired reparation are conveyed to the offender in a process called a reparation panel meeting. The panel consists of the offender, a project facilitator, a trained local Garda and two trained community volunteers from the area. They represent the community's role in acknowledging the harm caused to victim and community and support efforts at reparation.

During the mediation, conference or reparation panel, the offence and its impact are discussed and a plan for reparation is agreed known as a Contract of Reparation. Upon completion of the Contract, a report is provided to the court and depending on the nature of the offence and jurisdiction of the court, a number of options exist for finalisation. In the majority of cases referred by the District Court, successful contract completion results in the charge being dismissed under Section 1(1) of the Probation of Offenders Act, 1907 or being struck out by the court. For more serious charges the court may consider additional sanctions including fines, probation supervision, or the suspension of a prison sentence.

Research methods

As the personal experiences of participants and their perspectives on justice and restorative justice formed the premise for this research,

qualitative methods, specifically qualitative (semi-structured) interview, were adopted as the most appropriate research methodology. Such methods provide a depth of understanding not possible through the use of quantitative, statistically based investigations, and the approach values how people understand, experience and operate.

Ethical approval for the research was provided by the applicable university body and invitations for participation were extended to a group of 20 adult victims and offenders who had completed a restorative justice programme with the RJC project within the previous 12 months. It was important that those invited to participate in the research had completed their interaction with the project and with the court so they could be assured that their participation would have no impact on case outcomes. Ten individuals responded positively to the invitation – five victims and five offenders. Five participants were female and five were male. Five participants were aged 40+; five were in the 18–25 age band. While some participants were the victim and offender of the same offence, that was not the case with all. Ensuring confidentiality and privacy of participants was a key consideration, and pseudonyms were assigned.

The ten participants experienced a variety of restorative responses and criminal justice outcomes. Eight experienced restorative process-based approaches wherein offenders and victims encountered each other. Two experienced the reparation panel in order to deliver reparative outcomes. Eight had experience of the District Court and two had experience of the Circuit Court. Of the five offender participants, two cases were finalised by means of Peace Bond in the District Court and two by dismissal under Section 1(1), Probation of Offenders Act, 1907 in the District Court. The case of the offender participant who appeared before the Circuit Court was finalised by means of Peace Bond and dismissal under Section 1(1), Probation of Offenders Act, 1907.

Interview questions were designed to be open and focused on participants' personal perspectives and interpretations. Questions explored the offence that led to restorative justice referral, the outcomes (if any) achieved by the restorative approach, how participants would describe restorative justice to others, their sense of what justice required in the aftermath of an offence, and their experience of traditional criminal justice. Participants were also asked to select the most important aspect of their restorative experience from a list of 11 options.

Following interview, the transcribed data were viewed and reviewed multiple times to allow concepts and themes to emerge; literature review

was undertaken only when themes were sufficiently developed to allow the literature to challenge and support what emerged.

It is important to highlight the limitations of qualitative research and the various challenges that arise when one is conducting research on restorative justice. This research was based on a small sample of participants and as such is challenged to produce representative results. Self-selection bias is also a consideration in this type of research, as those who choose to participate in restorative justice may be substantially different from those who do not, in ways that may predict outcomes regardless of the programmes' operation (Sherman and Strang, 2007). Efforts to overcome this limitation focused on inviting as broad a group of participants as possible.

In any research interview there is always some concern that participants may be giving socially desirable rather than honest answers. This is a particular concern where the researcher has a prior relationship with participants. This research was carried out by an employee of the restorative justice project from which the research participants emerged, and as such is considered 'insider research' – the researcher has a direct involvement with the research setting. The limitations of insider research in terms of objectivity are acknowledged. However, for this research, insider connections were regarded as a strength that facilitated trust, rapport and the emergence of participants' voices.

Research findings

Justice

For both victim and offender participants, justice was considered important in the aftermath of crime. Justice was characterised as being a necessary process that should challenge unacceptable behaviour, promote accountability and learning, acknowledge harm, make amends and provide consequences.

for me ... justice was not jailing [him] but actually facing up and being challenged with the consequences [he] caused ... it's tipping the scales back ... you did this crazy thing ... you have to know that you did it and in some way pay it back ... doing something to make it right ... that's the only way you'll get to learn. (Anne)

I broke the law ... if there's not something in place to stop that happening ... what's to stop me doing it tomorrow or next day or progress to doing something

else ... If you do something wrong there has to be a means there ... to prove [you] have learned and won't do it again. (Emma)

If something goes wrong there has to be a means of making it right ... there has to be justice ... it is the line. If you cross the line things have to be put back right ... to where they should have been. (Michael)

Victim participants reported that their restorative experience felt like an experience of justice. The features of their experience most significant to this sense of justice were acknowledgement and offender learning/accountability.

Acknowledgement

For Anne, acknowledgment came in facing the offender, having the opportunity for dialogue and witnessing his emotion at their meeting. This felt like justice to her.

I faced him up ... for me to get an answer or to have the chance to go and say why did you do this ... to stand up to the person that actually made you feel so small and vulnerable ... facing him and understanding was justice for me ... having him sit across from me and cry at me and that's what he done. [That] was justice for me.

Oliver described how the church community in his case felt that restorative justice:

Allowed the damage done to the community and the pain felt by them to be acknowledged. We did not want to ask for punishment or retribution. We wanted an acknowledgement of hurt.

Joanne described the experience as making her feel 'very important in the process'.

Offender learning and accountability

As part of the research interview, victims were asked to select the most important aspect of their restorative experience from a list of 11 options. Four out of five victims selected 'To encourage the person who committed the crime to develop a sense of responsibility or to learn from the experience' as most important. This was a key component of why their

restorative experience was an experience of justice. It was felt strongly that justice should be about learning.

Joanne described how various components of the restorative justice programme had communicated the wrongfulness of the offence to the offender, which to her felt like justice. For her this was a better way to achieve censure than imprisonment.

justice was done because the various factors ... [they] were made to talk about it ... to think about how they could make amends ... [and] apology, I'm sure it must have been very difficult to write down the words why they were sorry and why they did it ... paying money ... it hurts people's pockets ... for all that they did, the writing, apologising, volunteering ... they were being reminded of why they are doing it ... hearing from a couple of places that [the offence] wasn't right ... must have made some impact which is some justice I think.

I came in and ... it was just one track on my mind, them going to prison ... [but] this end result is so much better than prison ... because ... the ball is handed to [the offender]. It's like – 'here you are, this is what you've done, what are you going to do about it?' ... I think for a human being to have to go through that process is probably very educating really.

Offenders also acknowledged the importance of learning and accountability as part of a justice response and cited increased learning and understanding as prominent features of their restorative experiences, suggesting satisfaction of victims' hopes in this regard.

Colm described how he:

Learned [that the victim] went through a lot in the aftermath. Even [the victim's] mother ... that must have been hard too because I wouldn't like to see my mother going through that ... It's understandable when you hear about it ... so I see now what it's like for them. You get to learn about yourself, puts things into more perspective and that lowers the chance you'll get in trouble again because you learn about the pain you caused.

Apology

All five victims received an apology – written, verbal or both – as part of the restorative programme, but when considering what was most important about their restorative experience and what helped it feel like

delivery of justice, apology was ranked as less important to victims than offender learning and accountability.

By contrast, apology was selected as the most important aspect of restorative justice by all offender participants. Apology was important in terms of the opportunity it offered the offender to make amends and feel better. Offenders also considered apology to be an opportunity to show the victim justice.

Fiona described how she felt:

We got to apologise, tell her that we were sorry; if we didn't do this project we wouldn't have got the chance to say that. We donated money to charity she picked, we've put it right by doing community work ... in our situation like I feel better after doing this project. I feel better cos of getting to apologise and actually knowing what I done wrong ... When I first came I had no interest in this ... now I'm delighted that I did this. I'm happy that I got the chance to say sorry and to put things right. It took weight off my shoulders you know What happened, at least you know [the victim] gets a bit of justice in it. Like we did this to show her justice.

it was a breakdown in justice for me to do [the offence] and that I actually apologised and coming to terms with what I had done was kind of letting [the victim] see that she was getting justice. (Michael)

Experiences of traditional criminal justice

Referral to the restorative justice programme was made at pre-sanction stage by the court. As such, each victim participant in this study had exposure to the court process and to criminal investigation. For them, the acknowledgement and offender accountability present in restorative justice, which had characterised it as an experience of justice, were lacking in their experience of traditional criminal justice. Individual Gardaí were praised for their efforts but the criminal justice process was criticised for lack of information, tardiness and a feeling of being let down.

There was one Garda who was really nice and helpful but then sometimes the court case was on and we didn't even know about it. Only when we came here [restorative justice project] were we told ... what was happening ... [the] project ... explained a lot more than we would ever found out from anywhere else. On the court date we were very unsure about what would happen that

day because somebody ... [Gardai] had to go to court on behalf of the state, not us really because it's the state versus ... we felt how would this person know? ... He doesn't know what really has happened. (Grace)

Offender participants also had significant exposure to traditional criminal justice. All were before the court on a number of occasions before their cases were referred for restorative justice, and would have been expecting traditional sanction. None had known of the existence of restorative justice prior to referral.

All five offender participants felt that restorative justice delivered more of their criteria for justice than their criminal justice experiences. Restorative justice was cited as offering opportunities that were important to offenders' sense of justice but which were lacking in their court experience, particularly opportunities for learning and apology.

Court was characterised largely as an embarrassing place where you thought about yourself, your own embarrassment and what would happen to you. Offenders felt that it encouraged little accountability.

In court the solicitors do the talking and you're only like a sheep in a field ... you just sit up and follow ... court was more about fear and embarrassment ... your solicitor tells you that if you open up and say what you did you'll make more trouble for yourself ... that's the complete opposite of this [restorative justice] programme. Deny everything and blaming someone else is more what you do in court rather than owning up to what you did. (Michael)

In court the biggest thing was it was embarrassing to sit there ... but I honestly think that this project is fairer than court ... standing in court and your solicitor is saying 'they don't have evidence so plead not guilty and hope for the best'. Whereas doing this you admit from the very start that you're wrong which I think is a nice thing too for the victim to know ... with [restorative justice] somebody [is] realising they have done wrong, whereas in court ... you can chance saying 'not guilty' and hope for the best ... but what have you learned from that? (Emma)

Punishment and restorative justice

For three victim participants restorative justice was considered to be punishment for the offender and this played a role in their sense of justice. For these victims punishment had more to do with consequences than

with pain infliction. Punishment meant having to do something that you might not necessarily want to do but must do as a consequence of the wrong you have committed, such as attending a restorative meeting, paying compensation or volunteering in the community.

I feel happy they got what they deserved ... what happened in my case was justice to me ... I think everything [the offender] did is punishment ... being made do something you might not want to do because of something you've done ... It's consequences that you don't want to do but you have to do because of what you did wrong. (Grace)

For two victim participants, punishment was synonymous with imprisonment and as such they did not consider the restorative experience to be punishment for the offender. Punishment meant having 'recourse to custodial sentencing' (Oliver).

Whether the experience was perceived by victims to be a type of punishment for the offender or seemed like efforts to 'make it right', the result helped contribute to an overall sense of adequate consequences, vindication and justice.

Similarly to victim participants, offenders had mixed views on whether their restorative experience felt like punishment. For three offenders the restorative meeting that they attended (process) and the agreement that they carried out after the meeting (outcome) felt like punishment. For these offenders the feeling of punishment was strongest before going into the meeting. It felt like punishment because it felt hard. This was expressed clearly by James and Fiona. For James, the initial meeting felt like punishment 'because it was nerve-racking'. For Fiona, 'coming to the meeting at the start felt like punishment ... I was dreading that.'

The restorative agreement also felt like a type of punishment, similarly because some elements were difficult. However, a consistent view was that apology did not feature as something that felt like punishment to offenders. Apology was unanimously valued as something that they had wanted to do. However, saving money to pay someone back for their medical expenses after an assault, doing some voluntary work in the community: those things were hard.

It was [punishment] in a way. Having to take time out of my day to come to meetings ... like having to take days off my course ... having to give away money which I scraped together and having to do community work. (Fiona)

Another common feature for the offenders who felt that punishment played a part in their experience is that although some things on the reparation agreement were hard, and as such felt like punishment, it also felt OK to do those things. Offenders knew how the agreement had been reached; they had participated in its development, understood why they were doing it and what they had learned from it. As such, although things on the agreement felt hard and felt like punishment, this felt OK, fair, deserved and just.

Because you know what you did and that you have to do what you are doing [reparation agreement] because it's owed to [the victim] because he lost out because of my actions. So I was obliged ... to pay him back what he lost. The same as I would like it if the tables were turned ... felt like what I deserved after what happened so it felt OK ... you know you're working towards improving the situation, making up for your wrongs, making [the victim] feel better and that feels better than being in court ... more influence in how it is made up basically is how I'd describe it. (Colm)

For the other two offenders neither the restorative process nor its outcomes were identified as punishment. These offenders categorised restorative justice as non-punitive for the same reasons that the other offenders had considered it to be 'punitive but OK'. For them, because restorative justice was about learning and apologising it did not feel like punishment.

Meeting [the victim] and apologising didn't feel like punishment: that was actually a relief. (Michael)

I personally wouldn't call it punishment ... I would say it was very helpful ... the right thing for me to do ... I don't feel this was punishment cos I learned more from doing the project. (Emma)

Recommendations

Participants were not asked for their recommendations. However, the nature of semi-structured interview facilitated participants' thoughts in this regard. Most suggested that restorative justice was not applicable to every case. Participants cited the subjective nature of justice. As Grace said, 'If you're in the situation you know that you want ... what happened

in my case was justice to me ... but mightn't be the same for everyone else.'

Offender attitude (genuine remorse) rather than seriousness of offence was seen as key to whether restorative justice was appropriate.

I know people are not always genuine ... I don't think someone deserves a chance at the project if they aren't honest from the start. (Emma)

If the person wasn't sorry, didn't regret it ... that would be different ... being sorry, taking responsibility, being mortified that you've done such a thing ... that shows maybe that the person requires something different to happen compared to someone else who doesn't care. (Anne)

Discussion and conclusion

For readers of restorative literature the findings of this research may not seem novel. That is not to disparage the insights of participants but rather to suggest that they confirm the findings of other studies: that restorative approaches can communicate censure effectively and deliver more on the aspects of justice that matter to victims (Witvliet *et al.*, 2008; Clark, 2008).

It is important to acknowledge that criminal justice was 'interrupted' in these cases by referral to the restorative project. However, even if the court had proceeded to impose traditional punishment in the absence of restorative approaches, the responses of victim and offender participants in this research cast doubt on the ability of that sanction to deliver the 'justice' identified as important. Offender responses highlight their perception of court as an embarrassing place where one thought about oneself, rather than an experience of censure or understanding of harm caused. Furthermore, victim participants' responses communicated their disappointment with the adjudication phase of the criminal justice process, suggesting that eventual punishment through the court process alone was unlikely to deliver on the aspects of justice that mattered to them.

In restorative justice literature it has been suggested that restorative approaches lack punitive intent (the intention of the punisher rather than experience of the 'punishee' being relevant here) and are therefore not punishment. When considered in light of the current research, this seems disingenuous and a narrow construction of 'intent'. If restorative processes and outcomes are acknowledged as painful, knowingly embarking on such processes deliberately inflicts pain and for the majority in this research,

restorative justice was perceived to be a type of punishment. However, this was not considered to be a bad thing. For a majority of victims it was key to the communication of censure and for the majority of offenders, while their restorative experience felt like punishment, because censure was communicated in a normative way, the reasoning employed was harder to reject and less objectionable. Offenders understood why it was necessary and had been part of the process of agreeing it. Such insight didn't make it less painful, but did lead to greater understanding of the impact of their behaviour than the courtroom had delivered.

Much as criminal justice seemed frustrating, each participant in this research experienced a combination of justice responses. The project that they participated in was not a complete justice system. Criminal justice existed in the background as a safeguard for fundamental aspects of justice: proportionality, right to representation and fair procedure, which restorative justice is often criticised as lacking (Dignan, 2003; Von Hirsch *et al.*, 2003). The project relied on criminal justice to adjudicate guilt and designate roles of victim and offender, and could not respond to cases where responsibility was denied or an offender was unwilling to repair.

Despite their glowing reviews of restorative justice, none of the participants in this research called for it to replace criminal justice completely. Rather they recognise a place for both. Restorative justice, in their view, is not merited when remorse is absent. Offenders say that it is not deserved in such cases and victims say that they would not participate. Their views suggest that restorative and retributive responses may both have a place in achieving a sense of justice, depending on parties' perceptions.

Given the increasing application of restorative approaches within the criminal justice system in Ireland, this research is important as it contributes participant voices to existing Irish scholarship. Those voices have particular relevance in light of the imminent publication of the Criminal Justice (Victims of Crime) Bill. While many of the findings are consistent with what we already know about restorative justice, the research also demonstrates in an Irish context that restorative approaches can deliver an effective experience of justice for crime victims and facilitate learning, understanding and censure for offenders. As restorative justice continues to develop in Ireland, this research prompts us to ask: what does justice require? For participants in this research, justice was achieved through restorative means (with the safeguard of criminal justice procedure in the

background). Their experiences highlight the importance of further advancement of restorative justice in Ireland so that we can endeavour to do as much justice as possible.

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Difficult Terrain and Unreported Successes: Young People and Community-Based Restorative Justice in Northern Ireland

Ruairi Hunter*

Summary: Community-based restorative justice (CBRJ) initiatives in Loyalist/Unionist and Nationalist/Republican communities in Northern Ireland emerged in 1998 with the intention of providing a non-violent alternative to punishment violence. Schemes have diversified and have been described in research literature. However, there is limited research on young people's involvement with CBRJ. Drawing on qualitative research conducted with a number of CBRJ stakeholders, this paper explores some of the developments CBRJ initiatives have enabled for young people in their communities, by facilitating positive relationships between young people and the police and creating meaningful 'needs-based' diversionary programmes. It analyses contemporary challenges to CBRJ's interaction with young people. The most significant barriers appear from within the communities CBRJ serves. The complex relationships many young people have with paramilitaries are linked with their sense of space and place. Feelings of political disenfranchisement, particularly in the Loyalist/Unionist community, have created difficult terrain for CBRJ. The paper highlights how narratives of community development, conflict transformation and early intervention strategies complement one another.

Keywords: Community-based restorative justice, conflict transformation, youth marginalisation, NEET, educational under-attainment, unemployment, paramilitaries, young people in Northern Ireland.

Introduction

Community-based restorative justice (CBRJ) in Northern Ireland remains a contested subject on many fronts (McEvoy and Mika, 2001, 2002; Eriksson, 2009). CBRJ initiatives operate in acutely deprived communities across Northern Ireland: communities where marginalisation, isolation,

* Ruairi Hunter is a youth worker with Include Youth (www.includeyouth.org). Email: Ruairi@includeyouth.org

exclusion and deprivation are daily characteristics of the lives of young people (McGrellis, 2011; McAlister *et al.*, 2014). Notwithstanding the body of research on CBRJ and marginalised youth in Northern Ireland, there is limited research linking the two. Of late, media attention has been given to the positive contribution CBRJ and young people often make to the wider community; however, academic literature has yet to reflect this.

This paper draws on qualitative interviews conducted with a sample of CBRJ stakeholders, which formed the basis of academic research. Through analysing a number of positive differences that initiatives have made to the lives of young people, and exploring the contemporary challenges that initiatives must overcome, the paper sheds some light on the complex relationship between CBRJ, youth marginalisation and the legacy of ‘the Troubles’.

Background

Beginning in the late 1960s and lasting for 30 years, ‘the Troubles’ was a period of chronic violence in Northern Ireland. The administration of justice did not escape this violence. ‘Paramilitary policing’ of largely youthful elements of low-level crime and antisocial behaviour through shootings, punishment beatings and banishments acted as an informal code of justice. Though barbaric, such forms of retribution were legitimised through a degree of community support (McEvoy and Mika, 2001). This support reflected both the illegitimacy of the police, particularly in Republican and Nationalist communities (Ashe, 2009), and the appetite for some form of order and justice (Jarman, 2007). In contrast, within Loyalist and Unionist communities, the belief that the police were preoccupied with the threat of the IRA meant low-level crime control became the assumed responsibility of local paramilitaries (Ashe, 2009).

During the 1990s Northern Ireland underwent a process of transition with the paramilitary ceasefires of 1994 and the signing of the 1998 Good Friday Agreement, widely regarded as signalling the end of ‘the Troubles’. Although paramilitary policing did not cease following the declaration of ceasefires, a combination of international embarrassment, pressure from human rights organisations and decreasing political palatability created an environment where this form and scale of ‘justice’ was unsustainable (Jarman, 2004). These events coincided with independent, concerted

efforts within the Loyalist/Unionist and Republican/Nationalist communities to bring about a legitimate alternative to paramilitary policing (McEvoy and Mika, 2001).

Largely owing to this sequence of events, Northern Ireland Alternatives (NIA) and Community Restorative Justice Ireland (CRJI) were formed in 1998, completely independently of one another.

CBRJ in practice

NIA and CRJI are community-based restorative justice projects that attempt to address socially harmful activities through the use of restorative practices. Historically, such activities include antisocial behaviour, violence, intimidation, drug abuse, etc. In many instances NIA and CRJI act as mediators between the parties involved. Projects are staffed by a small number of paid workers, although unpaid volunteers predominantly make up the workforce for both projects. Many of the staff are ex-combatants, and as will be discussed, this has been a common criticism for sceptics. NIA operates through six offices in the predominantly Loyalist/Unionist locales of greater Belfast and Bangor, whereas CRJI has eight offices in the Republican/Nationalist areas of Belfast, Derry and Newry. In recent years, projects have attempted to address some of the behaviours outlined above through youth diversionary programmes. The work undertaken by these programmes forms the basis of this paper.

CBRJ in Northern Ireland is grounded in restorative justice, which emerged in the 1970s as an 'alternative justice paradigm', responding to a growing acknowledgement of the failings of punitive and retributive formal justice (Zehr, 1990). During the initial stages, the greater part of CRJI's and NIA's caseload involved antisocial behaviour, youth offending, paramilitary threats/punishments and community exclusion. Although this still forms part of the workload, following the establishment of the Youth Justice Agency in 2003 and state accreditation for community-based projects, most offending is, in theory, processed through the criminal justice system.¹ CBRJ programmes focus on the harm caused by a crime; the aim is then to restore or repair this harm through a series of meetings or interventions (Braithwaite, 1993). The idea is that through facilitated

¹ Following state accreditation, protocols are in place whereby CBRJ projects are required to interact with the criminal justice system in order for offending behaviour to be processed through that system. Inspections indicate that the number of referrals through the protocols has been low (McGuigan and McGonigle, 2010; McGuigan *et al.*, 2011).

mediation involving the victim(s), perpetrator(s) and other relevant parties connected to the crime, a sustainable and peaceful solution can be sought. However, the objectives of CBRJ have expanded in recent years (Eriksson, 2009), with both NIA and CRJI being framed in a politically and socially transformative context (McEvoy and Eriksson, 2006; Chapman, 2012). Advocates have referred to the importance of CBRJ as a building block in terms of conflict transformation (McEvoy and Mika, 2001; Chapman, 2012); others have discussed the wider societal benefits CBRJ has offered, such as the creation of jobs for local people, social cohesion and improved relations between communities and the state (Eriksson, 2009).

This expansion has prompted praise and criticism in equal measure. Proponents cite the initial dramatic decrease in paramilitary-style punishments that has coincided with the inception of CBRJ projects (Mika, 2006).² State accreditation of CRJI and NIA in 2008 has gone some way towards appeasing sceptics who question the legitimacy of programmes (McGrattan, 2010). Similarly, a form of community acceptance in areas most adversely affected by ‘the Troubles’ has afforded credibility to programmes (Eriksson, 2011). In practice the peace-building and conflict transformation qualities of CBRJ have been hailed as an integral piece in the conflict transformation jigsaw (McEvoy and Mika, 2001; Gormally, 2006). In recent years, the ‘bottom-up’ approach of community-based initiatives has been cited as an effective transformation tool because of its impact on the daily lives of those living in these communities (MacGinty, 2014). Comparison of the organic origins of CBRJ projects with the imposed, state-led approach to restorative justice (McEvoy and McGregor, 2008) lends support to this argument. Arguably, one of the most significant strengths of CBRJ has been the reconstruction of legitimate state–community relations (McEvoy *et al.*, 2002). Since 2007, both CRJI and NIA have worked towards establishing a formal partnership with the PSNI (Eriksson, 2009).

Criticism of projects has come from various quarters. Lundy and McGovern (2008) note that issues of social justice are further down the pecking order than the internationally attractive goal of ‘conflict transformation’. According to Chapman (2012), this is evidenced through an inability of projects to balance the aims of restoring and strengthening civil society with the goals of political and economic transformation.

² Between 2003 and 2005, CRJI was been credited with stopping some 82% of ‘potential paramilitary punishments’ and NIA with stopping 71% (Mika, 2006).

Furthermore, as Haydon and McAlister (2015) note, restorative processes in Northern Ireland have little remit to challenge the structural inequalities confronting the most marginalised groups in our society, including young people.

Youth marginalisation and CBRJ

Arguably, the ongoing debate surrounding CBRJ is dated; more importantly, for the purposes of this paper, it neglects the narrative of marginalised young people in Northern Ireland. Youth unemployment rates in Northern Ireland are higher than elsewhere in the UK (Simmons and Thompson, 2016). Academic attainment is a further major challenge: the latest peace monitoring report noted educational underachievement as a severe problem among Protestant working-class boys, with only 19.7% attaining at least ‘five good GCSE results’ (Nolan, 2014). Related to the educational development of young people are the devastating effects of child poverty: it is estimated that one in four children in Northern Ireland grow up in impoverished conditions (Tomlinson *et al.*, 2014).

It is no coincidence that the issues outlined above are most acutely felt in areas most adversely affected by ‘the Troubles’. For example, young people’s mental health and emotional wellbeing has suffered as a result of ‘intergenerational trauma’ (McGrellis, 2011). Suicide rates among young people in Northern Ireland are among the highest in the UK (O’Hara, 2011). Varying pieces of research have linked all of these socioeconomic problems to the areas in which CBRJ programmes operate (Nolan, 2014; Tomlinson *et al.*, 2014). While there are evident gaps in the literature linking CBRJ and youth marginalisation, during the research process it became apparent that practitioners and stakeholders working at the forefront of CBRJ programmes were acutely aware of this link. How they challenged such structural inequalities is discussed below.

Research methodology

The focus of this research related to the core CBRJ tenets of ‘community’ and ‘transformation’. The study attempted to critically consider whether such terms (a) included young people in the vision of ‘community’ and (b) attempted to redress barriers and transform the lives of young people, or whether this terminology was reserved for funders and international conflict resolution onlookers. The research was subject to institutional

ethical review.³ Participants were provided with information on the nature of the project and the aims and objectives of the research. All participants provided written consent. To safeguard confidentiality, all interviewee names and place names have been changed.

Research participants were selected on the basis of working within the CBRJ field. While most respondents were involved from the beginning of CBRJ in Northern Ireland, some had gained experience in the sector only recently. The research sample ($n = 11$) comprised one Member of the Legislative Assembly (MLA), two neighbourhood police sergeants, one youth worker, a youth counsellor, a human rights lawyer, four CBRJ practitioners and one CBRJ director. All interviewees had gained experience in the greater Belfast and Bangor area. Research was confined to this area in the interests of time management and because of financial constraints. A semi-structured interview approach was used due to its flexibility in enabling participants to articulate their opinions on subjective and often complex phenomena (Bryman, 2012). Questions on the central themes were supplemented with more general questions regarding the contemporary landscape of austerity and the documented rise in punishment attacks (Police Service of Northern Ireland (PSNI), 2015a).

Results

A number of competing narratives emerged during the interviews. For example, with regard to austerity and funding cuts, the majority of interviewees expressed deep concerns; however, some also saw this as an opportunity for CBRJ projects to promote their worth as a legitimate, cost-effective alternative to formal justice measures. The following focuses on work undertaken by CBRJ social integration projects.

Education and employment

The most recent Department of Employment and Learning (DEL) statistics indicate that 17.1% of young people in Northern Ireland are considered NEET (not in education, employment or training), which is much higher than the UK average of 13% (DEL, 2015).⁴ NIA has attempted to address this through the Start programme, a partnership

³The research was conducted as part of the MSc in Youth Justice, Queen's University Belfast.

⁴Young people are classified as those aged 16–24.

initiative between NIA and Include Youth,⁵ which has been operational since 2013. This programme seeks to ‘up-skill young people through delivering essential skills in English, Maths and ICT, which they may have missed out on in school’ (Interview 9, youth work coordinator), while also providing work experience, vocational training and practical support in accessing further training or education or in seeking employment. Further, NIA was involved in a multi-agency consortium with CRJI and Challenge for Youth.⁶ The programme is entitled WAYS (Wrap Around Youth Support), and provides a range of services to people aged 10–17, such as one-to-one mentoring, counselling, personal development and independent living skills. Referrals to the initiative can be made through a number of avenues such as self-referral, youth workers and schools. The programme offers support to the most vulnerable young people, most commonly those classified as NEET, at risk of offending or from a care background, and is unique in that CRJI and NIA work collaboratively to address the same social needs from within their respective areas. Despite its success, due to financial uncertainty around funding and an over-reliance on volunteers, the project may be consigned to the short-term interventionist scrapheap.

Because the Start and WAYS programmes are still in their infancy, there has been limited external evaluation of them. They deploy an informal approach to addressing educational attainment and employment; programmes are youth-work based and unlike school or formal recruitment agencies. Essential skills tutors are flexible, and project workers are empathetic to the reality that many of their participants lead chaotic lives, impacted by poverty, school expulsion, truancy, neglect, abuse, mental and physical ill health and placement in alternative care, amongst other barriers (Haydon and McAlister, 2015). For young people, the results are twofold: firstly they are offered a pathway away from offending; secondly the programmes seek to address the well-documented problems of educational under-attainment and unemployment in working-class neighbourhoods (Nolan, 2013). According to Start statistics, from April 2015 to March 2016, 30% of programme participants moved on

⁵ Include Youth is a children’s rights-based organisation with more than 30 years’ experience of working with and for the most marginalised young people in Northern Ireland, both in practice and at a policy level.

⁶ Challenge For Youth is a cross-community youth organisation which, due to funding cuts, was forced to shut down in 2014 after 24 years of working with vulnerable young people. The work vacated by Challenge for Youth on the WAYS project was divided up between NIA and CRJI.

into employment (22% full time), 42% into training or education, and 12% into volunteering (Include Youth, 2016). Based on the opinions of young participants, Boyce (2012: 4) notes that the ‘informality in approach and delivery’ of such programmes is a key element of their success.

This holistic approach to reintegrating young people exemplifies how projects have diversified to meet changing societal needs, in this case related to the shrinking of the labour market (Roberts, 2013). In facilitating programmes that address unemployment and educational under-attainment, CBRJ seeks to tackle the broader social problems confronting young people while maximising diversion from the criminal justice system. Having local people staffing projects is referred to as the ‘bottom-up’ approach to justice, and has been hailed as an effective tool in addressing the complex needs of the young people it serves. However, the sustainability of such schemes will depend on funding. Previous research and the current climate of welfare reform suggest that truly transformative initiatives may be consigned to ‘insecure and short-term interventions’ (Haydon *et al.*, 2012).

Promoting inclusive communities

Research outlines how media characterisation helps shape negative societal perceptions of various types of young people in Northern Ireland (Gordon, 2006, 2012). This representation also increases the likelihood of further marginalisation (Gordon *et al.*, 2015).

Young people are not the only victims of negative media depiction. Ethnic minorities are arguably even more marginalised. Montague and Shirlow (2014) cite the growing number of hate crimes as evidence of this. Both schemes have attempted to alleviate this through a range of partnership programmes engaging marginalised and diverse groups from within local communities. For example, the NIA Good for Nothing campaign attempts to challenge negative stereotypes of young people by empowering them to take part in various activities within their communities. This has included decorating a room for a disabled person, packing food bags for refugees, and organising social events for the elderly. Referrals to the scheme can be made via the Probation Board for Northern Ireland (PBNI), PSNI or from within the community.

The scheme has garnered positive media attention, and may facilitate a more impartial view of young people in working-class communities. Furthermore, this represents a socially transformative approach to problem-solving (Lederach, 1997). Empowering young people to actively

promote inclusive communities provides hard evidence of Chapman's (2012: 2) claim that CBRJ forms part of 'a strong network of community and voluntary organisations delivering services to the unemployed, to women, to the elderly and to youth'. Formal approaches to young people and criminality have been criticised for their emphasis on 'criminal justice disposals rather than combating the impact of social injustice on the lives of children, young people and their families' (Haydon *et al.*, 2012). By offering a range of services to young people, CBRJ initiatives such as the Good for Nothing initiative have attempted to make a genuine and lasting impact on the lives of both vulnerable groups within their communities and those at risk of offending.

A grassroots youth-work ethos

All staff on CBRJ projects must have some form of restorative qualification to practise, and many are trained in youth work. Staff are specifically trained on the problems confronting young people in their area: 'Our staff are trained in suicide awareness and have successfully intervened on a number of occasions' (Interview 12, CBRJ project worker). In 2015, 14% of CRJI's caseload involved suicide intervention/support/advice (CRJI, 2016). Training in the specific areas of poverty, suicide awareness and mental health issues represents a proactive approach to addressing structural inequalities. By successfully intervening in attempted suicides, CRJI is countering a social problem prevalent in its operational constituencies, thus presenting further evidence of how a grass-roots ethos enables schemes' flexibility to adapt to local problems (MacGinty, 2014). This is far beyond the remit of CBRJ, and, as noted by one practitioner, 'should be the work of other statutory agencies' (Interview 11, CBRJ project worker). However, CBRJ has a unique vantage point in that it is community led, meaning that practitioners experience first-hand some of the structural inequalities confronting young people.

The youth-work ethos developed by CBRJ initiatives shares the restorative ethos of empowerment, working alongside individuals to make decisions instead of making decisions for them. The growing number of practitioners with a youth-work background embody what Lederach (1997) refers to as 'middle-range leaders' who are essential to conflict transformation. These leaders can channel the necessary links with 'top-range' leaders and grass-roots initiatives, thus strengthening civic society. Restorative justice and youth-work approaches have a number of important similarities, such as their non-authoritarian and informal

delivery (Banks, 2012), the individualistic approach to each person, and the skilled helper action-plan model (Egan, 2013). These similarities lend support to the argument that acquiring experience or knowledge in both fields can be complementary and informative for future development.

Rights-based, youth-centred

There is also evidence that the CBRJ addresses welfare and child protection concerns that are not being met elsewhere. This was commented on by a study participant, a legal expert in human and children's rights: 'they [CBRJ] meet and go beyond some of the standards that have been set worldwide ... the Beijing Principles, the Riyadh Guidelines. I think the moral will in trying to intervene where a young person is about to be attacked or beaten up ... answers any question marks surrounding the rights of the child' (Interview 8, human rights practitioner). Furthermore, NIA's involvement in children's rights issues extends beyond its moral will to be involved. According to one director, 'we have forged a partnership with Include Youth in terms of lobbying around key issues ... around the minimum age of criminal responsibility, child poverty, educational attainment, the demonisation of young people in the media' (Interview 3, CBRJ Director).

CBRJ initiatives attempt to address many of these social harms through collaborative work, specific programmes and day-to-day practice. This multifaceted approach to reducing social harms at practice and policy levels evidences Lederach's (1997: 149) assertion that peace-building and conflict transformation initiatives must 'adapt to the realities and dilemmas posed by the very nature of these conflicts'. It has been argued that many of the problems depicted above are indirectly, if not directly, linked to the legacy of 'the Troubles' (McAlister *et al.*, 2009; Hargie *et al.*, 2010). In attempting to redress these imbalances and promote and protect children's rights, projects can rightly be referred to as a socially transformative approach to problem-solving (Lederach, 1997).

Improved relations: PSNI and young people

Over the years since the establishment of the PSNI in 1999, police legitimacy and credibility have steadily improved (Nolan, 2013). This research suggests that both PSNI officers and practitioners viewed CBRJ work as necessary in order to continue developing relationships between young people and the police. For example, the aim of the MAD (Making a Difference) project, run in collaboration between CRJI and the PSNI,

is to ‘educate young people on their rights around stop and search, and familiarise themselves with local police officers’ (Interview 12, CBRJ project worker). The project entailed CRJI facilitating in-house workshops for local PSNI officers to come down and meet young people in a neutral space and attempt to build relationships by getting to know young people in the area. For one neighbourhood police officer, the most effective outcome of projects is to ‘humanise policing for young people ... and break down barriers’ (Interview 7, neighbourhood police officer).

Initiatives such as the MAD project are an important indicator of how far policing–community relations have come in Nationalist/Republican areas, where mistrust of the police was most acutely felt during ‘the Troubles’ (Monaghan, 2008). In attempting to ‘humanise’ policing, projects facilitate meaningful and positive contact between the PSNI and young people. Positive contact also challenges the ‘judgemental’ and ‘antagonistic’ attitudes displayed towards young people by some police officers (Graham *et al.*, 2011: 39). Research suggests that a large percentage of young people hold negative perceptions of policing (Byrne and Jarman, 2010). However, it appears that these attitudes may be mellowing, with young people currently transitioning in Northern Ireland expressing more positive views about policing than previous generations (Devaney *et al.*, 2014). This is in part due to the PSNI incorporating young people’s viewpoints on strategies involving police–young people interaction (McAnulty and Lindsay, 2015). Community projects such as CBRJ have been instrumental in facilitating and co-ordinating this interaction.

However, this research suggests that the picture is somewhat different regarding the relationship between the PSNI and Protestant Unionist/Loyalist (PUL) communities. A number of NIA practitioners commented that young people’s relationships with the police were impacted by the political situation and wider community feelings of grievance with the PSNI. It was found that the relationship between young people in NIA communities and the police seems to have stagnated, in some cases even deteriorated. Incidents such as the flags dispute⁷ have been detrimental to relations (Wilson and Glendinning, 2013; Nolan *et al.*, 2014). Young people’s negative perceptions of the PSNI are somewhat reflective of the growing Loyalist political disenfranchisement (Shirlow, 2012; Nolan *et al.*, 2014). According to interviewee 11, this has impacted on how young

⁷ A protracted dispute over the flying of the union flag over Belfast City Hall, after Belfast City Council voted to limit the number of days the flag flies over the hall on 3 December 2012. Mass protest ensued.

people perceive the PSNI. Furthermore, while Devaney *et al.*'s (2014: 2) research suggested an increased acceptance of policing among young people, it also made a contrary but equally important finding: that young people who did not possess a 'strong sense of belonging, pride and investment in wider society' were not as likely to display positive feelings towards policing in their areas. High levels of educational under-attainment, child poverty, marginalisation and unemployment explain the absence of a 'sense of belonging' for many young people in NIA communities (Haydon and Scraton, 2008). This in turn helps one understand young people's negative perceptions and relationships with authoritative figures such as PSNI members.

Further complicating young people's relationship with the PSNI is the appetite within sections of both Nationalist/Republican and Loyalist/Unionist communities for a return to 'paramilitarism' (Wilson and Glendinning, 2013). The increase in dissident activity in recent years presents contradictory narratives for many adult observers of the Northern Ireland conflict. It is therefore no surprise that young people's complex relationships with paramilitaries not only represent a major obstacle for relations with the PSNI, but also hinder CBRJ engagement with young people in their respective communities. This will be discussed at greater length in the following section.

Difficult terrain

Young people and paramilitaries

The most significant obstacle to the effective practice of CBRJ has been the continuance of paramilitary activity. This was reflected to varying degrees in all interviews conducted during the research. One youth worker gave a brief overview of the effects of paramilitary violence: 'out of a group of 15 [young people] I was working with, eight of them had a real negative experience with paramilitaries, who had threatened them ... punched one of their mothers, one of them had even witnessed their uncle being shot dead in front of them' (Interview 1, youth worker). Research on the lived experiences of young people documents the normalisation of such acts (McAlister and Carr, 2014; Harland and McCready, 2014).

Undoubtedly, the recent rise in 'paramilitary-style shootings' at the time of the research (36 compared with 28 during the previous year) and 'assaults' (58 compared with 42 during the previous year) (PSNI, 2015a, 2015b) had undermined much of the positive work done on many fronts

by CBRJ initiatives. The prevalence of this activity explains why there is still a need for CBRJ, but also plays into the hands of those who are sceptical about the 'true aims' of projects (McGrattan, 2010). Part of this critique stems from the reality that CBRJ needs to work in close proximity to paramilitaries on a daily basis: 'we still mediate with paramilitaries, yeah we will do that every day of the week to stop a young person being beaten or shot' (Interview 3, CBRJ Director).

This changing role of paramilitaries often does not sit well with young people who feel alienated from their objectives and 'the cause'. This alienation is often displayed by the FAP (F**k All Paramilitaries) graffiti, which a number of participants described. 'I have seen young people from both sides of the community using it on their homework books, casts and walls from Divis to the Shankill road' (Interview 1, youth worker). This illustrates how alienation is felt at the intra-community level and is not just inter-community. Further alienating young people is that they 'are being beaten for drug abuse ... drugs that they seem to be accessing from within that [paramilitary] organisation' (Interview 11, CBRJ project worker). These findings resemble Harland and McCready's (2014: 273) research on young males as victims of a 'catch-22' form of justice: 'Many of the boys recalled the injustice of paramilitaries inflicting punishment on them and their friends for so called antisocial behaviour, while those inflicting this punishment were not being held to account for their own actions in drug dealing and other crimes.'

It must however be stressed that the relationship between young people and paramilitaries was often difficult to label and unpredictable. In recent years research carried out on working-class communities has suggested that an element of support exists for paramilitarism (Hayes and McAllister, 2005; Wilson and Glendinning, 2013). In attempting to understand this, it is worth referring to the problems of marginalisation confronting working-class youth transitioning in Northern Ireland (Haydon *et al.*, 2012). This offers an insight into the complex relationship young people hold with paramilitaries in that their feelings of marginalisation from the community, family and economic setting mean they have nowhere else to turn to for a sense of belonging or identity (McAllister *et al.*, 2011): often paramilitary affiliation can fill that void. It is apparent that paramilitaries prey on this marginalisation to further their agendas (Harland and McCready, 2014). According to a youth counsellor, 'when they see young "so-and-so" has gone in and done a bit of time for car theft ... once he comes back out, [they see him] as an easy target for them to

recruit to do some of their dirty work ... It gives some people a bit of purpose' (Interview 5, youth counsellor).

Geographical barriers

Levels of paramilitary control arguably influenced young people's perceptions of their geographical constraints. One respondent observed that fear prevented many young people from basic activities such as 'getting a bus into the city centre' (Interview 1, youth worker). A neighbourhood police officer commented: 'most people within [area name] and [area name] have a six-street mentality, in that they had never been beyond six streets from their home ... and had a fear factor, and a total lack of knowledge of what happened outside six streets from their home' (Interview 7).

Such accounts expand upon Leonard and McKnight's (2011) findings on the physical segregation of space and its effect on young people. While peace walls physically segregate young people, fear of the unknown helps create other boundaries (Nolan, 2013). As noted by one practitioner, perceived geographical barriers prevent young people from venturing outside their communities: 'people can't understand why a young boy from [area name] or East Belfast doesn't just go down the town and go into one of these places and get their level 2 [English or Maths qualification]' (Interview 10, CBRJ project worker).

Restrictions on young people's space and place crossed the ethno-sectarian divide.

Lack of community support

Support for CBRJ is variable within communities and is linked with perceptions about young people. These perceptions are informed by widespread negative media stereotypes of young people living in deprived communities, which ultimately heighten feelings of marginalisation and stigmatisation (Gordon *et al.*, 2015). CBRJ must encourage young people to take part in its initiatives, but also convince the wider community (often negatively informed about young people) to buy into its vision of a better future.

A lack of community acceptance of CBRJ ranged from simple mistrust to repeated acts of violence committed against the two organisations. Violent acts such as petrol-bombing of CBRJ offices not only undermine CBRJ as an institution but also challenge its *raison d'être* – 'a non-violent alternative to justice' (Eriksson, 2009: 60). This illustrates the task at hand:

CBRJ is attempting to teach young people about non-violent alternatives to resolving disputes, while societal tolerance and subsequent normalisation of violence contradict this approach (Haydon and Scraton, 2008).

The difficulties faced by CBRJ are also impacted by a lack of political buy-in. 'I think the lack of political buy in makes it so much more difficult ... who politicians choose to align themselves to at times, is very unhelpful as well' (Interview 9, youth work co-ordinator). Respondents (both practitioners and stakeholders) depicted limited awareness about what CBRJ actually does: 'I think just there's a lot of people don't realise what CBRJ is about, what they do ... Sometimes even that it exists' (Interview 2, CBRJ project worker). Further, the current climate of welfare reform and austerity ensures that the future of the community and voluntary sector is engulfed in precariousness. Such issues are outside the scope of this paper and, as evidenced above, both CRJI and NIA have a more immediate task at hand in attempting to overcome the obstacles from within their respective communities of service.

Moving forward

Examples of good practice that can inform the development of strategies at both statutory and non-governmental levels do exist, and should be drawn upon going forward. Although in their relative infancy, projects such as Start and WAYS represent innovative approaches to address education and employment barriers. The direct benefits of such initiatives are twofold in that they attempt to create a diversion for young people at risk of involvement in criminal activity while also up-skilling individuals in an attempt to prepare them for entering an increasingly inaccessible employment market. It appears that the youth-work approach effectively complements the restorative ethos of empowerment (Braithwaite, 2002). Where restorative justice attempts to empower both the victims and perpetrators of a crime to repair the harm caused (Zehr, 1990), a core principle of youth work is to empower young people to be actively involved in shaping their own development (Hamilton *et al.*, 2004). Giving young people ownership of projects such as the Good for Nothing campaign is an effective example of the shared empowerment ethos in practice. Further strengthening this approach are the burgeoning number of practitioners within CBRJ schemes who have a youth-work background. Although all CBRJ practitioners have restorative qualifications, mandatory youth-work

training may enhance the transformative potential of programmes. Narratives of community development, conflict transformation and improving the quality of life for marginalised youth complement one another, and this should be recognised.

In order to serve a purpose in contemporary society, CBRJ projects have had to diversify and develop to meet changing societal needs, yet maintain a focus on the age-old problem of paramilitary activities that often engulf young people as both victims and perpetrators. While previous research focuses on transformation for communities (Eriksson, 2009), this paper illustrates transformative potentials for young people, while uncovering some of the difficulties that projects must overcome in order to help those most in need of service.

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Restorative Justice Practice: Rejection or Reflection of Social Work Values?*

Susan Commins[†]

Summary: The field of restorative practice has in recent years extended beyond its origins in the justice sphere into many areas of public discourse. This paper confines itself to the practices of restorative justice. Even within that narrower field, the approach encompasses a number of models delivered by a range of personnel from the public, private or voluntary sectors. Given these variables, there is a risk that restorative justice could be rendered an ‘amorphous’ concept, representing all things to all people. The author explores the congruence between restorative justice practice and social work values in the Probation Service.

Keywords: Restorative justice, social work, probation, reflectivity, reflexivity, anti-oppressive practice, social justice, mediation, facilitation, conferencing.

Introduction

In this paper the author aims:

- to explore challenges in developing a shared understanding of restorative justice and establishing a common meaning for related terms and concepts
- to examine the extent to which the social work values of reflective, anti-oppressive and anti-discriminatory practice, social justice and client narrative are embodied within the philosophy of restorative justice
- to examine the professional social work environment in the Probation Service, and its congruity with restorative justice practice.

* This paper is based on a review of literature from New Zealand, Europe and North America undertaken by the author as part of a Master’s in Social Science (Social Work) degree.

[†] Susan Commins is a Probation Officer in Dublin. Email: sccommins@probation.ie

Working definition of restorative justice

Defining the concept of restorative justice can pose challenges. For the purpose of this study the author has adopted this working definition:

Restorative justice seeks to redefine crime, interpreting it not so much as breaking the law, or offending against the state, but as an injury or a wrong done to another person or persons. It encourages the victim and the offender to be directly involved in resolving any conflict through dialogue and negotiation. (Department of Justice, New Zealand; Cunneen, 2002)

The origins of restorative justice

The origins of restorative justice in this jurisdiction derive in large part from a New Zealand Maori tradition of conflict resolution. The Maori argued that a wrong committed hurts the entire community and that the involvement of the family, community representatives and the formal criminal justice system were key to the success of their restorative justice process. They recognised a retributive element of that process, as the wrongdoer would be expected to feel a sense of shame for their actions: a quasi-punishment in itself.

The New Zealand government passed landmark restorative justice legislation in 1989,¹ following which the first family group conferences were convened (O'Driscoll, 2007). Conflict resolution through family conferences culminated in the formulation of a plan intended to empower the offender and the family by identifying strengths and so to support the offender in taking responsibility for the offence, making reparation and avoiding further offending. This practice model values reflectivity, social justice, victim healing, client empowerment and narrative.

The role of social work in victim–offender mediation in Canada is evident from its inception in Kitchener, Ontario, in 1974 (Umbreit, 1999). The John Howard Society of Alberta (1997) traces the origins to the recommendation of Mark Yantzi, a Probation Officer, who proposed to court that two offenders with whom he was working might benefit from a meeting with their victim. This intervention became the early template for victim–offender mediation work in Canada and acknowledged the importance of narrative and dialogue.

¹ Children, Young Persons, and Their Families Act, 1989 (CYPF Act).

In the United States from the 1970s onwards, Howard Zehr, Eastern Mennonite University, pioneered the development of restorative justice (Zehr, 2003). His approach was concerned with: ‘who is hurt?’, ‘what are their needs?’, ‘who is obliged to meet these needs?’, ‘what led to the harm taking place?’, ‘who has a stake in finding a solution?’ and ‘what process needs to take place to involve the stakeholders to address the causes of the hurt and to put matters right?’

Wachtel *et al.* (2010) date the introduction of restorative justice in North America to 1994, through victim–offender mediation. They contrast the US retributive justice system negatively with Zehr’s focus on the restoration of the wellbeing of the victim, an approach that values social justice, narrative and reflectivity.

The philosophy and values of probation practice vary significantly. Practice in the Probation Service in Ireland is informed by the values, principles and ethical standards of social work.

The Probation Service has championed and supported the development of two restorative justice projects – the Tallaght Restorative Justice Services (RJS)² and Restorative Justice in the Community (RJC)³ – since their establishment in 1999 and 2000 respectively. RJS and RJC provide offender reparation panels and victim–offender mediation as appropriate. Both projects receive referrals from District Courts of summary or minor offences and, in recent years, from higher courts for more serious offences.

McNulty (2005) documents the introduction of family conferencing in the Children Act, 2001⁴ as an intervention directed by courts to address offending by young people. McNulty notes that, from a social work standpoint, the main thrust of family conferencing is the empowerment of victims’ or offenders’ families. The conference, he says, offers a forum for their narrative, reflective account and dialogue.

In 2006, the Probation Service made a submission on restorative justice to the Joint Committee on Justice, Equality, Defence and Women’s Rights. Michael Donnellan, Director of the Probation Service, in his presentation to the committee said:

We heard this morning that restorative principles in Ireland are at an early stage. We need to develop a model of restorative justice suitable

² <https://rjs.ie/>

³ <http://rjc.ie/>

⁴ <http://www.irishstatutebook.ie/eli/2001/act/24/enacted/en/index.html>

to our District Court structure. We do not seem to be clear about that and we need to investigate and see how it can be embedded in our everyday work. We have a unique opportunity to do this and we in the Probation Service, with the help of the Department [of Justice and Law Reform], hope to clarify that in the next few months, taking on board expert international advice. (Houses of the Oireachtas Report on Restorative Justice, 2007: 36)

In reviewing the report of the National Commission on Restorative Justice (Department of Justice, Equality and Law Reform, 2009), O'Donovan (2011) argued *inter alia*, that four main stakeholders are involved in restorative justice – victims, offenders, the community and the state.

Obfuscation in terminology

Obfuscation is defined in Wikipedia as ‘the obscuring of intended meaning in communication, making the message confusing, wilfully ambiguous, or harder to understand. It may be intentional or unintentional.’ Seen more positively it could be referred to as ‘constructive ambiguity’.

Cuneen’s (2000) definition of restorative justice from New Zealand is used here as a working definition. However, restorative justice is a difficult concept on which to achieve agreement. It is often used interchangeably with the broader term ‘restorative practice’. According to Restorative Practices Ireland:

Restorative practice is used in a wide range of settings including criminal justice agencies, educational settings, and community services, statutory and voluntary organizations. Restorative practice can be used anywhere along the continuum of supports from prevention and early intervention, right through to victim offender mediation for serious harm. (Restorative Practices Ireland, n.d.)

Comparing this definition of restorative practice with Cuneen’s definition of restorative justice, the term ‘restorative justice’ may be more clearly understood as confined to criminal or civil justice matters, and ‘restorative practice’ used in the broader context of family support, educational services, etc. In reality and common parlance, however, the terms are not clearly differentiated.

In restorative justice the distinction between the roles of mediator and facilitator is often obfuscated in discussing victim–offender dialogue. Mediation usually implies an impasse likely to require managed negotiation or an imposed resolution. Facilitation is usually focused on achieving a ‘win-win’ situation through the use of personal narrative and dialogue. Again, they are often used interchangeably.

The United Nations *Handbook on Restorative Justice Programmes* (2006) tends to maintain the power differentials associated more often with mediation. While it promotes the role of non-governmental organisations (NGOs) in restorative justice practice, a top-down structure and the forging of links between NGOs and government agencies is advocated.

In the Czech Republic, the Probation and Mediation Service, a government organisation, employs Probation Officers, who are described as ‘mediators’. However, it could be argued that their role is more facilitative, reflecting social work values.

Their task is to manage the negotiation process, to create conditions allowing understanding between the participants, the reaching of a solution, taking into account both parties’ interests. The mediators neither assess the conflict, nor do they decide on the form of its solution. (Ourednickova *et al.*, 1996)

Van Wormer (2003) asserts that social workers engaged in restorative practice with families should take the role of facilitator for the parties and not adjudicator. The focus is, in her view, on dialogue and narrative and not the guilt or innocence of the parties.

Mediation assumes an expert knowledge and, by implication, a shift in the balance of power, towards the worker who has a gate-keeping role. This role assumes the ability to control resources and also the proceedings (Christopherson, 2009).

Shapland and colleagues (2011) evaluated three UK Home Office-supported restorative justice programmes: two offered mediation and one offered conferencing. Shapland *et al.* found that conferencing was conducive to opening up avenues for further discussion and for the parties to move on with their lives. This model appears to accord best with social work values and methods, in that facilitation of the participants was largely focused on their arriving at sustainable solutions.

O’Donovan’s (2011) concept of ‘community’ as one of four stakeholders in restorative justice is difficult to define, as it may be located as

either a geographic or a social entity. Within a restorative justice context, both victim and offender are stakeholders in their own right while also part of the separate entity of 'community'. In a restorative justice context, it is most often assumed that the 'community' is those who are closest to the victim and/or the offender, and act in a support role. At other times, however, the community is seen to represent or even replace the victim. For example, if a victim does not wish to attend a conference, a member of the community may be invited to represent the victim's interests.

The United Nations *Handbook on Restorative Justice Programmes* (2006) includes the following example of restorative justice as practised by the Probation and Mediation Service in the Czech Republic.

As part of the pre-sanction process, a plan is put before the Court involving an assessment of the personal strengths of the offender and how their risk factors might be addressed.

In Ireland these tasks were a central part of Probation Service work for many years before the relatively recent advent of restorative justice, and have been conducted consistent with the social work code of practice. Many elements of good practice in probation have been retrospectively acknowledged as restorative practices.

Restorative justice: All things to all people?

Restorative justice has been variously described as a 'philosophy', a 'movement' and a 'practice'. Daly and Immarigeon (1998: 21) argue that restorative justice has 'sprung from sites of activism, academia and justice'. Within the criminal justice systems of most countries it is relatively recent in its introduction and still at a developmental stage.

Dale and Hydle (2008) describe a plethora of restorative justice models in Norway, from a national mediation and reconciliation service, which deals with criminal and civil cases, to street mediation operated by the Norwegian Red Cross. They also discuss the child welfare service, which is active in approximately 70 municipalities and uses restorative practice including family conferencing.

Hydle (2011), a researcher at the University of Tromsø, points out the difficulties encountered in attempting to define these separate entities and their fundamental differences: public and private organisations, civil and criminal law distinctions and the use of volunteers. The interchangeable

use of the terms ‘facilitator’ and ‘mediator’ adds to the problem of defining meaning, describing structure and understanding processes.

In the Irish context McNulty (2005) identified the families of victim and offender as the key players in restorative justice family conferencing. As mentioned above, O’Donovan (2011) identified four distinct players in the restorative justice process: offender, victim, community and state.

Despite the difficulties in terminology, semantics and varied, sometimes almost all-encompassing models of practice, restorative justice can be understood as a form of conflict resolution used to resolve disputes which exist between parties and which can be viewed through the lens of civil, criminal and political arenas.

Probation models as ‘fluid entities’

Probation practice internationally varies significantly (Van Kalmthout 2009). In some jurisdictions probation agencies are staffed by social workers; in others a variety of professions with other qualifications and experience are employed. Links between Probation Services and Prison Services also vary. In some jurisdictions the services are combined and in others they are separate. The role of Probation Officers in civil or criminal courts is also varied (Van Kalmthout, 2009).

The use of social work skills by Probation Officers in restorative justice practice will be influenced by the paradigm and discourse favoured by the particular jurisdiction. Duffee and O’Leary (1986), cited in Whitehead and Braswell (2000), suggest that from a social policy stance, probation agencies may follow one of four models, determined by the level of emphasis placed on the offender, the community, or both. They discuss *restraint, rehabilitation, reform and reintegration*, the last of these being viewed as offering an emphasis on both the offender and the community, consistent with restorative justice practice.

Brown (n.d.) argues that the safety of staff and the increasing number of high-risk offenders subject to community sanctions may move Probation Officers away from casework towards increasing social control. Brown cites Sieh (1990) in concluding that the increase in offenders subject to community supervision has forced a change in the role of Probation Officers, leading to an emphasis on the management and control of offenders exemplifying a ‘law enforcement’ bias. This focus, by implication, upholds and maintains power differentials between offender and Probation Officer, impacting on the application of both social work values and restorative justice practices.

Whitehead and Braswell (2000) discuss the pathways leading to the redefining of the role of Probation Officers in the US. They describe a move away from the Probation Officer as 'avuncular advisor', a role that was largely that of a social worker working in a law enforcement context but acting as a mentor. They describe a move towards an almost 'Dirty Harry' role, as adjuncts of the police, engaged in the monitoring of electronically tagged individuals and testing clients' urine. The concept of enforcement and overt social control is now paramount and the authors suggest that probation represents one of the two 'correctional options' – the other being prison.

There seems to be very little impetus for such probation work to encompass restorative practice. Although Whitehead and Braswell (2000) support Probation Officers' focus on working to equip offenders with prosocial and problem-solving skills for reintegrative purposes, there is a tension between the idea of probation as purely law enforcement and its more human restorative-led face. They argue that the US probation model should be refined to encompass 'what works' principles and evidence-based practice, incorporating elements of rehabilitation and restoration principles as well as law enforcement.

Wachtel *et al.* (2010) argue that the terminology employed in the US criminal justice system leans towards punitive-influenced language even when discussing restorative justice conferencing. Wachtel notes contrasts between current US criminal justice practice and what he terms 'real justice' or restorative justice. He points out that the two models are opposed. It may be ironic that probation's move towards a more correctional or punitive approach has coincided with the emergence of restorative justice practice.

Victim involvement

Sheena Norton (2007) describes how any restorative justice work in probation must always be mindful of the other parties and that the victim and the community that has been harmed should have equal importance with the offender. She says that the social work values of anti-oppressive/anti-discriminatory practice are evident in the 'voice' of the victim being clearly involved. However, Norton (2007) cites Spalek (2003) in noting that research has not established a link between the development of the offender's victim empathy and reduced reoffending.

Whether in the form of facilitation, mediation or reparation, restorative justice can provide an opportunity for the victim and the offender to meet, to arrive at a mutual resolution and for the victim to feel a sense of empowerment by getting answers to their questions. Asking a question of the offender can prove liberating for the victim, independently of any answer given.

Collaboration and the rebalancing of power should be evident in restorative justice as practised with victims, encompassing principles of reflective social work practice. The process is in principle voluntary for all concerned and although invited to participate as an important stakeholder in the restorative justice process, not all victims wish to engage in the process. It could be argued that the victim's perception of the harm suffered influences their willingness to participate.

Victim–offender dialogue: Narratives and scripts

McNulty (2005) cites Palazzoli Selvini *et al.* (1980), Cecchin (1987) and Tomm (1988), and concurs that the use of circular questioning can be helpful in working with a family involved in a restorative conference. This reflexive technique can be used to establish both commonality and difference in the narrative accounts. Circular questioning involves the facilitator undertaking:

investigation on the basis of feedback from the family in response to the information he solicits about relationships and therefore about differences and change. (Palazzoli Selvini *et al.*, 1980: 8)

With circular questioning, it is possible to identify patterns of family functioning and possibly problematic norms. This may offer an opportunity for the family and offender to reflect, consider new options and uncover and utilise strengths. Circular questions can help separate or externalize the problem for the client and, as such, offer a safe space for re-authoring their social scripts.

It is important for change and healing that participants have an opportunity for dialogue and for the offender to acknowledge the view of the victim within the conference. The acknowledgement of both the offender and the victim in restorative justice programmes influenced by social work values has the potential to restore equilibrium. The offender

is able to explore their offending behaviour and the victim is able to give an account of the harm experienced, which can be empowering for both.

Offender: Identification of strengths

Hall (2012) recommends a strengths-based approach or collaborative working with Probation clients aimed at identifying and using their personal strengths. For this to be successful, an understanding of the interaction between collaboration, power and the choice of language is important and restorative justice work can facilitate this.

If there is a bias towards language and power to the detriment of collaboration, the intervention is likely to fail. Hall (2012) encourages client narrative to allow for free expression and uncover the client's perspective. This lends itself to client and worker being able to reframe situations, to drill down and discover a client's inner resources and resilience and to identify how these could be utilised to achieve a positive solution.

Watson and West (2006) argue that a solution-focused method of working with clients adopts a middle position between the management or professional agenda and the empowerment of the client. As there is a focus on moving forward with a positive outlook, this can work well as it positions the client as the expert in their own life. A strengths-based approach in working with clients in a restorative justice programme allows for rebalancing of power even within a structured and mandated setting.

Community models: The way forward?

The Probation Service Restorative Justice Strategy (Probation Service, 2013) discusses how the philosophy of restorative practice has underpinned the mandate of the Probation Service for many years and emphasises the importance of the broader community as a vital stakeholder. The strategy includes a number of actions including the expansion of community-based programmes and the inclusion of additional categories of offenders. It commits to the wide application of restorative practices in the work of the Probation Service.

The state, the court and the role of the Probation Service

Working as an agency of the Department of Justice and Equality, the Probation Service employs staff with social work qualifications to provide

court-ordered assessment and supervision and to provide a through-care and aftercare service in prisons.

Social work ethics and values are visible in everyday practice with clients and in multidisciplinary settings. The Code of Ethics of the Irish Association of Social Workers (2006) acknowledges power imbalances and consequent tensions in the care and control functions of social work. These are particularly prominent in working with mandated or involuntary clients.

Trotter (2002) argues that particular critical skills used by workers with involuntary clients in mandated settings are directly related to positive outcomes. Trotter identifies these as role clarification between worker and client, the use of empathy and a collaborative problem-solving approach. These skills are consistent with the promotion of social justice and human rights when delivered to a high standard and meet the requirements of the Code of Ethics of the Irish Association of Social Workers.

Dalrymple and Burke (2003) illustrate a framework for anti-oppressive practice in the social work profession involving the interaction of knowledge, values and skills and requiring the ongoing use of reflective practice by practitioners. Schoen (1983) has argued that social work practice needs to be reflective in the context of the 'uncertain and complex world of service users'. In this context of professional values and practice, Probation Officers apply 'what works' principles and evidence-based practices as envisaged by Whitehead and Braswell (2000) in their assessments of and interventions with offenders.

The final report of the National Commission on Restorative Justice (Department of Justice, Equality and Law Reform, 2009) advocated the existing criminal justice bodies as the preferred vehicle for implementation of restorative justice in Ireland. The report eschewed the creation of a separate agency while noting that this had been the preferred option in several other jurisdictions. It recommended that the Probation Service should be the lead agency in the development of restorative justice practice in the criminal justice system in Ireland.

Conclusion

The practice of restorative justice in a European context traces its origins to the New Zealand Maori model of conflict resolution, the value system of the US Mennonite religion and the practice of a Canadian Probation Officer. From these origins emerge key principles: the reframing of an

offence as a wrong that hurts the entire community, the consideration of an offence as harm that can be viewed from multiple perspectives, and the potential benefits of victim–offender mediation.

The diverse origins perhaps best explain the diverse models of restorative justice involving public and private entities and that employ volunteer or professional staff or a mixture of the two. Language and semantics remain ill-defined or ignored in the development and delivery of restorative justice services. The interchangeable use of terms such as ‘mediation’ and ‘facilitation’ can obfuscate important power and status differentials and, together with the plethora of models available, may risk rendering restorative justice ‘all things to all people’.

The multiple models of restorative justice practised in Norway made it difficult to establish with certainty whether elements of social work values are implemented in the delivery of services. In the United Kingdom restorative justice programmes based on a facilitation rather than a mediation model seem a better ‘fit’ with social work values.

In Ireland the Probation Service has remained at the forefront of restorative justice development through its role in the criminal justice system and the wider ‘justice family’, its support for community-based restorative justice projects and its engagement in family conferencing. This role includes the provision of a framework for restorative justice, and the establishment of standards and criteria for training and service delivery.

The Probation Service’s involvement in restorative justice is congruent and consistent with social work values. Restorative language and practice is employed to explore the offender’s worldview and to develop the offender’s understanding of the victim perspective and the harm caused. The use of anti-oppressive/anti-discriminatory language in social work practice is central to its compatibility with restorative justice.

In my literature review on the congruity between restorative justice practices and social work values, findings were inconclusive. To a greater or lesser degree social work values can be consistent with the practice of restorative justice, depending on the model of restorative justice and practices employed.

In addition to the plethora of models of practice espousing a restorative justice ethos, the absence of a shared meaning and definition of terms and language makes it difficult to draw firm conclusions about the fit between restorative justice practices and social work values generally. Compared with developments in other jurisdictions, restorative justice in Ireland has significant and substantial congruity with social work values.

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Deserving of Penalty and Public Outrage? The ‘Gypsy’* within the Punitive City

Anthony Donnelly-Drummond[†]

Summary: This article concerns the separate deaths of two unrelated Travellers. The first case is the killing of Traveller boy Fred Barras by farmer Tony Martin in England in 1999. The second is the killing of the Traveller John Ward by farmer Pádraig Nally in Ireland in 2004. Throughout, the author explores the potential for social learning as a consequence of instruction via the media, and penal signification. Theoretically the idea that the media may play an influential part in the civilising process, considered here as being more akin to a decivilising offensive, is also addressed in order to reflect on, and incite further debate as to the impact of stereotyping on minority groups, in this instance Travellers and the Roma (both groups commonly referred to as ‘Gypsies’). Elsewhere the Tony Martin case has been covered in depth, as has the media’s (RTÉ’s) influence on the Nally case. This paper adds to knowledge by further deconstructing public responses towards these communities prior to (and following) both deaths.

Keywords: Decivilising offensive, Gypsy, Traveller, Roma, signification, penalty, Tony Martin, Pádraig Nally.

Introduction

Nomads were othered and viewed with suspicion in 16th-century England (Mayall, 1995, 2004). They were reviled as:

Vagabonds, sturdy beggars, commonly called *rogues* ... [as] idle, vagrant persons, having no master, nor no certainty how and whereby to live. (Ribton-Turner, 1887: 103)

* Most nomadic people across the UK and Ireland today (and their non-nomadic relatives) prefer to be regarded as ‘Travellers’. Meanwhile ‘Gypsies’ from continental Europe are most often referred to nowadays as ‘Roma’. Nevertheless, all these groups share historical and contemporary experiences of discrimination on the grounds of belonging to the ‘Gypsy’ communities.

[†] Anthony Donnelly-Drummond is at the School of Social Sciences, Leeds Beckett University, and is an Honorary Member of the Gypsy Roma Traveller Police Association. Email: A.Drummond@leedsbeckett.ac.uk

These 'Egyptians' or 'Egypcians' (Mayall, 2004: 68), as they were originally referred to in the 16th century (whence the term 'Gypsy' derives), were also accused of 'intimidating farmers and Justices of The Peace' (Mayall, 2004: 68). Moreover, they were said to be 'barbarous in condition, beastly in behaviour, and bloody if they meet advantage' (Mayall, 2004: 68).

With relevance to the *raison d'être* of the debate that follows, Fraser (2007: 98) observes that:

The lack of a permanent address runs counter to the state's desire to establish a relationship with and knowledge of its citizens' or residents' place of abode. Homeless and nomadic communities require greater policing and ... greater state resources precisely because they ... slip under the radar of surveillance.

Although most Travellers (and Roma) are no longer nomadic, association with nomadism (by blood ties) impacts negatively on these communities. In the UK it has been alleged that when Travellers appear in court there is often no chance to 'slip under the radar' of state surveillance, as it is difficult for them to disguise their identity (e.g. surnames are often indicative of status), placing them at risk of 'anti-Traveller prejudice in sentencing' (Cottrell-Boyce, 2014: 417; Donnelly-Drummond, 2015).

Across the UK and Ireland harsh contemporary anti-trespass laws (aside from Scotland's legislation, which remains ancient)¹ have reinforced the message that nomads remain 'masterless' 'felons' (Ribton-Turner, 1887: 103). Thus nomads have been criminalised while members of these communities remain stereotyped (often via media amplification) as criminal en masse. Therefore I believe that clear links can be made between Garland's (1990) signification of penalty and the othering of Travellers (and Roma; Fraser, 2007; Fanning, 2007). Moreover, this can occur via a deliberate decivilising offensive that may at times encourage 'justification' for 'killing [boys such as Fred Barras and men such as John Ward] in the name of otherness' (Prum *et al.*, 2007).

The concept of signification and its impact on Travellers (including the Roma) is analysed prior to making links between this and the issue of media amplification and stereotyping concerning these ethnic groups.

¹ The anti-trespass laws are as follows: in the Republic of Ireland, the Housing (Miscellaneous Provisions) Act 2002; in Northern Ireland, the Unauthorised Encampments (Northern Ireland) Order 2005; in England and Wales, the Criminal Justice and Public Order Act 1994; in Scotland, the Trespass (Scotland) Act 1865.

Next, the civilising process (Elias, 2000) is discussed in order to make connections between, and to theorise, the impact of signification and stereotyping/media amplification on those who are 'othered'. Prior to concluding, the cases of the farmers are evaluated.

Theorising signification, media amplification and the civilising process

According to Garland (1990: 252) the term 'penality' 'communicates meaning not just about crime and punishment but also about power, authority, legitimacy, normality, morality, personhood, social relations and a host of other tangential matters'. Thus, via continual and repetitious instruction the signification of penal signs and symbols informs us how to consider good and evil, normal as opposed to pathological, the difference between legitimate and illegitimate, and order as opposed to disorder (Garland, 1990: 249). By way of legal judgments, admonitions and condemnations, it is believed that the public are taught and persuaded how to judge, what should be condemned and how to classify, while being supplied with the language to do so. What is more, as noted by Reiner (2016: 129, 134), while 'the police and courts are reliable story suppliers ... the media [can] distort the threat of crime, fomenting fear and stimulating public support for authoritarianism'.

Symbolic statements such as legal judgments amplified by the media might influence cultural mentalities and sensibilities. By 'cultural mentalities and sensibilities', Garland (1990: 195) means: 'all those conceptions and values, categories and distinctions, frameworks of ideas and systems of belief which human beings use to construe their world and render it orderly and meaningful'. In turn, cultural mentalities and sensibilities may influence penal institutions and the actions and beliefs of those working within them. In this way the public are asked to form opinions based on what little knowledge they have of a particular group of people – Travellers, the 'underclass' (Murray, 2005), black youth or other minorities – the consequences being that certain groups become stereotyped and blamed for society's problems (Vanderbeck, 2003).

Fraser (2007: 95–6) made an interesting observation on an incident in Firle in Sussex, England in 2003 when the local Bonfire Society:

carried out the tradition of burning a figure of local scorn and popular hatred. The effigy in question was a 'Gypsy caravan'. The caravan bore

the [derogatory] registration PIKEY [use of the name since proscribed in UK law] ... being a popular slang expression for Gypsies and Travellers. In addition, the window of the trailer was filled with pictures of a woman and several small children portrayed as a Gypsy family ... The effigy was marched through the village to the shouts and admiration of the local population, to be set alight to traditional cheers of 'burn it, burn it'.

Allegedly, according to the Bonfire Society (following reporting of this incident by a local 'Gypsy'), the burning of the effigies was an 'attack not on a racial or ethnic minority but on the politicians and police who had failed to act against ... [the uncivilised?] illegal camping' (Fraser, 2007: 96) of a family of Travellers in the summer of 2003 at Firle. Of course it is the reality that some unauthorised campsites are left in such a mess (whatever the reasons) that this feeds in to stereotypes as to the uncivilised behaviour of people such as Travellers and links them with dirt and disease, which is what the civilising process (Elias, 2000) has discouraged over centuries. According to Elias (2000) civilising processes were originally dictated by members of the courtly societies of Europe, an example being the following admonition: 'take good care not to blow your nose with your fingers or on your sleeve *like children*, use your handkerchief and do not look into it afterwards' (Elias, 2000: 124; emphasis in original). In turn, the general public would learn as these manners were indoctrinated into societies. Yet, although some members of contemporary society clearly view nomadism as uncivilised behaviour, the burning of the 'Gypsy' effigies in Firle cannot be considered a courtly procedure. Rather it should be viewed as an explicit and deliberate decivilising offensive, perhaps embodying an attempt to undermine equality/rights-based laws that offer protection to ethnic groups² such as these.

Van Ginkel (2015: 1) states that during the 1980s, although this was not part of Elias's (2000) 'conceptual apparatus', a number of Dutch academics considered the term 'civilising offensive' (rather than civilising process) as referring:

² As of 2016 (unlike members of this community residing in the UK), Irish Travellers are *not* considered to be an ethnic minority in the Republic of Ireland yet they are offered limited protection as members of the 'Irish Traveller Community' (Drummond, 2007). This may also be considered emblematic of a decivilising offensive, as recognition of ethnicity in Irish law would strengthen protection for Travellers under a range of international conventions to which Ireland is a signatory.

implicitly – to a one-sided process. There are those who launch an offensive, and there are the offensive's targets (or perhaps even victims) who undergo attempts to civilise them albeit not necessarily passively.

As discussed by Van Ginkel (2015), the concept of a 'civilising offensive' is analogous to a military operation, and, given the history of anti-Gypsism/Travellerism it is a useful way to discuss the situation of these groups in light of the killings of the two Travellers that are yet to be redressed. It may also prove pertinent that 'What it means to be civilised is ... largely defined by the middle classes'; moreover:

middle class civilisers often have no intention to extend their efforts to the poorest and unruliest urban dwellers. They merely want to keep them out of sight – and out of mind – [or metaphorically, burn them!] and restrict (or restrain) them so that they (the 'respectable' middle class citizens) will not be offended. (Van Ginkel, 2015: 1)

Traveller sites are often located at the periphery of towns and cities, arguably to contain residents, segregating this apparent underclass from 'civilised' society (Van Ginkel, 2015). Moreover, defamatory media articles on this 'underclass' and (more commonly today) blogs³ (referred to as 'citizen journalism' by Reiner, 2016: 134) attacking Travellers underline offensives such as those discussed by Powell (2007) and Van Ginkel (2015), the purpose being to 'shackle', chastise and shame those considered 'maladapted' (Van Ginkel, 2015: 1), 'abnormal' (Goodman and Rowe, 2014: 32), 'non-citizens' (Mottier, 2008: 265) in need of 'corrective treatment' (Sibley, 1981: 81).⁴ Yet when 'corrective' treatment takes the form of killing, the civilising offensive can only be deemed as decivilising: there is nothing left (individually) to redeem. However, it may be the case that killing has the impact of a civilising offensive on other

³ One of the worst examples of a decivilising offensive is exemplified in T-shirts that were available to buy online with the slogan 'Keep Calm and Kill Gypsies', as reported by *The Travellers' Times*, <http://travellerstimes.org.uk/Blogs—Features/Keep-Calm-and-Report-Hate-Crime.aspx> (accessed 8 March 2016).

⁴ Reviewer's comments left on the Amazon website concerning McVicar's (2003) book indicate a mindset that views Travellers as uncivilised: 'One aspect that struck me is how this chavscum underclass are funded by the rest of society ... Why are we paying to keep them alive, really?' (by Ian Millard, posted on 9 February 2009, <http://www.amazon.co.uk/Right-Kill-Tony-Martins-Story/dp/1903906369> (accessed 26 August 2015)).

group members (as in a warning shot if certain behaviour does not change).

Rohloff (2012) states that 'decivilising processes may occur where there is a weakening of the state', even if there is only a perception that governmental regulations are 'failing to control a particular perceived problem', or 'conversely, that individuals are failing to regulate their own behaviour and thus there is a need for a stronger external force ... to control these "uncontrollable" deviants'. Unauthorised encampments underline these failures, yet in the case of nomadic Travellers I would amend Rohloff's (2012) view to propose that states have not been weakened at all. It is more likely their failure to control the 'problem' (created *by* state parties) is purposeful: a deliberate failure to provide adequate accommodation for Travellers, especially nomadic ones (Drummond, 2007), in order that the media can whip up and sustain a long-running moral panic about subsequent unauthorised encampments. In turn this failure to provide accommodation may encourage untold members of the public to 'panic' and engage in banter decivilising Travellers further whilst undermining attempts by Travellers to lay claim to nomadism as a right or as reasonable and culturally relevant etc. (Drummond, 2008). Essentially, it is proposed that moral panics can often be employed against Travellers (and the Roma), the aim being to support a decivilising offensive stereotyping them as undeserving of help/welfare, thus discouraging sympathy for their plight on the part of the public (the ultimate aim being enforced assimilation, perhaps?).

Van Baar (2014: 5) conceptualised the term 'reasonable anti-Gypsyism', explained as:

A widely supported movement among non-Gypsies and non-Roma [seeking] ... retaliation under the pretext that ... Gypsies, Travellers and Roma frequently exhibit undesirable behavior. The argument goes that you are rightfully entitled to act against them and treat them differently, because they cause inconvenience, indulge in criminal activity and can generally be expected to cause trouble. It is not 'we' but 'they' who violate rights and fail in their duties. This 'reasonable anti-Gypsyism' manifests itself throughout politics and wider society – which is also one of the reasons why it is hard to challenge it.

Van Barr's (2014) theory is reflected in concerns expressed by Europol (2011: 11) that:

An attitude of detachment towards Roma communities by public authorities in some Member States has ... left the most vulnerable members of these communities – children and young women – unprotected from exploitation by criminal groups.

Other authors echo this detachment as they discuss control of Travellers and Roma by way of methods viewed as wide policing (James, 2007) and of demonisation (MacLaughlin, 1998), which in some instances has encouraged the ‘gardening’ of certain minority communities by eugenicist methods, as happened in Switzerland from the 1920s to the 1960s (Mottier, 2008). The more recent forced sterilisation of Roma in Czechoslovakia (1971–91) is also relevant here (McLaughlin, 2005).

The information presented so far indicates the detachment of some state officials from safeguarding members of these communities. Moreover, it may be speculated that currently the media is fed information to amplify concerns regarding these communities in order that decivilising offenses can appear ‘reasonable’ (civil, perhaps?) even if they take the form of ‘killing in the name of otherness’ (Prum *et al.*, 2007). This is a key issue which is addressed below.

It has been observed that in the case of nomadism, the ‘state and members of the nation will be hostile to those who attempt by the very nature of their existence to escape from ... normative boundaries ... a clearly established territorial, spatial loyalty’ underpinning general comprehension of ‘sovereignty [and, no doubt, allegiance to crown or state] and thence rule of law’ (Fraser, 2007: 98). In the case of Tony Martin, outlined below, I believe that apparent widespread support for his actions (McVicar, 2003: 165) underscores the way in which hostility is shown to those perceived to be evading normative boundaries.

The Tony Martin case

In England in 1999, farmer Tony Martin was burgled by two young Travellers (and a third, non-Traveller, driver/accomplice). As the two intruders were exiting Martin’s premises through a window (it is alleged that he had sat in wait in darkness), he shot both in the legs at close range. Brendon Fearon escaped but Fred Barras was shot in the back and died as he attempted to escape. According to McVicar (2003: 28), Martin ‘fancied he’d bagged a couple of two-legged rats, but [allegedly, and doubtfully] he had no means of knowing how badly’. McVicar (2003: 24)

also revealed that Martin 'used [his] gun regularly on [what Martin referred to as] vermin ... "pigeons and gypsies"'. It is also reported that Martin 'attended a police surgery on crime a year before [the shootings]' informing PC Douglas Cracknell that burglars, 'especially Gypsies, "should be surrounded by barbed wire and machine-gunned"' (McVicar, 2003: 114). Moreover, McVicar (2003: 199) states that in regard to Martin's denial in court of the use of derogatory language against Travellers, a friend of Martin's retorted: 'he's a lying bastard. Anyone who knows him, including my two girls ... know he'd kill a gypsy.'

In the closing speech of the trial, Rosamund Horwood-Smart QC expressed the opinion that Martin 'was a man ... waiting for intruders', that disproportionate and unreasonable force was used, and that 'he has lied and lied again to cover up the way he deliberately ambushed these burglars. He murdered them' (McVicar, 2003: 155). Nonetheless, Martin was eventually cleared of murder, convicted of manslaughter (on appeal) and sentenced to six years in prison. Just after his conviction, Holland (2000) observed that he 'is a tabloid hero – almost 300,000 Sun readers rang to protest against' the sentence. Martin received thousands of letters of support in prison (BBC News, 2003). This is despite the observation by Chief Inspector Martin Wright of Norfolk Police (Holland, 2000) that 'he [Martin] just went up to these people and shot them'. He was released after serving less than two-thirds of his sentence. His decision to sell his story (for £125,000) angered the dead Traveller's relatives, while the Labour MP Chris Bryant accused newspapers of 'condoning a lawless society' (Byrne, 2003).

Following discourse analysis of the Martin case, Vanderbeck (2003: 363) observed that, whenever Travellers set up illegal encampments, the media report that they have 'invaded' an area and residents "battle" to stop this. If residents succeed in preventing Travellers from setting up a camp or permanent site, they score a 'victory'. Therefore, resembling a military-style civilising offensive, media language portrays Travellers as enemies in a war that needs to be fought and won by settled society.

It could be postulated that media bias represented Martin as akin to the 'gentleman poacher, of outlawry as democratic rebellion', as 'part of the *demos* ... one of "us"', while Travellers remained (and remain) subjected to a decivilising process, viewed as 'Other' (rarely as gentlemen). It appears that the Englishman's home (and very likely, as indicated below, the Irishman's) remains his castle, and, as the outcome of the Martin case indicates, 'the Gypsy is someone who lives in the state of exception as the

outlaw subject of the law' (Fraser, 2007: 103). The 'Gypsy' remains othered even inside law's violence (Sarat and Kearns, 1995). All law is considered here as inherently violent in terms of its negative impact on those trialled, found guilty or not guilty, and the impact of these processes on those involved, including loved ones; the outcomes of Martin's and Nally's trials perhaps underscore exactly how violent law can be for those othered within jurisprudence (Buist and Lenning, 2015).

Martin's actions might be considered by some as an attempt to uphold the 'rule of law' against individuals allegedly intent on evasion of so-called 'normative boundaries' (Fraser, 2007: 98), individuals deemed perhaps to have failed to 'observe the "civilised" standards of the dominant society' (Powell, 2007: 118). Yet the same 'theory' could easily be applied to Martin and, as his case was covered by a host of media across the Republic of Ireland, I believe that an element of social learning was involved in the subsequent killing of another Traveller by farmer Pádraig Nally in 2004. Indeed, the written media might often be 'one of the causes of new crimes, by arousing the imitative instinct to be found in man' (Bonger, 2005: 60).

The case of Pádraig Nally

It is claimed that images of crime and violence presented by the media are a form of social learning, and may encourage crime by imitation or arousal effects (Reiner, 2002). In 2005, Nally, a farmer from Co. Mayo, alleged that two Travellers were thought likely to be about to burgle his home (Shiel, 2005; Hogan, 2005). After asking the first Traveller (Tom Ward) "where was the other fellow, believing Tom Ward was not likely to be on his own" ... He was told this other man was round the back "having a look". 'Mr Nally said words to the effect that he would not be coming out again' (BreakingNews.ie, 2006).

Thereafter, with striking similarity to the Tony Martin case, after a prolonged attack Pádraig Nally shot Traveller John Ward in the back and killed him (BreakingNews.ie, 2006). At the close of the trial on 20 July 2005, 'the jury returned a verdict of manslaughter, the applicant having pleaded not guilty to the single count on the indictment' (Director of Public Prosecutions v. Nally, 2006).⁵ Nally was then sentenced to six years in prison (Mulcahy, 2005: 12), but (not wholly dissimilarly to the case of Tony Martin) he was acquitted of manslaughter at a retrial in December

⁵ <http://www.courts.ie/Judgments.nsf/0/C11AC1AFE2F4AB1D80257205003CB715>

2006 and released. Just as in the Tony Martin case, though, shooting a burglar (allegedly) in self-defence, allegedly in fear, was not the whole story.

In opening the case for the first appeal, the prosecution's Mr Paul O'Higgins SC said that Nally first got a shotgun and shot Ward. Nally then 'beat John Ward black and blue'. There were eight 'full lacerations to Mr Ward's skull, exposing the underlying bone ... more than 25 bruises to his body and his nose was broken. There was a break to his left forearm, suggestive of a defensive type injury.' Moreover the prosecution said that 'Mr Nally had described the beating as "like hitting a badger or a stone. You could hit him but you could not kill him"' (BreakingNews.ie, 2006).

As Mr Ward attempted to stumble out of the yard:

Mr Nally went back into his shed, got the shotgun and three more cartridges. By this time the deceased was either out on the roadway or stumbling or limping towards it and had turned right onto the road when Mr Nally followed him and shot him again. The second shot went through his left arm, back out and through the left hand side of his chest into his lungs, almost immediately killing him. He said Mr Nally then took John Ward's body and heaved it over a wall, before driving to a neighbour's house where the gardaí were called. (BreakingNews.ie, 2006)

Mr O'Higgins said it was the prosecution's case 'that the killing in these circumstances [killing in the name of otherness?] was not and could not be a lawful killing'. 'He added: "There is not a death penalty for burglary in this country"' (BreakingNews.ie, 2006). Ahead of the trial, and, underscoring my concerns with media amplification (McVicar, 2003), Mr Justice Paul Carney warned:

'This case has engendered a great deal of publicity, perhaps more than any other in the history of this court. It has also engendered extremely strong feelings' ... the jury must try the case 'strictly on the basis of the evidence adduced and the trial judge's directions of law ... Anybody serving is warranting that he or she can do that without any prejudice towards the Travelling or farming community.' (BreakingNews.ie, 2006)

My question is whether a trial without prejudice could actually be possible when there was so much media coverage, mainly in support of Nally

(Leahy, 2014). This case has similarities to that of Tony Martin. Particularly striking are the analogies used by the farmers: a dying Traveller was ‘like a badger’ and Travellers were vermin, like pigeons. Reference to humans as animals (that are hated at least by many farmers) is a form of a decivilising offensive as occurred in Nazi Germany. Indeed, Smith (2011) states that during the Holocaust the Nazis referred to Jews as rats, that throughout history slave owners considered their slaves as subhuman animals and that such dehumanisation precedes genocidal policies (e.g. sterilisation). Regarding prejudice on a lesser scale (as also occurred in the Tony Martin case), media coverage on the Nally incident not only reflected Richardson’s (2005) observations on the wide policing of Travellers but also underscored the role of the media in signification.

Ward’s widow received hate mail proclaiming ‘one down, 30,000 to go’⁶ (Chrisafis, 2005), while Fine Gael chief whip Paul Kehoe told a public meeting: ‘let me say, he [Nally] was a victim, and if I was Pádraig Nally I think I would have done exactly the very same thing as well’ (Fahey, 2005: 9). Kehoe’s comments embody Foucault’s abstract philosophy on the nature of discipline, meted out in what is imagined as the ‘punitive city’, comprising ‘hundreds of tiny theatres of punishment’ (Foucault, 1977: 113). According to Ferrell (2005: 585) it is in these theatres of punishment that ‘young people, ethnic minorities, lesbians and gays, and other play villains are [portrayed as] deserving of penalty and public outrage’. The comments are also not dissimilar to the musings of some British politicians following the killing of Fred Barras. McVicar (2003: 84) observed that the first politician to ‘wade in on Tony’s side was ... Anne Widdecombe’, the same person that spent ‘much of her time defending such practices as women prisoners being shackled to hospital radiators whilst giving birth’. At the Tory Party conference in October 1999 she stated that the next Conservative government would ‘put the law in order’ (McVicar, 2003: 84) before continuing:

Victims are not only those who suffer from crime, but those who suffer from the law ... I believe it is every citizen’s right within reasonable and sensible limits to defend themselves, or their properties, against attack without then fearing a penalty at law.

Victims were (and remain) protected in UK law if they used self-defence to protect their homes and persons from attack: ‘a defendant is entitled to

⁶This refers to official approximate counts of Travellers in the Republic of Ireland at that time.

use reasonable force to protect himself, others for whom he is responsible and his property' (Beckford v. R [1988] 1 AC 130, cited in Martin v. R. [2001] EWCA Crim 2245).⁷ The role of a jury in such cases is to assess whether or not the violence used is proportionate or reasonable.

In Ireland it is significant that as a result of concerns over self-defence 'in the aftermath of a heated national debate following the jailing of farmer Padraig Nally' (thejournal.ie, 2012), a new law was introduced in 2011. The Criminal Law (Defence and Dwelling) Act 2011 allows a person to use reasonable force in defending their home (O'Connell 2012; Leahy, 2014). Yet, in discussion on this issue, Justice Minister Alan Shatter said the law is 'not a licence to kill' (thejournal.ie, 2012). While advocates for it argued that 'the law allows for force in proportion to the threat someone perceives they are under', the Irish Council for Civil Liberties warned that the law 'insufficiently' protects the right to life for householders or intruders while some fear it could lead to intruders being more likely to carry weapons (thejournal.ie, 2012). It appears, then, that although the Nally incident led to the introduction of a new law, how much force might be deemed reasonable in Ireland is still unclear. Meanwhile in 2013, no doubt influenced by other cases where burglars had been killed by members of the public in England (Pilling, 2011; Bunyan, 2011),⁸ the Crown Prosecution Service (CPS) issued new guidelines on self-defence:

Anyone can use reasonable force to protect themselves or others, or to carry out an arrest or to prevent crime. You are not expected to make fine judgements over the level of force you use in the heat of the moment. So long as you only do what you honestly and instinctively believe is necessary in the heat of the moment that would be the strongest evidence of you acting lawfully and in self-defence. This is still the case if you use something to hand as a weapon. As a general rule, the more extreme the circumstances and the fear felt, the more force you can lawfully use in self-defence. (CPS, 2013)

In commentary on Nally's original sentence, Mulcahy (2005) observed:

while considerable outrage has been expressed [by settled people] about the severity of Nally's [initial] six year sentence, Travellers and others

⁷ www.bailii.org/ew/cases/EWCA/Crim/2001/2245.html

⁸ Neither of these cases appeared to concern Travellers, and the ethnicity of the victims was not referred to in these articles.

view it as strikingly lenient and as highlighting the low value that the criminal justice system attaches to the lives of Travellers.

The final verdict on Nally (whereupon he was freed)⁹ led the Irish Traveller Movement (2006) to comment that it was:

deeply shocked at the verdict of the jury, and extremely disappointed that after a lengthy trial where all the evidence pointed to a deliberate and unlawful killing, that the jury chose to decide in favour of the farmer, who, in his own words had intended to kill the victim.

Conclusion

As outlined above, evidence exists to support the notion of a decivilising offensive aimed at the Traveller and Roma communities. In England, 'Gypsies' were first othered and viewed with suspicion in the 16th century. More recently 'Gypsy' effigies have burned on public bonfires in England (Fraser, 2007). Often, where accommodation has been provided, Travellers remain (albeit unofficially) segregated on sites located on the periphery of towns and cities. Travellers have been publicly referred to as akin to vermin like pigeons and animals such as rats and badgers. In the recent past across continental Europe, some Roma have been sterilised without consent (Mottier, 2008; MacLaughlin, 1998). Throughout the UK and Ireland (as detailed in footnote 1) a range of (mostly contemporary) harsh anti-trespass laws signify that nomadic Travellers (and those associated with them) are now officially criminalised and stereotyped as a suspect community. Hate-filled media articles (Drummond, 2006) show how 'in great part, the press [and some other forms of media] is the opposite of what it ought to be ... [often increasing] ... the prejudices of the crowd' (Bonger, 2005: 59). To a degree, the phenomenon of the Nally and Martin cases indicated how 'the press ... has a special place in the aetiology of crime' (Bonger, 2005: 60). Thus, as indicated via the furore surrounding the trials discussed above, it is evident that penalty, assisted in great part by media amplification, may at times instruct some of the public to judge and classify (in this case) nomadism (and anyone practising this way of life or connected to nomadism by blood-ties) as illegitimate, disordered.

⁹ On 10 December 2006 the outcome of the first Appeal was 'Quash conviction, direct retrial, grant bail', <http://www.courts.ie/Judgments.nsf/0/C11AC1AFE2F4AB1D80257205003CB715>

In light of the apparent failures of state parties to resolve 'a particular perceived problem' (Rohloff, 2012: 75), in this instance unauthorised encampments (often, and for a range of reasons, leaving a mess, and being the antithesis of the civilising process), it is evident that resulting moral panics can act as catalysts for a decivilising offensive, no doubt poisoning public opinion on Travellers, and influencing the cultural mentalities and sensibilities of many towards these communities as well as perhaps impacting negatively on justice. Moreover, the inaction of state parties in terms of providing solutions to the problems faced by nomads across the UK and Ireland appears deliberate. Indeed, it is apparent that inaction by governments, combined with media amplification, has exacerbated the situation of many Travellers, the consequence being that they are portrayed as having failed 'to regulate their own behaviour', thus there is a need for corrective treatment (Sibley, 1981: 81) to punish these 'maladapted' (Van Ginkel, 2015: 1) citizens. Yet, as suggested above, when 'corrective treatment' (Sibley, 1981: 81) takes the form of killing in the name of otherness and while some media organisations fail to condemn such extreme methods (and the evident support of some members of the public for them), it appears that in many theatres within the 'punitive city' (Foucault, 1977: 113), Travellers (and the Roma) remain largely disempowered, and may be viewed as deserving of penalty and public outrage. Hence there appears to be no 'stage left', no emergency exit for these actors within hundreds of tiny theatres of punishment across European states. In fact, the two cases discussed above indicate that the 'Gypsy' remains largely decivilised as 'someone who lives in the state of exception as the outlaw subject of the law' (Fraser, 2007: 103).

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LGBT* Diversity: Implications for Probation Practice

Colette Byrne[†]

Summary: On 29 April 2015, the Probation Service took a significant step in progressing its commitment to supporting and embracing diversity throughout the organisation. Staff from the Gay and Lesbian Equality Network (GLEN) joined with the Probation Service to launch its entry to the Glen Diversity Champions Programme.¹ This programme helps employers understand the business case for being inclusive of their lesbian, gay, bisexual and transgender employees. It gives them the confidence and the know-how to make their policies, culture and service inclusive, and an opportunity to be recognised as diversity champions, connecting them with other policy-makers and potential employees. The paper reflects on opportunities for the Probation Service to promote and support a greater understanding of the LGBT community, which respects individuals' chosen identity and facilitates 'whole self' communication.

Keywords: LGBTQ community, gender, lesbian, gay, bisexual, transgender, questioning, cisgender, intersex, Probation Service, professional interactions, inclusiveness, diversity, criminal justice.

Introduction

In the decades following the establishment of the Irish Free State in 1922, the Irish education system provided a curriculum whereby girls were predominantly educated towards domesticity and boys were in the main prepared for the role of breadwinner. The expectation was that children would mirror the example of their parents, who in turn had a moral duty to encourage prescribed behaviour. This mirroring 'refers to the act of

* The LGBT initialism is now a generic term for a community that has embraced its own evolution of diverse identities.

[†] Colette Byrne is a Probation Officer working in Dublin. Email: cbyrne@probation.ie

¹ GLEN (www.glen.ie) is a policy- and strategy-focused non-governmental organisation which, since 1998, aims to deliver positive change and equality for lesbian, gay and bisexual people in marriage, at home, at school, at work, in service provision and in the wider community.

changing one's behaviour to match the responses of others' (Cialdini and Goldstein, 2004). Every stage of life was mapped out, and this was seldom questioned. Moving outside the dictates of the time would have taken courage and a commitment to social justice.

Failure to comply with these rules and norms often caused scandal, huge stress and the threat of ruin, regardless of class or social status. Seeking to 'become oneself' – identifying oneself as belonging to a marginalised group not deemed part of the societal norm – necessitates a realisation that 'yielding to the wisdom of the heart requires a courageous step into the unknown' (Dickson, 2015). The courage to take the step forward may also require support from others, which may or may not be forthcoming.

Milestones

As we commemorate the centenary of the Easter Rising, it is timely to recognise other significant cultural, social and legal shifts of the past 100 years. Social change does not happen without struggle and wide debate. In the Irish context, change and maturation has not always been welcomed. The 'need to maintain order was heightened in the early decades of independence as the new state tried to define its national identity in the aftermath of colonisation' (Considine and Dukelow, 2009).

The introduction of the universal franchise in two stages, under British rule and then under Irish rule, is an example of that social change process. In 1918 women who owned property and were over 30 years of age gained the right to vote. In 1922 all Irish citizens over the age of 21 years gained the right to vote as part of the new Irish state.

In 1973 the marriage bar, which had excluded female civil servants from working after marriage, was lifted. In 1990, Mary Robinson was elected as the first female President of Ireland; she was succeeded in 1997 by Mary McAleese.

In 1993 homosexuality was decriminalised in Ireland. Divorce became part of the Irish social and legal landscape in 1996. The Employment Equality Acts 1998–2015² outlaw discrimination in recruitment and promotion and address equal pay, working conditions, training or experience, dismissal and harassment including sexual harassment. The legislation defines discrimination as treating a person in a less favourable

² <http://www.irishstatutebook.ie>

way than another person based on any of nine grounds, including gender and sexual orientation.

With the passage of the Marriage Equality referendum in May 2015, Ireland became the first nation to introduce marriage equality by a public vote: ‘a nation of equals’ (Healy *et al.*, 2016). In July 2015 the Gender Recognition Act 2015³ was passed, giving those over 18 years the right to change their birth certificate to reflect their chosen gender. With this landmark decision, Ireland became the fourth nation in the world to recognise this basic human right.

In November 2015, the Marriage Act 2015⁴ was signed into law. A total of 412 same-sex marriages have been registered in Ireland since May 2015 (www.irishtimes.com).

Reflections for Probation practice

Some say that sexual orientation and gender identity are sensitive issues. I understand. Like many of my generation, I did not grow up talking about these issues. But I learned to speak out because lives are at stake, and because it is our duty under the United Nations Charter and the Universal Declaration of Human Rights to protect the rights of everyone, everywhere. (UN General Secretary-General Ban Ki-moon to the Human Rights Council, 7 March 2012)⁵

In exploring how the Probation Service seeks to recognise the voice of LGBT people, it is important to be open to what Coulshed and Orme (1998) describe as ‘our own reflection’ and the values and ethics that we exercise in all our professional interactions. This reflection relates to work we undertake with service users within our own and other agencies. It invites us to be cognisant of all service users, including an understanding of the needs and experiences of LGBT service users.

The Gender Recognition Act 2015 and the 34th Amendment of the Constitution (Marriage Equality) Act 2015⁶ have implications for Probation Service practice. Our professional commitment to being inclusive of those who may belong to the LGBT community is important. It requires the capacity to hold an informed conversation with those who

³ <http://www.irishstatutebook.ie/eli/2015/act/25/enacted/en/html>

⁴ <http://www.irishstatutebook.ie/eli/2015/act/35/enacted/en/html>

⁵ www.ohchr.org/EN/issues/Discrimination/Pages/LGBT.aspx

⁶ <http://www.irishstatutebook.ie/eli/2015/ca/34/enacted/en/html>

are 'out', and indeed those who are not 'out' but are living with real concerns about how we, as professionals might react to their reality.

For some who belong to the LGBT community, their informed experience tells them that within society there is a contradiction between how they are perceived and how they wish to be known. 'From the day we are born, the standard-issue message is clear: We will grow up, become attracted to a person of the opposite sex, get married and have children' (Rosenthal, 2013). Moreover, the attitude to diversity which service users experience when interacting with Probation staff can have a lasting impact on that relationship.

Jennings's statement that 'I wish they could experience the grief and sorrow, the fear, that I feel every day' (Jennings, 2003) should remind us to be aware of the challenges that may be part of an LGBT service user's reality. The process of rethinking identity can be unsettling, especially for those who prefer conformity and what may appear to be a simple life. 'I didn't *want* to be gay – I simply *was* gay. When I told them I was gay I upended my parents' (O'Neill, 2014).

It is important to be mindful of the reaction of the significant minority who are not 'out' and still living in real fear, whether Irish or non-Irish, and the implications for Probation Service practice. While respecting the individual's right to privacy, opportunities to engage appropriately in conversations with service users who may be fearful of identifying as belonging to the LGBT community should not be overlooked. These conversations can demonstrate acceptance of the service user and seek to hold the service user in a safe place of empathy. This may also enhance communication and increase 'self-esteem' (Dickson, 2015), as acceptance is seen to be not the exception but the norm.

Herein lies the necessity for sensitivity within our engagements and conversations as we move towards inclusiveness of the service user while 'learning to interpret social relationships' (Payne, 2005). Unlocking the door to full inclusion, if handled with mutual respect, improves interaction as well as demonstrating inclusiveness.

The Marriage Equality referendum brought debate not only in the media but also in families and communities. Taking this debate and discussion into the workplace community should be a natural progression, but requires support and nurturing which organisations such as GLEN can offer.

While the successful referendum represents a significant step forward in the rights of transgender people in Ireland, it will take time to embed

the ideals in the legislation into the day-to-day reality of people who are lesbian, gay, bisexual or transgender. This is clear from recent research on attitudes to and experiences of the LGBT community (Higgins *et al.*, 2016). In launching the LGBT Ireland report, former President Dr Mary McAleese stated: ‘This scholarly report is as essential and revealing as it is horrifying. The ongoing damage is undeniable. That it involves so many young people is tragic. That it is solvable is the good news.’⁷

There is a need to raise awareness and sensitivity about Probation Service clients who sometimes present at interview with a deep-seated concern about being judged. They may feel frightened to declare their ‘whole selves’ to officials whom they view in this context as having all the power. ‘Since we are subject to external causes that restrict our capacity to achieve good through increased living power, we need to have empathy for each other and to work together for our mutual benefit’ (Charleton, 2007).

Diversity Champions⁸ is a workplace programme designed specifically by GLEN to help employers benefit from the inclusion of lesbian, gay, bisexual and transgender employees. The programme supports leading employers in communicating their commitment to LGBT diversity and inclusion. In 2015, as part of its ongoing commitment to inclusivity and dignity in the workplace, the Probation Service joined An Garda Síochána and the Irish Prison Service in the Diversity Champions programme.

LGBT diversity agenda

The LGBT diversity agenda is about inclusion and a primal need for acceptance, regardless of the situation or the era. Professional integrity includes, for example, the need for awareness that some foreign national service users may be feeling pulled between the reality of their diverse identity while in Ireland and their displayed homeland identity.

This challenge can lead to pressure to adopt a dual identity. The need for clients to ‘belong’ to the past identity can be a result of their ‘attachment’ (Bowlby, 1969; Ainsworth and Bowlby, 1991) to their family ethos, which may shun any LGBT identity. They may be comfortable being a part of the Irish LGBT community, being their ‘whole selves’ in Ireland, but may not be ‘out’ elsewhere.

⁷ <http://www.thejournal.ie/survey-lgbt-2673338-Mar2016/>

⁸ www.diversitychampions.ie

Probation Officers, therefore, need to be aware that ‘identity formation is complex and multifaceted and some individuals will not “progress” to the final stage if they encounter environmental conditions that are detrimental to identity development’ (Johnson, 2015). Some Irish people identifying as LGBT in other, more accepting places may struggle with an ‘enforced’ dual identity on their return to Ireland. This can cause distress as one moves between cultures, checking periodically to ensure that nothing demonstrates the *otherness* of the hidden identity.

According to Ryan and Pritchard (2004), ‘respect for diversity ensures that people’s unique identities are affirmed by others, while democratic participation enables community members to have a say in decisions affecting their lives’. Inclusivity gives all those of diverse identities an equal opportunity to have a balanced lifestyle built on a foundation of positive mental health.

Conclusion

Given the changing face of our society and recent developments in particular, the Probation Service’s engagement with GLEN provides a strong base on which to build greater awareness. Training programmes are part of this process, but action must go beyond cultural diversity training in the Service. What is required is ‘a training programme that would challenge participants to reflect on their values and attitudes but would also translate into action at levels of practice and behaviour’ (Ferneer and Burke, 2009).

Using four pillars – information, education, assimilation and implementation – could be an effective approach to the seamless professional inclusion of LGBTQIA⁹ issues in Probation practice. Each pillar is an important stage in progress towards an inclusive perspective. The pillars and the process must challenge us to keep up the professional standard and embrace an ‘acceptance without exception’ ethos (www.stonewall.co.uk).

- *Information:* There is a wealth of evidence-based research and practice information. The current Probation Service strategy identifies the important role of evidence-informed practice underpinned by the core values of openness, respect, professionalism and commitment (Probation Service, 2015).

⁹ Lesbian, gay, bisexual, transgender, queer, intersex and asexual.

- *Education:* E-learning-based training on ‘Equality and Diversity in the Public Service’ was undertaken by staff in the Department of Justice and Equality and the Probation Service in June 2016. There is scope and competence to develop more experiential and tailored training programmes using in-service trainers and external experts.
- *Assimilation:* People need to become comfortable with the information and the language, participating in the training and using evidence-based resources. This supports reflection on idea that ‘the self, a multi-dimensional entity, contains the self-concept, self-image, ideal self and self-esteem, to name a few concepts’ (London, 2002). Internal policies and procedures should be reviewed and revised as appropriate to lead, support and maintain momentum in the process of assimilation.
- *Implementation:* The full implementation of policy, with ongoing information and training about LGBT issues, is vital as Probation Officers become agents for change. ‘It is important to underscore that fostering such changes is likely to require developing policy and practice in tandem with LGBT organisations to proactively address this area’ (Carr *et al.*, 2016).

Seeking the solution to existing challenges for Probation Officers in relation to LGBT diversity should begin by engaging with the available resources and services. Learning the language is crucial, as language matters. ‘It is incredibly difficult for young people to have peers or family members collaborate in homophobia that is still part of the slang, a default code for bullying or a general intolerant social atmosphere’ (Mullally, 2016).

The evidence-based resources from GLEN and other agencies can enable us to be informed, to distinguish between fiction and facts, to see the person within who may be struggling and needs understanding and assurance about their intrinsic right to bring their ‘whole selves’ into their interactions. The four pillars as described provide a useful structure for effectively engaging with resources and expertise to develop that knowledge and understanding.

Probation Service support for staff in implementing more inclusive policy, education and practice with our LGBTQIA service users will facilitate comfort in communication. It is important to avoid moving backwards and seeking comfort in ‘the professional cloak’ (Share and Lalor, 2009). Challenging ourselves to continuously embrace change will make life more professionally open, respectful and inclusive.

Glossary

The inappropriate use of particular terminology is not always a consequence of prejudice but can be due to lack of knowledge, and personal discomfort about seeking clarification. The following summary¹⁰ is provided to inform the understanding that underpins acceptance.

- *Bisexual* or *bi* refers to a person who has an emotional and/or sexual orientation towards more than one gender.
- *Cisgender* or *Cis* refers to a person whose gender identity is the same as the sex they are assigned at birth. Non-trans is also used by some people.
- *Gay* refers to a man who has an emotional, romantic and/or sexual orientation towards men. Also a generic term for lesbian and gay sexuality – some women define themselves as gay rather than lesbian.
- *Intersex* is a term used to describe a person who may have the biological attributes of both sexes or whose biological attributes do not fit with societal assumptions about what constitutes male or female. Intersex people can identify as male, female or non-binary.
- *Lesbian* refers to a woman who has an emotional, romantic and/or sexual orientation towards women.
- *LGBT* is the initialism for lesbian, gay, bi and trans.
- *Questioning* is a process of exploring one's own sexual orientation and/or gender identity.
- *Transgender* or *trans* is an umbrella term to describe people whose gender is not the same as, or does not fit comfortably with, the sex they were assigned at birth. Trans people may describe themselves using one or more of a wide variety of terms including (but not limited to) transgender, crossdresser, non-binary, genderqueer (GQ).

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¹⁰ From www.stonewall.co.uk

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What's the Difference between Ireland and Iceland? One Letter and a Decent Prison System ...*

Kevin Warner[†]

Summary: This paper identifies aspects of the prison system in Iceland that offer positive models for Ireland. Although Iceland experienced a similar financial crash to Ireland, Iceland's penal policies remain very much in tune with Nordic approaches, which have largely resisted the punitive impulses evident in English-speaking countries. Comparisons between the prison systems of Ireland and Iceland reveal a much lower rate of incarceration, and more socially inclusive attitudes, in the latter. The paper examines, in particular, prison regimes in each country; on most criteria, conditions and the manner of treating people in prison in Iceland are seen to be significantly better than in Ireland. The thinking behind the different policies and practices is explored: concepts such as 'dynamic security', 'balancing care and custody' and 'normalisation' have much greater currency in the prison system of Iceland than in that of Ireland.

Keywords: Ireland, Iceland, penal policy, prison conditions, treatment of prisoners, care and custody.

Introduction: A 'punitive turn'?

Those who shape prison systems in different countries can learn from each other. In this paper, I identify aspects of the prison system in Iceland that offer positive models for Ireland. There has been considerable discussion in recent years around the contrasts in penal policy between Nordic and 'anglophone' countries (Pratt, 2008; Ugelvik and Dullum, 2012; Pratt and

* This paper is based on one delivered at the 8th International Conference of the European Forum for Restorative Justice, *Beyond Crime: Pathways to Desistance, Social Justice and Peacebuilding*, held in Queen's University, Belfast, in June 2014.

[†] Dr Kevin Warner is a former Co-ordinator of Education in the Irish Prison Service and is an adjunct lecturer in the School of Applied Social Science, UCD. He also teaches on the BA in Criminology course at UCC. Email: kevinwarner47@gmail.com

Ericksson, 2013). While a pronounced punitive trend has been identified in English-speaking countries in recent decades, it is argued that Nordic countries are ‘exceptional’ to this trend and have to a large extent resisted punitiveness in penal policy. Most of this discussion examines the continental Nordic countries (Denmark, Finland, Norway and Sweden), while Iceland – although sharing much with these in terms of history, geography, language and culture – is hardly ever probed. Iceland is a Nordic country, but is seen as an ‘outlier’ in many respects. However, in some ways, the manner in which prisons are run in Iceland, *and especially the thinking behind its penal policy*, offer salutary ‘lessons’ for Ireland.

The banking and economic crash experienced in Ireland from 2008 followed soon after a similar catastrophe in Iceland. The parallel downward experience of the two countries led to an ironic joke circulating widely in Ireland at the time of the Icelandic crash: ‘What’s the difference between Ireland and Iceland?’ The prescient answer was: ‘one letter and six months’. However similar the financial stories of the two countries may be, their criminal justice and penal systems have taken markedly different paths – hence the adaptation of the old joke in the title of this article.

In Ireland, substantial evidence of a ‘punitive turn’ in penal policy is clear from the late 1990s. This is most marked in a doubling of the prison population over 15 years, but detectable also in a worsening of prison conditions and much more negative representation of those sent to prison – although it should be noted that demeaning rhetoric about those who fall foul of the law is not always consistent, nor fully followed through in practice, in the Irish context (Warner 2011; Hamilton, 2014).

Penal policy and practice have remained much more restrained in Iceland over these decades:

It is noteworthy, despite a marked population increase in Iceland during past years, that the total prison capacity did not increase markedly since the 1990s ... the Icelandic per capita imprisonment rate [is] low, or around 45 per 100 thousand inhabitants, below almost all other European nations. (Gunnlaugsson, 2011: 28–9)

At the same time, there has been a significant increase in alternatives to prison in Iceland since the turn of the century, especially in the use of fines, probation, community service and electronic monitoring. Thus, Iceland remains an example of ‘Scandinavian exceptionalism’, ‘characterized by relatively short sentences and a small prison population’ (Gunnlaugsson, 2011: 32).

More than 30 years ago, the Report of the Committee of Inquiry into the Penal System in Ireland (commonly known as the Whitaker Report) summarised its approach to penal policy in asserting ‘the principles of minimum use of custody, minimum use of security and normalisation of prison life’ (Whitaker Report, 1985: 90). Key assumptions underlying that prescription are the awareness that prisons damage people, that they have ‘detrimental effects’ and that it is the deprivation of freedom that is the sentence and no more. Very similar thinking and approaches are to be found in Council of Europe policy documents, especially in the *European Prison Rules* (Council of Europe, 2006) and in Nordic countries generally. This outlook may be broadly located within what David Garland (2001) calls ‘penal welfarism’.

The opposite approach has been described by Garland (2001) as ‘a culture of control’ and by Pratt *et al.* (2005) as ‘the new punitiveness’. Greater punitiveness can be detected in the prison systems of many countries, and especially English-speaking ones, in recent decades. Instead of ‘minimum use of custody’, excessive numbers are sent to prison; the prison population of Ireland, for example, doubled between 1995 and 2014.¹ Instead of ‘minimum use of security’, there can often now be disproportionate emphasis on severity, restriction and control, and a corresponding drift away from approaches that help and support people in prison. And, instead of accepting those in prison as ‘normal’ – as citizens and members of our society – there tend to be patterns of demonisation, stereotyping and exclusion. Garland speaks of ‘stereotypical depictions of unruly youth, dangerous predators, and incorrigible career criminals’ (2001: 10).

So, a useful shorthand way to analyse penal policy and practice is to ask what is happening in relation to three criteria:

1. What is the scale of imprisonment?
2. What is the ‘depth’ or severity of imprisonment?
3. How are people in prison perceived and represented?

In what follows, I keep these three criteria in mind when comparing the prison systems of Ireland and Iceland, but dwell on the second in particular, focusing on the kind of ‘regimes’ there are for men and women

¹ The Council of Europe’s *Penological Information Bulletin* No. 21 gives the prison population of Ireland on 1 September 1995 as 2054. The ‘World Prison Brief’ of The International Centre for Prison Studies, London, gives a figure of 4104 for 1 April 2014.

held in prison. A key assumption in this discussion is that prisons themselves can be ‘criminogenic’, and especially that the way men and women are treated in prison can either support or undercut desistance. Moreover, the way they are treated is clearly related to the way they are represented and perceived – so, the issue of social inclusion is also a dimension of this discussion.²

‘Contrasts in tolerance’³

Penal policy in Ireland has become considerably more punitive since the mid-1990s and, in particular, regimes have degenerated and become far more damaging (Warner, 2012, 2014). By contrast, an examination of policy and practice in such countries as Denmark, Finland and Norway clearly identifies better models from which Ireland might learn lessons (Warner, 2009). The latter research described three Nordic prison systems, in all of which incarceration is significantly lower than in Ireland; where alternatives to custody are used much more readily; and where those who break the law tend, to a far greater extent, to be regarded as ‘members of society’.

In particular, this research detailed prison regimes in which conditions and the way people are treated are much more supportive and less destructive. Nordic prisons typically insist on single cells, allow 12 to 14 hours’ out-of-cell time in closed prisons, ensure full days of purposeful activity and allow prisoners extensive opportunities for ‘self-management’ – such as buying and cooking their own food.

Nordic prison systems also make much greater use of open prisons, most notably in Denmark where, at any time, there are far more sentenced men and women in *open* prisons than in closed ones. For example, the average occupancy of sentenced prisoners in closed Danish prisons in 2012 was 884, far below the average occupancy of 1309 in open prisons for that year (Kristoffersen, 2013: 44).

This paper focuses on Iceland with a view to offering further evidence that there can be better ways of approaching imprisonment. Iceland has a rate of incarceration that is close to half that of Ireland. As will be seen, ‘quality of life’ and conditions in Icelandic prisons are vastly more constructive and supportive than in Ireland. Underpinning these features

² For an example of the relationship between the way prisoners are perceived and how they are treated, see Costelloe and Warner (2014).

³ This heading draws on the title of the famous 1988 book by David Downes, *Contrasts in Tolerance: Post-war Penal Policy in The Netherlands and England and Wales* (Oxford: Oxford University Press).

are considerably different societal attitudes towards those in prison, with Iceland regarding men and women in prison much more inclusively.

The data listed in 1–20 below indicate, in broad-brush fashion, contrasts in penal policy and practice between Ireland (IRE) and Iceland (ICE). For the most part, these are sharp contrasts. Most of the aspects discussed relate to ‘regimes’, i.e. to the way people in prison are treated and their conditions of custody. The information draws on various written sources, and especially on a research visit to Iceland in June 2013, when I went to four of Iceland’s six prisons, attended a workshop on the post-release ‘halfway house’ and interviewed a number of individuals.

The data include information from CPT reports on Ireland (2011) and Iceland (2013), Kristoffersen’s *Correctional Statistics* (2014) and the ‘World Prison Brief’ of the International Centre for Prison Studies (ICPS) in London. In Ireland, material published by the Irish Prison Service/ Department of Justice and Equality and answers to parliamentary questions are used. In Iceland, official (Fengelsi.is) and other websites that carry material about prisons have been useful, as well as articles by Erlandur Baldursson (2000) and Helgi Gunnlaugsson (2011) in particular.

There were 147 men and women in prison in Iceland as of 1 January 2014 and 3798 in prison in Ireland as of 29 February 2016.⁴ The following contrasts in penal policy and practice are notable.

1. *Rate of incarceration* per 100,000 of the general population: 45 in ICE, 82 in IRE.
2. *The balance between sentences in the community and prison sentences*: ICE tends to have twice as many people serving a sentence in the community as in prison, whereas IRE has a very strong tendency to resort to imprisonment.⁵
3. *Approximate percentage of prison population in open prisons*: 25% in ICE, 5% in IRE.

⁴ Source: ‘World Prison Brief’ of the International Centre of Prison Studies, London. <http://www.prisonstudies.org/world-prison-brief> (accessed 1 April 2016).

⁵ For Iceland, see Kristoffersen (2014: 27), where the average number of registered clients in the Probation Service for 2012 was given as 320, which may be compared to the average prison population for the same year of 159 (when those living in the halfway house are excluded, p. 22). In relation to Ireland, O’Mahony (2002: 552–553) states: ‘the majority of convicted Irish offenders are sent to prison for relatively minor acts of property theft ... imprisonment rates clearly point to a comparative overuse of prison, particularly in regard to the breadth of use’.

4. Normal *out-of-cell time in closed prisons*: 14 hours in ICE, 6 to 7 hours in IRE.
5. Extent of *cell-sharing*: 5% in ICE (to become 0% in 2016 when the new prison in Holmsheidi is opened), over 50% in IRE.⁶
6. Extent of *segregation within prisons*: One ‘secure unit’ for 10 in ICE, severe segregation in all of Ireland’s seven largest prisons.⁷
7. *Toilets in privacy*: 100% in ICE, 52% in IRE.⁸
8. *Self-management* by prisoners, in particular cooking for themselves: 90% in ICE (to be 100% when Holmsheidi Prison opens), well below 5% in IRE.⁹
9. *Average prison size*: 29 in ICE (the largest prison holds 87); 292 in IRE (the largest, the Midlands, has about 820).
10. Normal *visiting arrangements*: Over two hours per week in private ‘in well-equipped and pleasantly decorated facilities’ (CPT, 2013, 60) in ICE; in IRE, closely supervised, often without any physical contact permitted, in crowded, institutional and often chaotic conditions, for 30 minutes per week.
11. *System of regular and structured prison leave*: Yes in ICE, no in IRE.
12. Prisoners’ *access to Ombudsman*: Yes in ICE, no in IRE.
13. *Remission*: One-quarter for all prisoners in IRE, but one-third in ICE (and frequently increased to half). For those under 21, standard remission is a half in ICE, but only a quarter in IRE.
14. *Preparation for release*: In ICE, standard procedure involves moves to an open prison and/or to the halfway house, and social work support for accommodation, employment, etc. In ICE, the Vernd halfway house in the middle of Reykjavik accommodates 23 released prisoners at a time (about 15% of the prison population) and they all leave this house daily to go to work, education or treatment. Electronic

⁶When Icelandic prisons were visited in June 2013, only four cells were ‘doubled up’; these were in the old Hegningarhusid Prison in central Reykjavik. This prison is due to be replaced by a new one in 2016. The Irish figure is calculated from an answer to a parliamentary question by Ciaran Lynch TD on 13 May 2014.

⁷The ‘secure unit’ at Litla-Hraun Prison is referred to in the CPT report, 2013. For detailed descriptions of segregation in Irish prisons, see Jesuit Centre for Faith and Justice (2012), especially Chapter 4.

⁸ See parliamentary answer to Ciaran Lynch TD on 13 May 2014.

⁹ Only the old (and soon to be replaced) Hegningarhusid Prison in Reykjavik, which holds about 14 prisoners, cannot facilitate full self-catering. Dinners in Hegningarhusid are delivered into this prison from a nearby hospital, although prisoners there do put together other meals for themselves, and all meals are eaten with others in small dining areas rather than in cells.

- monitoring to facilitate early release is an additional option since 2012. In IRE, such supports are, relatively speaking, rare.
15. *Structured activities* (education, work, etc.): Available to most prisoners, but often somewhat limited, in both ICE and IRE.
 16. *Participation in higher education by prisoners*: 4% in ICE, just over 1% in IRE.¹⁰
 17. *Drug treatment facility*: 11 places in ICE (for a prison population of 147), nine places in IRE (for a population of 3798). ICE is thus 30 times more responsive than IRE in this regard.¹¹
 18. *Overall material conditions*: Good in ICE (as verified by CPT, and also observed); widely sub-standard in IRE.
 19. *New prisons*: Both IRE and ICE have made significant investment in new prisons that will replace outdated facilities, in Cork and Holmsheidi respectively, and each will open in 2016. However, while the new Icelandic prison will hold 56 in single cells ‘with alcoves inside the cells that provide each detainee with a view and daylight’,¹² the new Cork Prison, behind walls 7.2 m high, will hold nearly all prisoners in double-occupancy cells – in serious breach of the European Prison Rules.
 20. *‘Moral performance’*: In ICE, ‘inmates praised staff ... [prisons have] positive atmosphere’ (CPT, 2013: 36); in IRE, there are real concerns in relation to safety and humane treatment (CPT, 2011).¹³

The last mentioned feature, ‘moral performance’, assesses the two prison systems against Alison Liebling’s (2004) key concept. While recognising the importance of material standards, Liebling is rightly more concerned ‘with less easily quantifiable features of the prison experience, and in particular, with perceptions of justice, fairness, safety, order, humanity,

¹⁰ In Iceland, six prisoners (4% of the prison population) were studying at university level in June 2013. This information was provided by some of these prisoner-students during visits to prisons that summer by the author. In Ireland, 47 were studying with the Open University in May 2015, as was revealed in a parliamentary answer to Ciaran Lynch TD on 13 May 2015.

¹¹ In Iceland, there are 11 places in a special unit in Litla-Hraun Prison, where prisoners can follow ‘a dedicated drug treatment programme’ that consists, among other things, ‘of individual and group therapy, lectures, meditation sessions and AA meetings’ (CPT, 2013, paragraph 58 and footnote 57). In Ireland, the only comparable unit is in the Medical Care Unit of Mountjoy Prison and this has nine places.

¹² See ‘Design of New Prison in Reykjavik Determined’, <http://icelandreview.com/news/2012/06/06/design-new-prison-reykjavik-determined> (accessed 1 April 2016).

¹³ For further descriptions of regimes in Irish prisons, see Warner (2012, 2014).

trust, and opportunities for personal development’, which she calls the ‘moral performance’ of the prison (p. 50). The point can be made, of course, that material standards and the less tangible ‘moral performance’ are often closely related. It is the view of this author that the two have deteriorated in tandem in Irish prisons since the mid-1990s.

Contrasts in thinking

For the most part, as is clear from the data above, prisons and overall penal policy in Ireland fare very poorly in comparison with Iceland. It can be asserted, of course, that Iceland is a society that is considerably smaller and very different in many ways to Ireland. However, this argument has limited explanatory value, especially when one recognises that many of the features in penal policy and practice that are seen in Iceland can be found also in other Nordic countries, which are much closer to Ireland in terms of size, history and economic structure.

We need to look at *the thinking* underpinning penal policy and practice to decipher the main source of Iceland’s penal constraint. However, the ideas and attitudes that underpin the 20 features listed above in relation to Iceland are very similar to those found in Council of Europe policy documents such as the Recommendation on the treatment of long-term prisoners (2003) and the *European Prison Rules* (2006) – especially the principles that prison should be used as a last resort, that the detrimental effects of imprisonment must be countered, that the dignity of the person in prison must be seen as fundamental, that prisoners are citizens and members of society, and that there should be a focus on resettlement.

The three criteria for assessing prison systems outlined in the Introduction clearly reinforce each other: the scale of imprisonment, the ‘depth’ of imprisonment, and the perception of the person held in prison. If the *scale* of imprisonment is escalated so that prisons become overcrowded and regimes consequently degenerate, then we see a worsening in the *depth* of imprisonment. Evans and Morgan state:

It is notable that those countries with the lowest incarceration rates tend also to have the shallowest systems, that is a high proportion of prisoners in small relatively open institutions with liberal regimes. Rising incarceration rates tend to be accompanied by the growth of more restrictive prison regimes. This is scarcely surprising since to the extent that growth in the use of imprisonment reflects a political will to

get ‘tough on crime’, it is to be expected that toughness will be extended to the provision of more restrictive regimes. (1998: 325)

Moreover, a negatively stereotyped *perception* of the men and women who are in prison – seeing them as ‘other’ rather than as ‘valued members of society’ – will obviously contribute to their greater incarceration and facilitate at least an indifference to their ill-treatment (see Warner, 2011). These patterns have been evident in Ireland over the past two decades, and we can see a departure in Ireland from approaches that still dominate in Iceland in relation to all three of these criteria.

However, it is the ‘quality’ rather than the ‘quantity’ of imprisonment that will now be examined more fully here, i.e. the extent to which there is ‘minimum use of security and normalisation of prison life’. The ‘depth’ or ‘quality’ of imprisonment can be explored by means of a number of concepts widely used in penology, and we can develop the contrast between Iceland and Ireland around these terms.

The idea that there should be a ‘*balance*’ between ‘*care*’ and ‘*custody*’ (or ‘*control*’) recurs frequently in European discourse on prisons. For example, an advisory committee set up by the Minister of Justice in Iceland in 1991, to make proposals on future strategy in the prison system, reflected this thinking, while consciously following the European Prison Rules and the outlook of the Nordic Prison Officers Association. The committee stated:

The role of the prison officer is twofold, embracing both custody and treatment ... The urge to punish has been reduced, while humanitarian viewpoints have gained greater weight ... Communication between prison staff and prisoners is a key element in all prison work ... Operating a prison entails influencing people, not just counting prisoners and turning keys. (quoted in Gislason, 2008: 64)

Gislason recounts how, subsequent to this committee’s report, the training of prison officers in Iceland focused, among other things, on ‘interpersonal communication and dynamic security’ and on promoting ‘humanitarian considerations’ (2008: 65). A 2005 Ministerial committee on prison officer training said this should involve highlighting ‘officers’ security and surveillance function, on the one hand, *but ... give no less prominence to their role in caring for and communicating with prisoners*’ (Gislason, 2008: 70; emphasis added). A 2004 document setting out the aims of the prison

system in Iceland states: ‘At the end of the individual’s prison term, measures should be taken, in consultation with him, to ensure that he has a fixed abode, is in communication with his family and/or friends and knows how to seek help, so managing to find his way in society’ (Gislasan, 2008: 71).

Helgi Gunnlaugsson, Professor of Sociology at the University of Iceland, is critical of conditions in several of Iceland’s older prisons, although (as can be seen from the above contrasts) these conditions are in most respects a good deal better than those in Ireland. On the other hand, he emphasises what he sees as a marked change in Icelandic prisons in recent years towards

a human approach ... they care for the prisoners. I can see a shift in how the directors [of the prison administration] and the governors and the guards approach inmates. It’s more human, it’s more care, and I see a shift towards that ... a shift towards meeting the needs of prisoners.

He cites improved access to education as one example of prisoners’ needs being met. Although a minority of former prisoners remain stigmatised by society, such as those who have committed sexual crimes, he is of the view that there is ‘a really good chance of reintegrating to society’ after release; the prison sentence ‘is not going to haunt you’.¹⁴

It should be noted that some of the issues listed among the 20 points of contrast in the previous section – such as the extent of unlock time, the size of prisons, material conditions and the availability of purposeful activity – can either facilitate or work against the requirement that prison officers relate to and communicate with prisoners. For example, such engagement becomes much more difficult when a prisoner is locked up each day for 17 or 18 hours, which is the norm in Ireland (and hundreds of prisoners are locked up for far longer than that each day). As was noted above, the most recent CPT report was complimentary with regard to relationships and atmosphere in Icelandic prisons.

Of course, like many high aspirations, official statements pledging adherence to progressive penal policy may not always be followed through in practice. In Ireland, an official strategic report in 1997 also advocated a rebalancing of care and custody in the direction of care (the ‘McAuley

¹⁴ The quotations in this paragraph are from an interview by the author with Professor Gunnlaugsson in Reykjavik on 5 June 2013.

Report’). Yet, in subsequent years, a quite blinkered and heavy-handed idea of security came to dominate, so that now a great number of those who live in Irish prisons are held in very restricted caged areas and are locked in cells for excessive periods with little that can be described as ‘care’ or ‘normality’.

One example of this regression can be found in the CPT report for Ireland issued in 2011, which was severely critical of the prevalence of inter-prisoner violence and advocated a response to the problem that was similar to that of the Icelandic strategy committee quoted above. The CPT said, in part:

Addressing the phenomenon of inter-prisoner violence requires that prison staff must be alert to signs of trouble and both resolved and properly trained to intervene. The existence of positive relations between staff and prisoners, *based on the notions of dynamic security and care*, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate *interpersonal communication skills* ... Moreover, it is imperative that concerted action is taken to provide prisoners with *purposeful activities*. (CPT, 2011: 33; emphasis added)

The idea of *dynamic security*, which is advocated here by the CPT, is frequently referred to in other Nordic and European contexts. Among other things, it envisages a fostering of relationships, constructive activity and treating prisoners as individuals. The idea of balancing care and custody is very close to the concept of dynamic security. ‘Dynamic security’ is described by Dunbar (1985) and Coyle (2005), and the concept can be found in many European statements of penal policy, such as in the Council of Europe’s Recommendation on the treatment of long-term prisoners (Council of Europe, 2003).

When CPT reports are published, they are accompanied by a response from the government investigated. The Irish government’s response to the above CPT recommendation is surprising. It seems to misunderstand entirely what the CPT advocated, and in particular ‘the notion of dynamic security and care’. Instead, as their response to the problem of inter-prisoner violence, the Irish authorities set out a long list of restrictive physical measures which they have deployed or propose to deploy, not one of which reflects these concepts. The Irish list includes: solitary confinement for men deemed in danger, tighter control and monitoring, greater use of cameras and probe systems, the installation of nets over

yards, a drug detection dog service and the introduction of more BOSS (Body Orifice Security Scanner) chairs.¹⁵ It is difficult to work out whether the concepts of care and dynamic security were just not understood or were simply ignored by the Irish authorities. The reality is that Irish prisons are today severe and oppressive places for the majority of those held in them.

The extent to which the role of the Irish prison officer in the Irish prison system has become even more tilted towards the custody end of the care–custody balance – in contrast to their Icelandic colleagues – is documented in a 2012 report on the Irish prison system (Jesuit Centre for Faith and Justice, 2012: 68–72). The imbalance is evident, for example, in the assignment of over 140 additional prison staff to ‘enhanced security measures’ to prevent ‘access to contraband items, primarily mobile phones and drugs’, and a ‘Drug Detection Dog Unit (comprising 31 staff)’ in 2008 and 2009 (Irish Prison Service, 2010: 4, 25). It is clear that while priority is given to such security roles for prison officers, which keep them distanced from prisoners, roles that enable staff to engage positively with men and women in prison and build relationships with them, such as in training-instructor posts, have been severely weakened. Instead of promoting ‘dynamic security’ and enabling officers to engage with prisoners so as to offer support and motivation, ‘physical control [has become] the default response of the Irish prison authorities to dealing with the management of prisoners’ (Jesuit Centre for Faith and Justice, 2012: 71).

There are two other important and related concepts which, when examined, expose further differences between the experience of imprisonment in Iceland and Ireland. These are the idea of ‘*normalisation*’ as something for which prison systems are expected to strive, and *the recognition of people in prison as part of society*. Obviously, these two ideas are also linked, for if a person in prison is seen as a member of society, he or she is more likely to be treated in a ‘normal’ manner. Clearly, Irish prisons fall far short of normalisation. We need only look, for example, at what happens in Ireland in relation to visits to prisoners, at the toilet arrangements there are for many, at a prisoner’s lack of control over basic daily activities such as cooking his or her own food, at how few open prisons there are, or at the prohibition on access to the Ombudsman

¹⁵ Response by Government of Ireland to CPT Report, paragraph 33, available at <http://www.cpt.coe.int/documents/irl/2011-04-inf-eng.htm> (accessed 22 June 2015).

(which would indicate recognition of one's citizenship). While the situation in Iceland is by no means perfect, people in prison are treated in a more constructive manner there and we can assume they are far less likely to become institutionalised and damaged by imprisonment.

This discussion relates to a final concept: *what is a 'good' prison?* Erlendur Baldursson has long worked as a senior official in the Icelandic prison system. He is clear and grounded when he speaks about prisons. He says: 'small institutions function better' because 'the problems that emerge, and there are problems in all prisons, are more visible and can therefore more easily be discussed and solved' (Baldursson, 2000: 7).

Baldursson stresses, however, that what he means by a prison functioning better 'does not refer to recidivism in the first place, but rather to reducing human suffering when serving a prison sentence' (p. 8). Such recognition of the damage imprisonment causes is a core issue for him, and for the prison system. Baldursson is adamant that 'a prison is a prison' (p. 6); that there is no such thing as 'a good prison' (p. 7); he refers repeatedly to 'the damage caused to people by imprisonment itself' (p. 9); and he says 'putting people in prison contributes only by a marginal degree to solving crime problems' (p. 12). Minimising imprisonment and humane containment are clearly dominant impulses in shaping Iceland's prison system.

Interestingly, these two crucial concepts – minimising imprisonment and 'humane containment' – also underpinned the major report on the Irish prison system by the Whitaker Committee over 30 years ago (Whitaker Report, 1985). However, in Ireland, it seems that such wise insights from within our own country as to what penal policy should be, as well as the better models that can be found currently in other countries, are all equally ignored. Consequently, thousands suffer and are damaged, society at large loses also, and millions of euro are wasted on backward ways of dealing with the troubled and the troublesome in our society.¹⁶

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¹⁶ For a more general discussion of imprisonment in Europe, see Carroll and Warner (2014).

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Older Probationers in Ireland

Lauren O'Connell*

Summary: This paper seeks to indirectly explore how older probationers experience probation in Ireland. Older probationers are largely overlooked by the current literature, both internationally and in Ireland, despite the increase in the number of older offenders generally. While there is some discourse on the incarcerated older offender, older probationers are not given the same attention. The research was conducted as part of a Master's study with the Probation Service in Ireland and involved a focus group of Probation Officers on their experience in working with older probationers. From this focus group it was concluded that issues unique to older offenders that have been identified in the prison literature are also present in the probation setting and have the potential to exacerbate the pains of probation.

Keywords: Older offenders, ageing, probation, pains of probation, supervision, rehabilitation, community.

Introduction

older people sentenced to community penalties remain largely invisible. Criminological discussion and debate in relation to probation policy and practice is currently dominated by a concern with young offenders and youth justice. (Codd and Bramhall, 2002: 27)

Interest in older offenders and their experiences of navigating the criminal justice system, in particular the prison system, has gained momentum in recent years due to an increase in the number of older offenders (Crawley and Sparks, 2006; Fazel *et al.*, 2004; Loeb *et al.*, 2007; Ornduff, 1996). The increase in the number of older prisoners can typically be attributed to three factors: an overall ageing society, the development of technologies

¹ Lauren O'Connell BCL, LLM (Criminology and Criminal Justice), is a PhD candidate at University College Dublin. Email: laurenjadeoconnell@gmail.com

enabling investigation and convictions in historic cases, and longer sentences resulting in an ageing prison population (Williams, 2013: 474; Walsh *et al.*, 2014: 137). Despite this attention in prisons, there has been a lack of study on older probationers in the community and published research remains scarce.

In Ireland, general and media interest in older offenders can be seen in the cases of Patrick O'Brien (*Irish Times*, 2015) and Margaretta D'Arcy (Siggins and Raleigh, 2014) along with some prison literature (Alvey, 2013). In both cases mentioned the age of the offender played an active role in the trajectory of the discourse concerning appropriate sentence and punishment. This paper does not venture into discussion of appropriate sentencing or punishment but considers the experience of those placed on probation.

Qualifying age

It is prudent at this point to define the term 'older offenders'. A definition can prove elusive, as any age can be perceived as an arbitrary cut-off point. As Shichor (1988: 164) eloquently states, 'age is not a uniform indicator of behavior [but rather is] merely a relative concept'.

A cut-off point is, nonetheless, required for effective research and analysis. In general, literature on older prison inmates cites 50 years or older as a measure, as this point is associated with a notable change in the circumstances of the inmate (Ornduff, 1996; Alvey, 2013). In probation, the age used appears more arbitrary in the limited literature. Fifty-five years old and older was utilised in research by Shichor and Kobrin (1978, cited in Shichor, 1998: 164). The Irish Probation Service records those aged over the age of 54 as the oldest age category in its population data (Probation Service, 2014: 55). As this research was conducted with the Probation Service, consistency dictates that this study use that age threshold, while acknowledging the caution and concerns outlined by Shichor (1988).

Older offenders

While the *proportion* of older offenders remains relatively consistent in Ireland, the *raw numbers* have increased (Forsyth and Gramling, cited in Ornduff, 1996: 182). The number and percentage of the overall population is small. This can be seen in Irish prisons, where, in July 2014,

348 offenders were aged over 50 years, corresponding to 10% of the prison population (Irish Penal Reform Trust, 2015). This was an increase from 199 prisoners aged over 50 in 2007 (Irish Prison Service Reports, 2007–2013).

The Probation Service (2011: 42; 2014: 55) reported 139 new referrals aged over 54 in 2011 (1.5% of 9347 new referrals) compared with 200 new referrals in 2014 (2.36% of 8482 new referrals). Unfortunately, no available statistics provide a more detailed insight into the demography of this group, though it is noted that the majority are male. For example, 85.8% of new referrals in 2013 over 54 years of age were male (Probation Service, 2013: 50).

Studies have been conducted in the community exploring the needs and experiences of older persons (TILDA, 2011).¹ The TILDA report included analysis on ageing, community engagement and personal values. Despite the extensive nature of the report, explicit consideration of older offenders in the community was not included in the study. Their needs and issues would be relevant in the TILDA study. This is an indication of how they are overlooked.

Apart from research on the older person in society, most literature concerning older offenders focuses on those in prison. While this group are not homogeneous, it is generally accepted that older inmates experience prison differently from their younger counterparts. Prisons, in both physical layout and general operation, are usually designed for a younger inmate. This can result in disadvantage and hardship for older inmates (Ornduff, 1996: 183; Williams, 2013: 487). Two particular issues that appear to disproportionately affect older inmates are healthcare and social isolation (Alvey, 2013; Loeb *et al.*, 2007; Ornduff, 1996).

A prominent theme in recent literature is the use of compassionate early release programmes for older inmates as a mechanism to manage overcrowding in prisons (Rothman *et al.*, 2000; Steiner, 2003; Wahidin, 2006). Older prisoners are more often released early. Despite enthusiasm for alternatives to imprisonment, there has been little examination of the impact on older offenders subject to these alternatives, including probation. This is a serious gap in knowledge since older probationer numbers are rising and current probation strategies are dominated by a focus on youth and juvenile crime (Codd and Bramhall, 2002: 32).

² See also <http://www.cardi.ie/publications>

Although probation is a sanction, it is intended to be rehabilitative and focuses on community-based reintegration. Ward and Salmon (2009) note that 'rehabilitation work with offenders occurs within a context of punishment and response to crime which constrains and penetrates the practice arena'. This can be directly applied to probation. Probation in Ireland seeks to be a 'humane approach to helping offenders to change' (Probation Service, 2015). The Probation Service has overall aims based on 'community building, public protection and crime prevention' (Healy and O'Donnell, 2005: 57). Given the nature of the Probation Service's mandate, it is important that older probationers are not overlooked, and that their needs are addressed. Otherwise there is a risk that older probationers could become 'de-prioritised and disempowered, rendered invisible and excluded' (Codd and Bramhall, 2002: 33).

Methodology

This research was completed in the Probation Service as part of a Master's dissertation with the additional aim of encouraging discourse on the subject. Ethics applications to University College Dublin and the Probation Service were approved. The author engaged with a Probation Service manager to facilitate the research.

Due to time constraints it was not possible to conduct interviews with older probationers themselves. Conducting a focus group was determined to be the most effective method of discussing issues, given that older probationers are a small proportion of the overall probation caseload. The author conducted a focus group with five Probation Officers based in a relatively rural part of Ireland on their own experiences with older probationers. While the group is a small sample of Probation Officers and may not be representative of the wider population, they do provide an in-depth view of the issues facing the older probationers with whom they worked.

The focus group was used to investigate if there was any correlation among issues encountered by Probation Officers. The author used a list of prepared questions to ensure the conversation remained on topic while allowing the conversation to progress naturally.

The author ensured that the participants were fully informed of their rights regarding agreement to participate or not in the study. Participants were provided with information sheets and completed consent forms prior

to the group meeting. The focus group comprised male and female officers. Participants have been assigned pseudonyms to ensure anonymity.

Findings and discussion

The findings indicate that probation supervision can be a mixed experience for the older probationer, with both positive and negative elements. The main findings of the focus group are considered under four headings: the prevalence of older probationers, working with older probationers, how older probationers experience the pains of probation, and recommendations of participants on interacting with older probationers.

The prevalence of older probationers

All participants had experience with older probationers. All of the participants agreed that older offenders make up a small proportion of their overall caseload, with approximately three ongoing cases each at any time, although older probationers did tend to be 'on supervision for longer periods of time' (Probation Officer E). The number of older probationers (for participants in the sample) has not fluctuated greatly in recent years, which is at odds with the literature and national data, where the raw number of such cases is increasing (Probation Service 2011, 2014). This may be unique to this team in this region, or it may be that the incidence and distribution is unevenly spread. The group explained that they were most likely to encounter older probationers who were male and had been convicted of theft, sex offences or drink-driving offences.

Almost all Probation Officers considered 'older' as a person of a pension age or retirement age (typically mid-to-late sixties). This is roughly 10 years older than the literature findings on prisons. This could result in a limited perceived population of older probationers (assuming that 54 and older is the correct age marker to use), and their particular needs being less than properly addressed during probation supervision.

Working with older probationers

The Probation Officers suggested that older offenders were easier to work with than younger offenders, with overall compliance being highlighted as a particular positive factor. Older probationers were praised as often more mannerly and polite than younger probationers. Probation Officer A stated that older probationers were generally 'positive in their attitudes and ...

nice to deal with ... if they miss an appointment, they'll call and apologise'. Probation Officer E explained that younger probationers often do not have the same respect for authority as older probationers.

Regarding particular skills used by Probation Officers in their dealing with older probationers, the group placed importance on attributes such as 'being patient and taking your time', 'having to go at their pace', and being more aware of welfare issues such as how to apply for medical cards and rent allowance. Probation Officer C explained that 'there is more hand-holding than with a younger offender'. Probation Officer E stated that patience was important because the probationer can often be isolated and have to learn new roles and self-management/catering skills, especially if they come from a background of 'traditional roles' and families.

How older probationers experience the pains of probation

To determine what the needs of older probationers are, the framework based on the 'pains of probation' developed by Durnescu (2011) was used. These pains or frustrations, coupled with the themes identified in the prison literature (healthcare and social isolation), provide a foundation to explore how older offenders experience probation.

According to Durnescu (2011), there are eight 'pains' or 'deprivations' of probation: the deprivation of autonomy, the pain of reorganising daily routines and travel plans, the pain or burden of travel, the pain of financial costs associated with probation supervision, the deprivation of private family life, the pain of stigmatisation, the pain of a forced return to the offence, and the pain of living life under tremendous threat (for more information on these, see Durnescu, 2011). These pains can be considered as obstacles to the overall rehabilitative aim of probation.

In the focus group it became apparent that the main issues identified as disproportionately affecting older inmates in the wider prison literature (healthcare and social isolation) also disproportionately affect older probationers and exacerbate the pains of probation, resulting in a unique and often more difficult experience of probation supervision. It is clear that in the case of the older probationer, the 'pains of probation should be carefully considered to enhance the rehabilitative potential of probation' (Durnescu, 2011: 543).

Autonomy

Regarding the pains of probation, the first pain or deprivation is that of autonomy. Autonomy is affected quite simply by having to attend

appointments regularly. This pain affects most, if not all, probationers regardless of their age. The impact on autonomy was considered to be a significant burden, with some probationers for example complaining that attendance at appointments affected their employment (Durnescu, 2011: 534). The deprivation of autonomy caused by probation is felt differently by older probationers. As older probationers may not be returning to or seeking employment, their autonomy is not as adversely affected as younger probationers'. Rather, their adverse health and mobility conditions, as identified the prison studies (Ornduff, 1996; Alvey, 2013; Wahidin, 2006), do affect their ability to attend appointments.

The burden of travel

Linked to limits on autonomy there is a burden of travel, whereby the probationer can incur financial costs. Some offenders, especially those in isolated locations, incur significant costs in travelling to appointments (Durnescu, 2011: 536). In the case of pensioners or disabled individuals, this may be minimised through entitlement to a travel pass (Department of Social Protection, 2015). Older offenders who have not yet reached the qualifying age, or not completed the necessary applications, are incurring expense and they may have to expend their social benefits or limited income for this purpose. This cost 'acts like a second unwritten punishment—a financial penalty' (Durnescu, 2011: 541). Probation Officer A in this study stated that, quite simply, 'it costs money to be on probation'.

An aggravating pain is that public transport is limited in rural areas. In the focus group the issue of public transport arose frequently due to travel and financial costs and the exacerbation of the isolation felt by older probationers. Probation Officer C explained that, in one case, a client 'couldn't find work due to their age and that they can't drive'. It was also mentioned that the poor transport network 'creates obstacles to becoming sociable which also leads to further problems' (Probation Officer B). Older probationers with health issues, particularly mobility related, can find travel and time management more difficult than younger probationers. This pain is exacerbated if the probationer has no one to assist with travel arrangements.

Healthcare

Although not a pain identified by Durnescu (2011), healthcare was identified in the course of this study as one that exacerbates other pains.

While not caused by probation, it can affect the process of probation supervision. Regarding health issues, the focus group experienced problems with clients' health, which impacted on supervision. Probation Officer E highlighted that health issues can impact on an older probationer's suitability for community service, simply by their not being physically able to participate in certain programmes. Health appointments appeared to pose logistical difficulties. It was mentioned throughout the conversation that home visits were conducted, which can alleviate travel burdens associated with poor mobility. Probation Officer A spoke of having to see a client who was housebound. While this was a very positive and compassionate approach by the Service, the probationer risked a negative effect on their social integration by not being able to leave their home and engage more widely with people. In certain cases there may be a link between poor health management and social isolation, with one often exacerbating the other.

These findings are consistent with international research. Shichor (1988: 169) when interviewing Probation Officers regarding their experience of older offenders found that 'bad health conditions often become a difficulty in the supervision of elderly probationers due to health problems'. Shichor (1988: 173) concluded that 'health conditions, at times, make it difficult to make their probation appointments'. In the case of older probationers, health management can exacerbate the pain of autonomy.

Private family life and stigmatisation

The deprivation and pain of privacy and private family life is often most evident at the initial stages of probation, as the array of questions posed to the probationer can result in the probationer feeling their entire lives are under scrutiny (Durnescu, 2011: 535). This can be linked with the pain of stigmatisation as probation supervision, particularly long-term, is 'practically impossible to conceal' from family members and the wider community (Durnescu, 2011: 537). Such supervision can potentially discourage family reunion (Durnescu, 2011: 540). This can negatively impact on the chances of overall rehabilitation, as support from familial sources can 'create bonds that increase the costs of law violations and increase the motivation to avoid illegal activities' (Davis *et al.*, 2012: 452). Older probationers, particularly those who have served longer periods in prison, are more likely to have lost these ties and so desistance and rehabilitation are affected, as without people to support and reward

positive behaviour, the motivation for committing crime may not diminish (Davis *et al.*, 2012: 452).

Social isolation

Linked with private family life and the risk of stigmatisation, social isolation was a major factor identified for older probationers. It was repeated that while younger probationers have peer groups or familial supports, older probationers can be 'isolated by their family and may have to set up somewhere new' (Probation Officer D).

Regarding the lack of structure posed by unemployment or retirement, there did not appear to be any alternative structure on offer. Lack of employment exacerbates social isolation, and prevents a positive peer network associated with employment for older offenders (Davis *et al.*, 2012: 451). The lack of employment adds to the pain of financial hardship and can impede successful rehabilitation (Durnescu, 2011: 539). Davis *et al.* (2012: 451) explain that employment not only minimises criminal opportunities, but also 'may increase associations with law abiding peers, leave less time for associations with deviant peers, and increase bonds to conventional society'. As a result, there is a higher risk of social isolation in the case of older probationers.

Forced return to the offence

As part of supervision, probationers are expected to discuss and examine their offence and offending behaviour. This can often cause upset, although it has been positively linked with desistance (Durnescu, 2011: 537). While it may not appear at first glance that this pain would have a significant variation in relation to the age of the offender, this author noted that the focus on 'life review' by Crawley and Sparks (2006: 77–78) can be linked with this particular pain of probation.

Probation supervision does encourage a life review in that the probationer must talk about the offence to properly engage. The life review involves an overall assessment of one's life. Crawley and Sparks (2006: 77–78) describe how a positive evaluation of our lives can help in the process of dealing with mortality, while a negative evaluation can cause regret and despair, particularly when one has insufficient time to address wrongs. Crawley and Sparks (2006: 77–78) explain that:

this recognition that time is running out makes the ... experience ... of elderly men distinctly different from that of prisoners not yet in middle

age. The latter has sufficient years left to try to re-make (and re-write) his life when he is released; the former knows he does not.

This perceived time limit can result in a higher burden or pressure for older probationers to 'right their wrongs'. Linked with this is how the older probationers felt about their infractions and how they cope with returning to the offence. Shichor (1988: 171) explains that:

Elderly offenders usually claimed to be innocent, but resigned to the situation in which they found themselves, and they reported regularly.

This could be considered indicative of refusal to engage with the life review, or address the offence, as it is more difficult given the limited time available to 'correct' it. Higgins and Severson (2009: 796) explain that with age comes reflection and purpose. Those who are incarcerated may be acutely aware of this: returning to the community usually entails a host of challenges that can relate to personal identity and meaning (Higgins and Severson 2009: 796). Thus, this pain may be felt more acutely by older probationers, particularly if they are in poor health. Their refusal to engage may be exacerbated by social isolation, given that there may be few people to encourage conversation on their behaviour.

Probation Officer C stated that 'some [older probationers] find it difficult to go into the offence'. Probation Officers D and A agreed, with D stating that 'they're not used to talking' and A stating that they 'can find it difficult to talk to other people'. Probation Officer C explained that one-to-one conversation could be challenging and outlined that home visits were difficult because older probationers did not want to talk about the offence. C stated that 'because of age, older people just found it awkward talking about the offence'. Probation Officer A stated that there was a lot of denial, while D stated that there was a shame associated with the offence. Probation Officer A further stated that sometimes older men are not comfortable talking about offences, particularly sex offences, with female Probation Officers: 'shame is much more prominent for older offenders and their families. It's very destructive.' Probation Officer A also discussed a scenario where they had to attend a programme because the client was not engaging with the discussion required. Indicative of social isolation, Probation Officer C mentioned that 'home visits were difficult as they were glad of the company but didn't want to talk about the offence. Because of their age, they found it awkward.'

Across the group there was agreement that older probationers do experience the pain of returning to the offence more than younger probationers. Probation Officer C repeatedly cited age as a causative factor in this.

Living life under tremendous threat

The pain of living life under tremendous threat is normally considered to constitute a fear of being imprisoned. This is because there are conditions and obligations that, if the probationer does not adhere to them, can result in imprisonment (Durnescu, 2011: 538). However, this author would add that this could also include fear of societal repercussion. This is relevant because probation supervision often restricts a probationer to a certain area, from which they are not allowed to move themselves without permission. Crawley and Sparks (2006: 74–75) noted that for older sex offenders, prior to release there was a concern of being assaulted upon release and that their personal safety would be at risk. Older offenders may experience this risk more acutely if they have health issues and are socially isolated. Combined, these would make probationers much more vulnerable than their younger counterparts. There was a common fear among older prison inmates that they would not be allowed to resettle (see Crawley and Sparks, 2006: 74–75). Probation, with its corresponding deprivation of autonomy, removes the option of relocation away from threats, or at a minimum makes it more difficult.

Improvements mooted by Probation Officers

Focus group participants were asked what improvements could be made regarding work with older probationers. The consensus was that it was ‘important to link them with society’ (Probation Officer A), though there was more work involved in doing so (Probation Officer C). Probation Officer B explained that they are ‘isolated, hidden from view and should be encouraged and linked to provide them with support. Supports from the locality would be better.’ Probation Officer E explained that ‘they are the same as any other age group in that if their needs are not met, then their mental health can be badly affected’. The group agreed that further research was needed into the experiences of older probationers as it would ‘help to get their views’ on probation.

Summary of findings

Older probationers experience probation in a different manner to younger offenders. They are different in that they may be easier to supervise but

pose challenges in requiring more help to rehabilitate and reintegrate. The pains of probation are experienced differently due to particular issues relating to health and social isolation, and this can impact on successful rehabilitation. Lastly, it can be concluded that additional research is both desired and needed to further explore the experiences of older probationers.

Recommendations arising from the study

There are areas that can be improved in probation practice that may minimise the pains of probation for older offenders and support successful engagement and rehabilitation. Along with research, development of an age-oriented strategy would be highly beneficial. Healy and O'Donnell (2005: 61) highlight that 'in order to advance best [probation] practice in Ireland, it is important to develop a strong research base from which to generate ideas and debate'. It would be to the benefit of both older probationers and the Service that further research, and implementation of a strategy on working with older probationers, occurs.

In the meantime staff training and education regarding the particular needs of older offenders is important, particularly in defining the age group identified as older offenders and their needs. As this study reveals, Probation Officers often consider the qualifying age to be significantly different than research literature suggests. It is essential to clarify who the older probationer is so as to identify the particular needs of this population and establish the appropriate actions and interventions to address those needs.

Along with this, it is important that Probation Officers are sensitive to the pains of probation, and aware of how they impact on older probationers. The higher risk of social isolation and the difficulties in dealing with the offence should be prioritised as these pose significant barriers to engagement and successful rehabilitation. A better understanding of these risks would lead to a better relationship between probationer and Probation Officer, which is 'an essential prerequisite for any effective attempt to change behaviour' (Durnescu, 2011: 542–543).

The importance of this positive officer–probationer relationship is outlined by Liebrich (1994: 45), who explained that 'the influence probation officers might exert is clearly related to the quality of the relationship they have with the offender'. This relationship could be improved by understanding the specific needs and experiences of older probationers. This would aid in the understanding of empowering the offender and minimising the associated pains.

Addressing the pains of probation

As the Probation Service is motivated by rehabilitative goals during the course of reintegrating offenders, it is important to investigate how the pains can be minimised, as they can impede rehabilitation. While it may be possible to address each pain of probation individually, it would be prudent to develop an overall practice strategy to minimise the pains and maximise benefits more generally.

For successful rehabilitation and reintegration to be achieved, the Probation Service should aim to address the four forms of rehabilitation described by McNeill (2012): psychological, legal or judicial, moral and social; if these are not met, it means that desistance and rehabilitation are not likely to occur. These are interdependent and describe the end-goals of probation supervision.

In working towards McNeill's four forms of rehabilitation, the Probation Service should consider using the Good Lives Model (GLM) (Ward, 2002) with older probationers. GLM seeks to 'better safeguard the human rights of the offender' and could also improve the relationship between the probation staff and offender (Durnescu, 2011: 542). GLM 'promotes a more respectful and collaborative style of interaction between the probation staff and the convicted person' (Durnescu, 2011: 542). Applying GLM practices would assist achievement of the four forms of rehabilitation (McNeill, 2012). This study found, in general, a positive working relationship between supervisor and probationer: GLM could provide a consistent and effective probation practice model with older offenders, building on positive relationships and engagement.

Managing healthcare concerns and targeting social isolation

Given that the Probation Service has strong links with development programmes in local communities where offenders live, it is arguably in a good position to engage with other services to address healthcare concerns and social integration.

In terms of health management, often a concern for probationers, education in healthcare and self-management would be beneficial for older probationers. Improved management of health issues would also aid probation supervision by reducing missed appointments and minimising associated costs. Education concerning ageing would be useful as it would allow older probationers to develop body awareness knowledge, skills and

practices (Loeb *et al.*, 2007: 327). Probation Officers could link probationers with the appropriate healthcare services if they are not already linked, and ensure an opportunity to register with a local GP (Prison Reform Trust, n.d.: 13).

Probation Officers are not healthcare experts, but it would be useful for them to be familiar with age-related issues and ailments or illnesses that older probationers may be suffering from, and may disclose or display. This may aid the relationship between the supervisor and probationer by improving understanding and enable a compassionate management of expectations in supervision.

When asked what services would be offered to older probationers in coping with isolation, Probation Officer C explained that it depended on the need of the probationer but that they would be inclined to link a probationer to mainstream community development programmes with a focus on older people. The Men's Shed organisation was mentioned as a useful social contact group.² Probation Officer C explained that it is a good organisation 'as it doesn't allow younger men ... Older offenders find it more difficult to engage with services especially with younger offenders.' In Men's Sheds, men are meeting others in their own age group. There are other organisations associated with farming and local development. An unnamed programme mentioned in the focus group worked with isolated farmers and offered practical assistance with things such as making a will and counselling. There was an overall uncertainty in the focus group regarding which programmes are available for older probationers. This may be attributed to the smaller number of older probationers in the Probation Officers' caseload. As there do not appear to be many active programmes that ensure the social integration of older offenders, apart from the Men's Sheds initiative, it would be worth investigating other programmes as well as ways to promote participation in existing programmes.

An interesting and positive issue that emerged during the study was that, despite there being no set protocol where employment is not pursued by the probationer, probation supervision can reduce the risk of social isolation for older offenders. Probation may alleviate the risk by identifying those at risk of isolation and work to link the probationer with services and the wider community. Probation Officer B explained their experience with an older offender who was 'lonely, unmarried and in trouble for most

³ <http://menssheds.ie/about-us/>

of their life ... They actually enjoyed community service because without it they were bereft of community contact.' With access to healthcare and other services being more difficult outside of prison, probation may, despite its pains, have a role in reducing the risk of social isolation by facilitating social contact and referrals for older probationers, aiding their social rehabilitation.

Research

Probation Officers in this study were enthusiastic for further research into the needs and experiences of older probationers. That research could inform and guide the development of an older probationer strategy that the Probation Service could implement, as it does with strategies for female and juvenile offenders: 'an awareness of older offenders is an essential element of any probation strategy aiming at implementing anti-discriminatory practice' (Codd and Bramhall, 2002: 32). Probation Officer C believed more attention should be paid to older offenders and that there is an advocacy role: 'As an older offender, you may need people to advocate for you.'

It has been noted in England and Wales that the lack of research on older probationers has resulted in it being 'impossible to say whether current programmes ... are effective for older offenders' (Codd and Bramhall, 2002: 33). As there is similarly little research in Ireland, this conclusion could also be applied to Ireland.

Alvey (2013: 213) says that research is required and that there should be longitudinal studies which include semi-structured interviews conducted with 'older prisoners, prison officers, medical prison staff and probation/social work staff'. Research, particularly longitudinal research, should be conducted into the long-term experience of older probationers.

Building on Alvey's (2013) call for an interdisciplinary research plan, the Probation Service should develop strategies through 'action research'. Action research was described by Walsh *et al.* (2014: 147) as 'an approach to developing a new assessment tool and care planning process for the health and social care of older prisoners'.

Action research combines education, practice and research, and involves multiple parties working in conjunction to 'innovate, develop and manage changes in practice' (Walsh *et al.*, 2014: 139). It is iterative in nature and requires transparency to operate effectively, along with requiring the collection of information from the parties involved

'throughout the development phases in order for each cycle to inform the next' (Walsh *et al.*, 2014: 140). It was developed by Meyer (2010, cited in Walsh, 2014: 139), and is defined as 'an approach to research ... underpinned by cycles of planning, acting, observing, reflecting and re-planning'.

Action research should be used by the Probation Service to develop age-specific responses, to better understand the particular needs of older probationers and guide practice generally. It could also encourage older offenders to play an active role in both the process and the outcomes of the research. An action research project in this instance could be a 'method of simultaneously developing practice and collecting data' (Walsh *et al.*, 2014: 139).

Conclusion

It is evident that older probationers are a distinct group. This group not only, as the literature indicates, experience prison in a unique manner, but also experience probation supervision and its associated pains in a unique manner, with some pains being exacerbated due to health concerns, and rehabilitation being challenged by a high risk of social isolation and a reluctance to engage with discussion on the offence. Given the findings in this study, 'further attention needs to be paid to ... the pains of probation [as these can] play an instrumental role in desistance processes or act as counterproductive forces' (Durnescu, 2011: 543). As with Durnescu's (2011: 543) study, this study has limitations, so it would be beneficial to conduct further larger scale research.

If the above recommendations are implemented, the pains of probation for older offenders may be minimised and engagement in rehabilitation encouraged. None of the necessary changes will occur without advocacy driving them.

Advocacy is especially needed for older [offenders] because they are subpopulations of elders who are seriously underserved, engender little public sympathy, and have few natural allies regardless of whether they are residing inside or outside of the walls of prison. (Loeb *et al.*, 2007: 328)

The Probation Service should 'begin to pave the way for a greater awareness of the needs and experiences of older offenders in all aspects of

criminal justice' (Codd and Bramhall, 2002: 33). The author believes that the drive to do so already exists in the Probation Service.

An older person may not have that many years left, so it is more critical to help in the last few years of their life. (Probation Officer B)

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Book Reviews

Community Punishment: European Perspectives*

Edited by Gwen Robinson and Fergus McNeill

London: Routledge, 2016

ISBN: 978-1-13881-864-4, 272 pages, paperback, £34.99

The editors have collated within one book a snapshot of criminal justice across most of Western Europe that will provide an immediate brief to any student or practitioner wishing to gain an insight into many concepts and approaches. While the reader may expect to gain an understanding of probation as it applies to their own and other states, it becomes immediately obvious that in many countries community punishment was developed as an alternative to prisons for a number of reasons, political, social, organisational and economic. The editors acknowledge this and, having highlighted the disparity between the amount of research comprising ‘comparative penology’ and community supervision, they purposely adopt an approach beyond conventional meanings of ‘probation’ to encompass all forms of mandatory supervision including financial penalties and electronic monitoring: hence ‘community punishment’.

In order to provide a measure of consistency across so many authors, Robinson and McNeill have suggested a framework of questions to be addressed including foundation, development and reflections for each author to consider. They also encouraged writers to address the four narratives of supervision, i.e. ‘managerial, punitive, rehabilitative and reparative’ in describing the evolution of their respective jurisdictions’ criminal justice system.

The book is not rigidly linear: by all means start with your own country, but do read them all in order to appreciate common themes and issues that have shaped (or hindered) each society’s understanding of punishment and supervision. That said, in beginning with Belgium, England & Wales and France, the chapters present a series of

* Revised by Paul McCusker, Unit Manager, Assessment Unit, PBNI.

contemporary agencies struggling with the erosion of social work values in practice, diminishing resources and a constant battle to define their own legitimacy.

All too often economics emerges as the most pernicious driving force for community punishment, based on no other rationale than to offset prison populations. As mentioned, the book holds no linear plot and I admit to an element of *Schadenfreude* in reading the final essay on Sweden (considered by most as the ‘Gold Standard’ of supervision in Europe, if not the world), by Svensson, to discover a service not beyond its own crisis of identity and legitimacy and susceptible to political manipulation in the past.

What makes these essays interesting is that the authors are objective but not dispassionate in their analysis of their respective services. Kristel Beyens describes how the Probation Officer role became one of ‘judicial assistance’ in Belgium, emphasising that their task was to ensure compliance but the cost of increasing bureaucracy was diminishing the scope to offer social welfare and guidance. She adds that the fear of the ‘hollowing out of the social and human dimension’ is not without foundation and that JAs in Belgium are at risk of becoming mere administrators of sentences while, increasingly, areas of their work are outsourced to less skilled staff ‘in temporary and uncertain positions without social work training’. Each author highlights an issue or challenge that will resonate with the reader when considering their own service and practice. Robinson’s own essay on England & Wales, unflinchingly titled ‘Three Narratives and a Funeral’, pointedly illustrates how the rise of the managerial narrative, risk assessment culture and the proliferation of cognitive behavioural programmes now means that ‘Crime is a risk to be managed rather than a social problem to be eliminated.’

Ioan Durnescu provides a fascinating insight into Romania post revolution, where, after 1989, crime rates exploded and prison costs threatened to bankrupt a fledgling democracy. Its solution – to embark upon a massive decarceration strategy – foundered on the absence of a statutory agency dedicated to community supervision. The creation of the Romanian Probation Service from 2000 onwards describes not just a modernisation but a ‘Europeanisation’ of the justice system there.

Deirdre Healy’s chapter on the evolution of probation in the Republic of Ireland is a wry and reflective account of how a service has survived primarily due to political apathy which protected it from populist fads and kneejerk reactions and has allowed it to maintain its penal welfare ideology. However, she makes it clear that the dedication and effort of its staff does

not deserve an organisation that remains on the verge of neglect, underfunded and in need of modernisation. Even the success of the 'Community Return Programme', where prisoners can be released to perform community service, is defined as coming from 'an austerity narrative rather a managerial one'!

Throughout each of these contributions common themes can be found, but they are not universal. There is the debate regarding what community punishment is and what it is actually meant to achieve. In many instances it developed as an alternative to custody but only if it emphasised the punitive element of supervision which, for many agencies, could only be delivered at the expense of social work values and an abandonment of the rehabilitation narrative. In France even the word 'community' is perceived as divisive, and in Spain the concept of community punishment is almost alien, but political and financial necessity compels each country to develop its services.

Paradoxes are everywhere: although community service is cheaper than custody, less is spent on it, guaranteeing its failure to grow and that prison populations remain high (Spain). France has a Probation Service merged with prisons where it is the dominant partner and has never been more powerful or less involved with social work (Herzog-Evans). The Troubles in Northern Ireland created entire communities outside a normal criminal justice system but PBNI's neutrality allowed it to function and cultivate a creative, rehabilitative service in those communities, albeit with the tacit approval of paramilitary organisations for which 'community punishment' was an altogether more visceral practice used to maintain their legitimacy in those areas.

There is no doubt that services face their own challenges and are increasingly having to redefine themselves according to the dominant socio-political mores of the moment, but the tone of the book is not pessimistic. As stated, the writers are not dispassionate, and in many instances – The Netherlands, Germany, Belgium etc. – there is reference to an almost guerrilla-like movement which hints at small groups of probation staff mounting an insurrection of care and compassion for offenders within an overwhelming Offender Administration Machine.

The editors do not propose to provide answers to a continually evolving concept, but I admit that having read their book I have travelled to interesting places and in good company – I have become a little wiser along the way.

Dangerous Politics: Risk, Political Vulnerability, and Penal Policy*

Harry Annison

Oxford: Oxford University Press, 2015

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Section 225 of the Criminal Justice Act 2003, which came into effect in 2005, provided for the Indeterminate Sentence for Public Protection (IPP) in England and Wales, so that any offender who a judge thought *might* be dangerous could be indefinitely detained in prison, after the expiration of a minimum tariff.

Harry Annison's book is a tremendous read for anyone working in the criminal justice system. It charts the gestation, tortuous birth and ultimate sputtering demise of this sentencing phenomenon – an indefinite sentence similar to the existing life sentence, including the Parole Board requirement, but far broader, and more damning, in its reach. It was designed to act as, and perceived by judges as being, a judicial 'straitjacket' (p. 120).

Central to Annison's insightful and entertaining IPP 'story' (p. xi) are illuminating quotations from in excess of 61 'elite' interviews conducted with politicians, judges, senior civil servants, sentencing officials, 'policy participants' and pressure groups. While all quotations are anonymised, the author helpfully provides a broad designation, such as 'civil servant', 'Minister' or 'senior judge' to give context to the remarks.

Annison deftly illustrates how the IPP came into being at a time of punitive, pre-emptive, risk-oriented penalty in England and Wales, when New Labour was increasingly obsessed with dangerousness and public protection, constantly jousting with the *News of the World* to demonstrate its toughness on crime. A Conservative interviewee refers to Labour's 'slavish devotion' to Rebekah Brooks once it became known that she was Rupert Murdoch's 'right hand woman' (p. 42), while a penal reform group member commented on the destructive power of the media on policy formulation:

When I started at [group], I thought 'loads of what the government is doing is absolutely awful, this is madness.' But then you think, 'in terms of the public mood, what do ministers have to go on?' It's basically the media and their constituents. (p. 43)

* Reviewed by Jane Mulcahy, PhD candidate, University College Cork.

Annison gives considerable attention to the importance of ‘the public voice’ and the perpetual references to ‘the public’ during debates about the necessity of the sentence, despite the fact that ‘the public’ was excluded from the policy-making process. His account of this ‘illusory democratization’ and desire on the part of Ministers to ‘manage public opinion’ (p. 42) is one of the most interesting aspects of the IPP story. One Labour adviser stated:

Did we sit around reading focus groups and reading opinion pools and stuff all the time? No. Did we listen to what newspapers said? Yes. Because newspapers are read by people and they influence them. Did [the minister] listen to his constituents ...? Yeah, absolutely. (p. 42)

What emerges very clearly from Annison’s book is the role played by the so-called Westminster tradition (p. 72), which is deeply hierarchical and closed. Annison skilfully describes how the IPP evolved as the ‘the strategic centre in Downing Street’ and the Cabinet Office became more pronounced (p. 51). According to a pressure group representative:

It was absolutely clear that the driver for policy was Number 10 and that ministers really had very little influence over what was going on ... it was a highly centralised policy system ... it all came from the politburo. (p. 96)

Despite recognition by officials that it was right and constitutionally proper for policy matters to be the purview of Ministers, various interviewees describe the tension that may emerge between a civil servant’s duty to his master, the Minister (no matter what daft, destructive ideas he wants speedily introduced into legislation) and his sense of duty to the public interest, or indeed his own conscience, despite the comfortable anonymity of his office. According to a Home Office official, ‘They are the politicians and our job is to serve them ... the “servant” part [in “civil servant”] is not accidental’ (p. 72).

Other interesting aspects of the IPP saga include the failure of the Home Office to address, or clearly and unambiguously publicise, the dangers of the IPP in advance of its introduction (see p. 63). Regarding prison population projections, the Home Office’s *Correction Services Review* (2002) estimated that the IPP sentence would require approximately 950 extra prison places per annum (p. 63). However, senior

Labour politicians stated that roughly 900 extra prison places *in total* would be required for IPP prisoners (p. 65). The confusion (deliberate or accidental) surrounding the '900 statement' caused MPs and penal reform advocates to be more muted in their opposition to the IPP sentence than they would have been had they had a clear picture of the likely explosion in numbers (p. 66) and the toll it would take on the Parole Board.

Home Office officials readily admitted that they got the release rate horrendously wrong, assuming that people on short tariffs would get out within a reasonable period of time when in fact they were kept in prison for 'five times past that short tariff' (p. 64).

Annison's account of the efforts of the senior judiciary to temper the worst excesses of the IPP sentence in Chapter 5 is absorbing, especially for lawyers. As regards the stream of judicial review cases taken against the Parole Board due to delays in parole hearings, a member of the Parole Board confessed to Annison that judicial reviews 'are very, very useful at times' (p. 87).

Although Ken Clarke abolished the sentence in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the abolition was not retrospective. The Government took the view that this would be inappropriate since the sentence was predicated on notions of dangerousness and risk management in the first instance. The IPP inflicts lingering suffering on 4000+ prisoners and families (see <http://ippfamilycampaign.blogspot.ie>) who remain subject to its strictures. There has been no amnesty, commutation of sentence or other creative effort to right the wrongs done to those unjustly sentenced under this scheme: for example, those who served well in excess of the 'tariff' set by the sentencing judge but were unable to demonstrate their suitability for release due to a combination of insufficient access to rehabilitative programmes and Parole Board delays. A cautionary tale indeed.

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.

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