

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

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

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

Introduction

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

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

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

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

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

Aims of the study

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

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

Method of data collection

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

Research design

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

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

Does quality matter when writing pre-sanction reports?

Effects in the courtroom

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

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

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

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

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

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

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

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

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

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

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

The cost of providing pre-sanction reports to court

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

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

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

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

How to benchmark quality?

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

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

Research findings and discussion

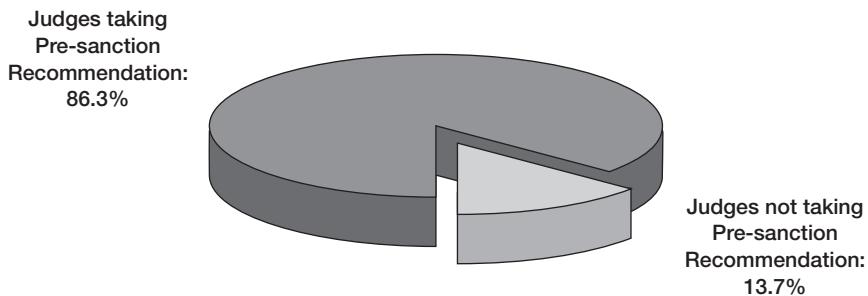
As mentioned above, in 2010 the Probation Service provided approximately 13,107 pre-sanction reports to courts (Probation Service, 2011, p. 13). However, given the limited nature of this research, a random sample of 30 pre-sanction reports was requested from Probation Service management for analysis.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

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

Take-up rate by judges

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

Figure 1. Take-up rate by judges



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

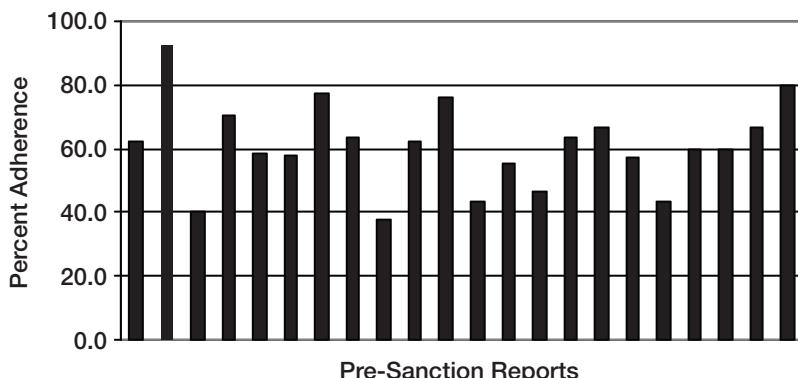
However, the evidence found in the literature review cautions us to be wary of assuming that high take-up rates provide evidence of direct influence on sentencing. Tata *et al.* (2008) state that high take-up rates by judges in Scotland should not be assumed to be direct evidence of influencing sentences.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

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

Adherence to service guidelines

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

Figure 2. Adherence to guidelines in the 22 reports



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

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

Offence(s) current and previous

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

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

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

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

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

Victim issues

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

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

Relevant offender background and circumstances

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

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

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

Conclusion

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

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

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

Summary of findings

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

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

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

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

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

Implications for probation practice

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

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

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

Conclusion

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

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