

The National Commission on Restorative Justice: A Review and Plan for Development

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Abstract: The National Commission on Restorative Justice operated from 2007 to 2009, with the final report being published in December 2009. In this article the background to the setting up of the Commission is outlined, along with its terms of reference. A synopsis is given of its deliberations and resulting recommendations in the key areas: what restorative justice means, stages in the criminal justice system, criteria for application and preferred models, service delivery, national co-ordinating structure and legislation. An overview is given of proposals for implementation and national roll-out, including estimation of costs, projected offender participation, consequential recidivism and diversion from custodial sentences. Some concluding comments reflect on the place of restorative justice two years on.

Keywords: Restorative justice, Commission, Courts, victims, adult offenders, community, state, mediation, conferencing, reparation.

Background

Interest in restorative justice (RJ) began to 'take off' in Ireland in the second half of the 1990s. The National Crime Forum in its consultation on crime in Ireland heard presentations on RJ and referred to it favourably in its report (National Crime Forum, 1998). Early in 1999 approval was received for payment of grants through the Probation Service for two pilot RJ projects for adults, operated by local committees in conjunction with the Courts, at Nenagh, Co. Tipperary and Tallaght, Co. Dublin. In 2001 the Children Act became law, both putting the Garda Juvenile Diversion Programme¹ on a statutory footing and

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¹ Sections 17–51 of the Children Act 2001.

mandating the Probation Service to organise family conferencing for under-18s at the Courts' request.²

In 2006, the Oireachtas (Irish Parliament) Joint Committee on Justice, Equality, Defence and Women's Rights decided to examine the potential benefits of RJ methods in Ireland. A day of oral hearings was held on 18 October 2006, at which the Committee heard submissions from the two pilot projects, the Secretary-General of the Department of Justice, and senior management in the Probation Service and An Garda Síochána.

The Joint Committee's Report, launched on 3 January 2007 (Oireachtas, 2007), contained 10 recommendations, proposing that RJ be developed as a more regular feature of the Irish criminal justice system and that existing RJ programmes be supported. It argued that increased funding for RJ be viewed as an investment in more progressive methods of dealing with the effects of crime, that members of the judiciary be made more aware of RJ programmes and engage with the services that had been established, and that RJ practice for adult offenders be provided for in legislation. This report garnered cross-party support in the Oireachtas and is an important political reference point. The consensus it articulated on the merits of RJ as an option for the criminal justice system created a momentum for development.

In its presentation to the Committee, the Probation Service argued that expansion of the existing pilots on its own was not the only approach. 'It has been suggested to the Minister and his Department that they commission a working group to review RJ models both in Ireland and internationally and generate proposals for development. A cross-sectoral group, incorporating practitioners, managers and academics should help to build confidence in RJ as the basis for viable community sanctions' (Oireachtas, 2007, p. 42). The Committee endorsed this suggestion and recommended that such a group be created 'to develop a national strategy for RJ that is based on international best practice'. In its view, the group would explore the various approaches to RJ, assess the impacts of specific practices on the parties involved and the added value they might bring to the criminal justice system, and so develop a blueprint for the national roll-out of RJ services that would best suit the Irish culture and have the optimum chance of success.

² Sections 78–87 of the Children Act 2001.

Setting up of the Commission

One hundred years – to the very month – after the passage into law of the Probation of Offenders Act, 1907, the Minister for Justice, Equality and Law Reform, Michael McDowell TD, announced the establishment of the National Commission on Restorative Justice on 11 March 2007. The Minister highlighted the victim and community focus of RJ and how this approach requires the person who committed the crime to face up to the harm done and to repair or make good the damage caused. The Minister was anxious to see how the concept could be expanded in Ireland with appropriate structures and a sound funding base (Department of Justice, Equality and Law Reform (DJELR), 2007).

The Commission was chaired by a Judge of the District Court with members drawn from senior management in the principal criminal justice agencies involved – the Probation Service, the Courts Service, An Garda Síochána and the Director of Public Prosecutions. In addition, there were two ‘lay’ members, one a member of Seanad Éireann and one an experienced employer (DJELR, 2007). The Commission was also supported in its work by a small secretariat of five persons.

The full terms of reference are quite detailed and comprehensive, but can be paraphrased as follows. The core goal of the Commission was to explore the use of RJ with regard to persons brought before the Courts on criminal charges and to make recommendations as to its potential wider application in this jurisdiction. To this end, the Commission was tasked to review:

- the existing models of RJ in this jurisdiction
- contemporary RJ developments in other jurisdictions
- the evaluation, in terms of research-based evidence, of the effectiveness of RJ models, as against other court disposals, from six specified perspectives.

As befits a National Commission, it was required to seek the views of relevant bodies, interest groups and individuals. It was particularly mandated to consider the recommendations in the Joint Oireachtas Committee’s Report on RJ.

Then, in the light of all the above, the Commission was tasked to consider whether RJ models should be further developed in Ireland at a national level. If it concluded that they should, the Commission was to spell out:

- which model or models would be most appropriate and cost-effective
- whether these models should be put on a statutory basis
- the range of offences and Courts to which RJ would be applicable
- the role of the Courts, Probation Service and other key bodies.

Finally, in terms of outcomes, the Commission was to estimate:

- the number of offenders likely to be dealt with by a nationwide system of RJ and the costs per annum
- the number of offenders likely to be diverted from a custodial sentence (DJELR, 2007).

So, in effect the Commission was to put flesh on the bones of the Joint Oireachtas Committee's recommendations, to do the research, evaluate the pros and cons and come up with a clear practical scheme of how these proposals might work.

An interim report was required within six months, with a final report to be submitted within a year.

Work of the Commission

With the release of some members and staff from other duties, the National Commission on Restorative Justice became fully operational in August 2007. Following a public notice in the national press, 26 submissions were received from the public, of which six were supplemented by presentations at meetings of the Commission.

In view of the prominence given to research-based evidence and evaluations of effectiveness in the terms of reference, published studies of the operation of RJ schemes in a variety of different jurisdictions were sourced and examined (Shapland *et al.*, 2004, 2006, 2007, 2008; Sherman and Strang, 2008). In addition, to inform the choice of appropriate and cost-effective applications for this jurisdiction, a special report was commissioned to review and appraise research-based evidence from abroad. The latter study, undertaken by academics from Durham University, was particularly comprehensive, helpful and informative (O'Mahony and Doak, 2008). Two chapters in the final report detail RJ developments in other jurisdictions, based on this material (DJELR, 2009a).

The Commission was also mindful of the legal principles and operational guidelines contained in a number of international instruments.

- *European Union*: Council Framework Decision on the standing of victims in criminal proceedings, especially section 10 (European Union, 2001).
- *United Nations*: Economic and Social Council Resolutions 2000/14 and 2002/12 (United Nations, 2000, 2002). *Handbook on Restorative Justice Programmes* (United Nations, 2006).
- *Council of Europe*: Recommendation No. R (99) 19, Mediation in Penal Matters (Council of Europe, 1999).

Members of the Commission visited the pilot projects and were facilitated in seeing the work of restorative justice at first hand. Detailed consultations were held with the Probation Service and other agencies, relevant conferences were attended and opportunities taken to meet and discuss issues with a number of experts from abroad who were visiting Ireland. The Chairperson also exchanged views with colleagues in the judiciary. As part of finding out the public's perspectives and opinions, five regional consultative workshops were organised during summer 2008, while meetings were also organised to ascertain the views of experts and practitioners in the criminal justice area. Case studies were shared by practitioners and some of these were included in the final report (DJELR, 2009a), to better illustrate what RJ would achieve.

An interim report was furnished to the Minister in March 2008, with five interim recommendations, and was published in May (DJELR, 2008). The final report of the Commission (DJELR, 2009a) was forwarded in July 2009 and published by the Minister in December 2009. The final report is over 130 pages in length and contains 65 recommendations addressing all the Terms of Reference.

Conclusions and recommendations

The following is a summary of the core areas of deliberation of the National Commission on Restorative Justice.

(A) The Commission's understanding of RJ

Reflecting on the diversity of applications and analyses around the world, the Commission sought to consider both process and outcome in an Irish context and arrived at the following definition:

Restorative justice is 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.

A stakeholder analysis identified four key players in RJ, as follows.

- *Victims* are directly involved in RJ; where their needs are met and concerns addressed in the process, there is strong evidence of their satisfaction.
- *Offenders*, where guilt is admitted, can go on to understand the consequences of the crime, understand and assume responsibility for how their actions have affected the victim and others, and begin to address the factors that led to their behaviour. So participation in RJ affords an opportunity to become reconciled with the victim and to resolve to avoid further offending. There may be a belief that RJ is a soft option for offenders, but the Commission found that research consistently suggests otherwise, as the direct contact between the parties makes it difficult for offenders to hide behind excuses when faced with the consequences of their actions. Facing the victim is often a challenging and emotional experience, in contrast to the traditional court process.³
- *Local communities* can help identify needs and support efforts to change behaviour by participation in local services and programmes. Community disapproval of criminal actions can lead to remorse, reparation and commitment to avoid reoffending (re-integrative shaming).

³ In his address at the launch of the Commission (11 March 2007), the Minister for Justice, Equality and Law Reform, Michael McDowell TD, articulated similar views: 'People have sometimes argued that Restorative Justice is a soft option – I don't agree. It's not appropriate in every circumstance but a system that results in the offender facing up to the consequences in person of what he or she has done and making amends can be extremely challenging, sometimes much more difficult than being processed through the court system. It challenges attitudes and behaviour and can change lives.'

- *The State* is primarily responsible for providing the structures and options for responding to crime, and funds the criminal justice agencies. So it is best placed to initiate and regulate the RJ process. If RJ is to become an effective option in the Irish criminal justice system, it may require a suitable legislative context, as well as the resources necessary to ensure effective delivery to standards consistent with the complex and sensitive considerations involved.

Where an RJ process costs less than other sanctions, there is a considerable dividend to the State. If an offender does not reoffend, savings arise not just to the criminal justice system, but also from the absence of injury and harm to victims and the community.

In comparison with conventional offender sanctions, RJ offers increased levels of participation and positive involvement in the delivery of justice, hence promotes a more democratic engagement with criminal justice. The role of the State therefore should extend to ensuring that victims' issues can be resolved within the criminal justice system through legally sanctioned processes of conflict resolution. The Commission clearly did not see RJ as an alternative to or replacement for the conventional court processes but as an enhancement and extension to them.

It has been held in Irish courts that the public interest is served 'not merely by punishing the offender and showing a deterrent to others, but also by offering a compelling inducement and an opportunity to the offender to reform'.⁴ The Commission concluded that it is very much in the public interest to ensure that victims of crime are given the opportunity to confront issues arising from the crime and if possible to receive restitution. Where offenders take responsibility for their criminal acts, accepting the consequences in terms of sanction, and where the process both addresses the harm done and engages the parties in helping to reduce reoffending, the public interest is also well served.

Arising from all of the above, the Commission was satisfied that RJ is an invaluable cost-effective option for the Irish criminal justice.

(B) Stages of the criminal justice system

RJ can be delivered at any one of four points of progression through the criminal justice system:

⁴ State (Stanbridge) v. Mahon, per Gannon J. (1979) IR 214, following *The People (A.G.) v. O'Driscoll* (1972), per Walsh J. (I Frewen 343).

- *pre-charge*, i.e. diversion from court, e.g. Garda National Diversion Programme
- *pre-conviction*, i.e. diversion during a case before court, but before a finding of guilt, e.g. Family Conferencing operated by the Probation Service
- *pre-sanction*, i.e. after a finding of guilt but before a sanction is determined
- *post-sentence*, i.e. during or after a custodial sentence served in a prison or a place of detention.

The Commission's terms of reference specifically focus on 'persons brought before the courts on criminal charges', so it determined that priority be given to wider application of RJ by means of court referral at pre-sanction stage. The Joint Oireachtas Committee urged the expansion of RJ to adult offenders given that juvenile arrangements are already in place in statute and on the ground, but nothing comparable other than the two pilot schemes exists at adult level. The Commission shared this view. When court referral arrangements for adults have been put in place on a nationwide basis, adults might also be referred, in the light of this experience, to an RJ process other than by the courts.

(C) Criteria for application of RJ

Offences. The Commission did not deem it necessary to adopt a definitive range of offences that could ground a reference to RJ. So no specific offences would be ruled out, apart from very serious crimes where custodial sentences are normal, such as murder and rape. Initially, cases should be eligible for referral where a court is considering custodial sentences of up to three years, with the exception however during the initial phases of implementation of certain serious offences such as domestic violence and sexual assaults, pending the further development of good practice and growth of public confidence in RJ. The Terms of Reference emphasize diversion from custody. Targeting offences for which up to three years' custody is being considered would enhance the prospects of such diversion.

While giving priority to diversion from custody, however, the Commission considered that the application of RJ was not dependent on its use in this way. The intrinsic value of the process to both victim and offender is well established and should not be underestimated. Therefore

courts should also be able to apply RJ options in appropriate non-custodial cases. The Commission warned however that only those cases before the courts where RJ will add value to the criminal justice system should be considered. There is little to be gained by applying a time- and resource-intensive RJ process where a fine or other less costly non-custodial sanction would be just as suitable.

Courts. RJ should be available in respect of persons guilty of criminal charges before the District and Circuit Courts.

Victims. It is essential that participation by the victim be voluntary. They must be fully informed of what the process involves and the greatest latitude possible should be extended to them to facilitate their participation. If a victim is unable or does not wish to participate, other means should be considered to effect a victim input, including where appropriate the participation of a suitable surrogate victim. This may be a family member of the victim, or someone who has previous victim experience of a similar offence, who can contribute effectively to the process. What is important is that the offender is given a clear insight into the impact of the crime and the harm suffered by the victim.

Victims should be clearly identifiable persons. Without a direct victim, such as in some public order crimes, offences may be suitable for inclusion where it is worth while or beneficial to the community, but in general the lack of an identifiable victim reduces the restorative potential of the process.

Offenders. A fundamental condition of eligibility for referral to RJ must be that the offenders accept responsibility for their criminal actions. The potential for reparation to a victim and rehabilitation of the offender are also key considerations in the selection of suitable cases for RJ. Offenders must be willing to engage actively with victims in a mutually respectful process, under supervision. They should be at significant risk of reoffending in particular circumstances, demonstrate a willingness to avoid further criminal activity and be assessed as having the capacity to take the steps necessary to achieve this. As well as first offenders, recidivists or repeat offenders should also be included, if they are deemed suitable for participation.

(D) Models of RJ

The Commission considered that there were three RJ models that warranted close consideration for Irish circumstances, namely:

- *victim-offender mediation* (face-to-face meeting between victim and offender)
- *restorative conferencing* (i.e. the Family Group Conferencing model, adapted to the needs of adult offenders)
- *reparation panels* (representatives of criminal justice agencies and of the local community meet face to face with offenders).

All three model options should be available to a Court, so that the nature of the offence, the circumstances of the case and above all the needs of the parties can guide the Court as to which might be most suitable. Since RJ is intrinsically a people-centred approach, this means consideration of victim needs (repair harm), offender needs (change behaviour) and community needs (prevent recurrence).

Both victim-offender mediation and restorative conferences involve victims and offenders, so are the Commission's preferred forms of RJ intervention. The Reparation Panel model, however, may be appropriate where a strong community engagement is desirable. Even then, however, every effort should be made to involve victims, where they are identified and agree to participate, albeit indirectly.

(E) Service delivery

The Commission concluded that the most cost-effective structure for providing RJ interventions in Ireland was the use of existing criminal justice agencies. The staff of these agencies already have experience and expertise in dealing with both victims and offenders. It did not favour following the example of other jurisdictions where a separate agency was created, to which staff would be seconded or 'poached' from existing services, particularly in the current economic climate.

Based on its involvement in family conferencing and with the pilot projects, the Probation Service should continue to be the lead agency in implementing any wider application of RJ for adults before the courts. Funding for RJ should continue to be provided through the Probation Service. It should co-ordinate available resources to best effect, including the provision of staff to facilitate the development of RJ interventions to the appropriate standards. The Commission considered it crucial that RJ operates to accepted standards, to ensure that offenders contribute effectively while protecting their rights to fair procedures. This concern for standards encompasses the need for accredited training of staff delivering RJ and the auditing of processes regarding the safeguards

being applied, the resources used and the outcomes achieved. The centrality of training and practice standards was highlighted to the Commission by workshop participants and experts consulted. As the lead agency, it was proposed that the Probation Service should establish the criteria and standards that need to be met, and be in a position to monitor the recruitment, training and performance of the staff and volunteers of non-governmental organisations engaged in restorative justice.

A notable feature of the Probation Service's RJ work with adults was the involvement of NGO staff and local volunteer panels. The Commission believed that there was merit in retaining access to this range of expertise, given its breadth of experience and flexibility of provision. The mix of criminal justice agencies, NGOs and local community sources encapsulated for the Commission a valuable combination of stakeholders in a collaborative criminal justice venture, from which all can benefit and to which all have a worthwhile contribution to make. Probation was tasked to ensure ongoing NGO and community involvement.

The interim report highlighted shortcomings in respect of data collection and evaluation. Both the Probation Service and the Garda Síochána, as lead agencies responsible for the delivery of programmes and accountable for the resources employed, must prioritise the acquisition of what data are needed to ensure ongoing value for money. Funding made available to NGOs or voluntary bodies should be conditional on the recording and return of required data. Ongoing internal reviews must be put in place, together with periodic independent external evaluation as an integral element of RJ provision.

(F) Co-ordinating structure

The Commission was strongly of the view that a multi-agency approach is needed if RJ is to be implemented successfully on a wider basis in Ireland. This requires close co-operation between criminal justice agencies as well as the relevant health, education, employment, training and welfare services, and allied community-based groups.

To ensure co-ordination in planning, delivery and evaluation, the Commission recommended that a National Restorative Justice Committee be established, independently chaired and representative of the key interests involved. Its membership should include sufficiently senior level representatives from criminal justice agencies to bring about

meaningful oversight, focus and cohesiveness of RJ inputs. Consideration should also be given to including representatives from the legal professions and RJ providers.

Judges have a key role in the application of RJ, so appropriate liaison should be maintained with the judiciary. It was recommended that the Committee should consult with the Presidents of the relevant Courts, to brief them on developments and so that the observations of judges from their experience of RJ can be taken into consideration. It was proposed that the Committee would meet at least four times a year, be supported by the relevant policy division in the Department, and should report annually to the Minister for Justice, Equality and Law Reform. The work of the Committee would be to advise on the:

- establishment of new venues and the selection of authorised service providers
- recruitment and training of workers and volunteers with the service providers
- standards of training and service delivery.

The Committee would also oversee the ongoing monitoring and evaluations of RJ interventions, which in time should provide robust information on value for money of different models and projects.

(G) Legislation

The importance of a formal structure was a theme repeatedly encountered by the Commission in its regional consultations. Victims and community representatives felt that RJ programmes should have a firm base in statute, to accord them the status of legitimacy that could not be achieved otherwise. The clear experience of the pilot projects was that without a statutory base, difficulties can be encountered in securing a consistent flow of referrals. Voluntary schemes are dependent on the goodwill of court authorities. If personnel change or interest wanes, under-utilization results and an effective scheme can wither. This can undermine public confidence and the support that projects need to become sustainable options in the criminal justice system.

The Commission concluded that grounding RJ in statute would confer regularity on the process, and that legislation would provide a continuity of operation and consistency of application that would not be available from ad hoc arrangements.

- Courts could make referrals to RJ without fear of exceeding their authority.
- Each participant's role would be specified, safeguarding fundamental rights.
- A clear legal framework would be provided, specifying criteria for eligibility, referral procedures, stage of the process, type(s) of models or measures to be available, etc.
- Mechanisms for monitoring adherence to guiding principles and values of RJ might be laid out in statute, so that practices on the ground will reflect these principles and values.

Legislation could also make it mandatory to consider the use of RJ in particular situations, so that it will not become an option rarely availed of. The experience of many jurisdictions suggests that where mandatory consideration is not provided for in legislation, RJ often fails to be used or is used in an inconsistent manner. Judges would be obliged simply to consider its use; the decision to refer or not would still rest with the Court. In the Commission's view, the Court would be assisted by an assessment of suitability from the Probation Service, and consultations by Probation and the authorised service provider with the parties to the process to propose which model of RJ would best suit. This choice of model would have to be approved by the Court.

When courts apply RJ as sanctions for criminal offences, how RJ interlinks with the criminal law is critical because RJ becomes part of criminal procedure. With potentially coercive penalties as an alternative, RJ programmes must be recognised and overseen by official bodies. Legislation would specify the standing of RJ programmes, defining links with relevant parts of the criminal justice system. It would provide a framework so that programmes operate in a predictable and accountable manner, while ensuring that cases referred are appropriate and well targeted according to criteria laid down. Most of all, a statutory obligation to have RJ programmes available to all District and Circuit Courts necessarily predicates an appropriate level of provision throughout the State and so a secure funding base.

The Commission accordingly recommended that the wider application of RJ be given a statutory base. Some of the detailed guidelines (e.g. on training and process standards) could be specified in secondary legislation or in non-statutory codes of practice. Primary legislation should be enabling, with sufficient flexibility to allow for

adoption of different models. It could also allow for the later addition of new offences to the list of those eligible for an RJ process, as experience and resources allow.

(H) Potential numbers of Rj disposals

The Commission was tasked to come up with an estimate of the number of offenders likely to be dealt with in the event of a national roll-out of RJ. Attention has been drawn to the absence of research-based evidence on the outcomes of RJ inputs in Ireland, and the limited operations in just two District Court Districts of the non-statutory-based pilot schemes for adults. Estimates of the potential wider application across the State were prepared using Court data, but adopting cautious assumptions on the volume of cases likely to be referred and their outcomes. For these reasons, the Commission's projections are presented as a range between highest and lowest rather than a precise figure.

Using Court Service data for 2007, and assuming referral rates of from 5% to 10% of adults guilty of offences that could be eligible for RJ, it was estimated that from 5,000 to 10,000 cases might be referred annually. Based on Irish experience to date, 25% of these will be considered for mediation or conferencing and 75% for reparation panels. However, not all cases will be found suitable or will progress to an RJ outcome. Again, for mediation or conferencing, the percentage so progressing could be as low as 50%, while for reparation panel cases it could be as high as 80%.

In summary, the Commission estimated that between 3,625 and 7,250 cases a year could be satisfactorily dealt with by means of an RJ option. It would expect, however, that with greater experience, more expertise would be gained in the use of RJ and increasing legitimacy would be conferred on this response to crime. The results should be higher volumes of referrals, reflecting greater RJ usage by courts. It should also herald greater willingness by victims and offenders to participate in RJ. As they become more familiar and comfortable with the processes, the mix and completion rates of victim participation schemes and panel referrals may change. Hence the projections would need to be kept under close review.

(J) Costs, cost-effectiveness, reoffending

Such evidence as is available on these topics is from abroad, where the wide variety of models and delivery structures, disparate cost factors, and

different research approaches in a range of studies frustrated the Commission's capacity to make comparative assessments of cost-effectiveness within and between jurisdictions.

Firstly basic information on the costs and outcomes of the two pilot projects were garnered. The low numbers dealt with in Nenagh produced a cost per referral of €6,364. In Tallaght, with much higher numbers, and combining mediation and panel cases, the cost per referral worked out at €3,250. Costs were also looked at in youth RJ provision in Ireland, but measurement here was in terms of the duration of staff time per case. The Commission also looked at findings from research studies on costs associated with RJ in other jurisdictions. A four-year study of three schemes in the UK computed costs per case referred but also costs per case completed, where the variation was from £3,261 to £4,666 (Shapland *et al.*, 2004, 2006, 2007, 2008; Sherman and Strang, 2008).

The costs and cost-effectiveness of RJ should not be considered apart from other sanctions that might have been imposed. Without getting into a complex analysis to try to compare like with like, the Commission noted that the average annual cost of keeping an offender in custody in 2007 was €97,700, while the 2007 estimated costs of probation intervention ranged from €2,025 per Community Service Order to just over €8,000 per Probation Order.

The Commission concluded that the diverse sources of data on costs proved difficult to harness for comparative analysis. However, it is clear that RJ interventions are among the least expensive sanctions in the criminal justice system. So RJ represents a better value for money option in appropriate cases. The challenge therefore is to ensure that RJ resources are not deployed in inappropriate cases, where there is little likelihood of a suitable outcome or where a less costly disposal could have been effectively deployed.

In research studies (O'Mahony and Doak, 2008) around the world, the commonest measure of effectiveness against which RJ is assessed is recorded reoffending, usually within two years of completion of the process. The same measure is applied to most studies of offenders at different stages of the system, or undergoing other sanctions. Caution must be exercised, however, as control groups may not be directly comparable or findings, even if positive, may not prove statistically significant, especially where samples researched are small, as is often the case with the early experience of new programmes. Above all, if there has been a recorded reduction in reoffending, to what extent was this due to

participation in the programme/experience of the sanction, apart from other desistance factors? Might the reduction have occurred for other reasons?

The Commission none the less was specifically tasked to review 'offenders and their recidivism' in different RJ models. Meta-analyses of multiple studies have found positive results. A 2007 appraisal of 36 studies (Shapland *et al.*, 2004, 2006, 2007, 2008; Sherman and Strang, 2008) found that the majority of RJ programmes had a positive effect on reducing reoffending, particularly in the case of violent offences. A 2008 UK study concluded that offenders who participated in RJ committed statistically significant fewer offences in the subsequent two years compared to offenders in control groups (Shapland *et al.*, 2004, 2006, 2007, 2008; Sherman and Strang, 2008). Across available studies, the balance of findings demonstrates that RJ measures are indeed effective at reducing reoffending. In the Commission's considered view, the benefits found in RJ processes abroad can be replicated here.

In addition, reoffending is not the only indication of the effectiveness of a criminal sanction: other intended outcomes must be evaluated. There is strong evidence from international studies that RJ is effective at meeting the needs of victims and at inducing offenders to accept responsibility for and acknowledge the harm done to victims. This impact on offenders is an indication of their willingness to change behaviour and avoid reoffending in the future.

(K) Diversion from custody

Given the lack of evidence-based research on the subject, any assessment of the number of offenders who could be dealt with by RJ instead of a custodial sentence must be tentative. Cautious assumptions were applied, this time to Prison Service data, which revealed 5,794 committals to custody in 2007 to serve sentences of less than three years. From this, it was estimated that 210 to 420 offenders could instead have been placed on an RJ programme by the court. Having regard to the duration that those sentenced actually spend in custody, it was projected that these levels of diversion would free up between 42 and 85 prison spaces per annum.

Applying this to the average annual cost of a prison space (€97,700 in 2007), notional prison cost savings would arise in the range of €4.1 million to €8.3 million a year, before offsetting the cost of providing nationwide RJ interventions. The prison spaces freed up may well be

instead used to increase the average duration in custody of more serious offenders, serving longer sentences. Nevertheless, more offenders would be effectively managed in the community, and better value for money would be obtained from escalating penal expenditure.

In addition, regard must be had to significant savings that would arise from reduced reoffending, as well as the considerable benefits to be derived for victims and the community from offenders addressing the harm caused by crime rather than just spending unproductive periods in custody.

(L) Implementation and national roll-out

The Commission strongly believed that the wider application of RJ for adults in Ireland needed to be progressed as a matter of priority.

The current projects were each to be developed within their current resource capacity. Expansion nationwide of the two projects was not suggested; rather they were to be put on an improved footing, with more and more serious offenders being referred, and the range of RJ models available being increased. The Probation Service was also to review the management of existing resources to ensure more cost-effective results, and work with the projects to bring about better continuity in caseload levels.

To test RJ responses in other parts of the State and the application of the three recommended RJ models in a range of situations, the Commission recommended the provision of RJ programmes in at least six new venues by 2013. Suggested criteria for selecting locations were:

- adequacy of population served
- appropriate range and frequency of offences dealt with in the local Court
- potential for active community engagement with the project.

The provision of programmes at the new venues would be subject to detailed ongoing monitoring leading to a more effective evaluation of benefits to the stakeholders.

The Commission also urged that early consideration be given to placing RJ for adults on a statutory footing. The preparation of the legislation should proceed in parallel with the introduction of new venues, where programmes would initially be offered on a non-statutory basis.

The goal set by the Commission was to have nationwide implementation by 2015 at the latest. It considered that this gave adequate time for the relevant authorities and agencies to have the requisite resources allocated and effectiveness appropriately tested. As noted above, information on costs available to the Commission was too varied to support a reliable estimate for the national roll-out with the projected level of cases. When RJ has been implemented at the additional venues, then costs can be more accurately assessed. In the meantime, the Commission recommended that the Department, in consultation with the relevant agencies, should immediately review expenditure commitments for 2011 to 2014, to source funding for the additional venues. However, since the potential benefits of RJ, especially reduction in reoffending and diversion from custodial sentences, apply across the wider criminal justice system, the Commission recommended that reallocation of funding should not come exclusively from the Probation Service.

Finally, the Commission emphasized the importance of ongoing monitoring of resource use, outcomes and effectiveness across all venues. Apart from costs, it should also provide feedback on the involvement of victims, offenders and others and the level of compliance with agreements and action plans. Building on this monitoring, the Probation Service should arrange for an independent expert evaluation of all venues before the end of 2013. This evaluation should include a suitable costing model for the national roll-out, to assist the Department in assessing the additional resources needed.

Two years later

The final report was completed in mid-2009. Since then, economic constraints have increased and in the light of significant reductions in Government expenditure, it seems unlikely that there will be much scope for new spending initiatives. So the timescale envisaged by the Commission will likely be delayed by three years at least, but this is not to suggest that planning and preparation cannot proceed in the interim.

In Dáil Éireann on 25 November 2010 the Minister for Justice, Equality and Law Reform, Dermot Ahern TD, announced 'a scheme ... to test a range of restorative interventions for adult offenders based on the recommendations contained in the report'. He went on to say: 'The objective of the scheme is to build the foundation for the implementation

of a robust restorative justice model of practice providing an alternative to a prison sentence of less than 12 months' duration'. The Probation Service was given responsibility to monitor, oversee, and evaluate the implementation of a restorative justice scheme and to report on the effectiveness and value for money of the model after a 12-month operational period (Dáil Éireann, 2010). In practice this pilot initiative comprises the expansion of Restorative Justice Services Tallaght to most of the Dublin District Court area and the extension of the work of Nenagh Reparation Project to include the District Court in Limerick city. The evaluation and report are anticipated in 2012.

The bulk of the Commission's other deliberations still stand, particularly its examination of the value and concepts of RJ, the merits of different models, criteria for selection of RJ, delivery structures and the need for a legislative base. The survey of RJ in other jurisdictions would benefit from updating in due course as new developments and research studies are reported. The projections made by the Commission of intended outcomes (numbers, costs, diversion from custody) were based on 2007. These will need to be updated, using the same methodology but utilising more specific costs from reduced budgets of agencies and organisations.

The Ministerial welcome and endorsement at the time of the launch of the Commission's final report was a most important step in recognising that 'Restorative Justice serves as a real alternative to locking offenders up, reduces reoffending and allows victims a sense that they are at the centre of the justice system' (DJELR, 2009b).

The implementation of the pilot scheme is a significant indication of willingness to initiate a development agenda for restorative justice as part of the Irish criminal justice system. It is also an acknowledgement of the work of the National Commission on Restorative Justice and its recommendations. Restorative justice clearly has a future in Ireland. However, much work remains to be done in defining the most appropriate place and role.

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