

Differing Conceptions of Risk and Need in Irish Probation Officers

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Summary: Developments in work with offenders have been guided over the past two decades by an approach that relies on assessment of risk as a primary guide to allocation of resources and development of case management strategies to reduce reoffending. Risk-based case management is perceived to be both more effective in preventing reoffending and better able than previous methods to enhance community safety. This paper explores these issues using data from focus group discussions held with Irish Probation Officers in the spring of 2007. The discussions were part of a larger project examining education and training for probation practice. Views were expressed in the focus groups concerning the need to balance probation practice between community safety and addressing offender needs (criminogenic and/or more traditional welfare needs), and an understanding of risk assessment and its relationship to case management within a context perceived by some as emphasising community safety over rehabilitative considerations.

Keywords: Risk, need, risk assessment, Probation, Probation Officers, supervision, offender management, rehabilitation, welfare, attitudes, roles.

The history of the introduction and adoption of a risk needs assessment framework for management of offenders in custody and the community across the English-speaking world has been well documented (Bonta and Wormith, 2008; Mair, 2004). Its adoption into criminal justice systems has meant that actuarially based risk assessment has become the primary logic for allocation of resources, the method to determine levels and types of intervention, the extent of surveillance monitoring of offenders, and the release from prison for those with custodial sentences. Two schools of thought have emerged to explain the rise of risk-based correctional practice: it parallels a rise in punitiveness represented by an

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increase in surveillance as part of transition to a 'risk society' (Feeley and Simon, 1992); it offers hope for a return to a form of rehabilitation that presents an effective way of reducing reoffending and therefore making society safer (Andrews and Bonta, 2010).

As the importance of risk assessment has grown, research on its use by Probation Officers has become the subject of study. The connection between risk assessment and other areas of work with offenders was addressed in Kemshall's major study of 1998. She located risk assessment within the larger parameters of practice complete with the various value imperatives that exist in working with offenders. Her work suggested that the use of risk assessment takes place within a context where people are required to make decisions every day about managing caseloads, and allocating time and other resources. Some of the data from her study led to the following observation:

Technical risk assessment instruments appear to resolve the issue of desirable practice ... by obscuring value choices behind checklists and weighting systems. The choices and weightings become self-evident, i.e. generated by the 'objective' application of the instrument itself, thereby reducing the reasoning of workers and the scope for moral debate. (Kemshall, 1998, p. 142)

What much of the research has shown is that Probation Officers and others involved in the management of offenders are inclined to see risk assessment as a factor, but certainly not the only factor, in the development of a case management/supervision plan. Robinson's findings from her research (2002) in two English probation areas summarize the issue this way:

While LSI-R [the Level of Service Inventory – Revised] was on the whole seen as a useful tool, scores derived from it were thought to be of limited value in making decisions about either the level or content of supervision in relation to individual offenders. That is, scores were universally viewed as a supplement to rather than a substitute for professional judgement and the consensus among practitioners was summarized by one officer's comment, that 'it's not always as simple as a figure'. (p. 16)

Research comparing Probation Officers in Leicestershire and Manitoba found similar sentiments in the two locations (Bracken, 2003). There was

a reluctance on the part of some Probation Officers in both services to see an actuarially based assessment score as all that was needed to make judgements about how to supervise an offender in the community. It should be noted that their respective services had not suggested this either.

Fitzgibbon's more recent research (2007) on probation officers' use of the OASys risk assessment instrument in England and Wales found that the practice context was particularly relevant to how well the instrument was used. In situations of 'increasing resource and manpower constraints' there was concern about possible over-prediction of risk and dangerousness. However, 'far better risk assessments were undertaken when a consistent and sustained relationship had been built up' (p. 95) with the Probation Officer doing the assessment.

The emphasis on risk assessment as a foundation to contemporary probation practice is thought by some to be a reflection of a more focused approach to surveillance and control. A 'new punitiveness' has arisen in the past 25 years or more, which means that contemporary penal practices are 'obeying a different set of values and cultural expectations from those that had previously provided the frame of reference under conditions of welfare state/penal modernity' (Pratt, Brown, Brown, Hallsworth and Morrison, 2005, pp. xv-xvi). Garland's contention (2000) is that this has grown out of 'high crime societies' wherein 'high crime rates became a normal social fact [and] penal welfare solutions fell into disrepute' (p. 348) while the response to crime included 'more expressive and intensive modes of policing and punishment that purports to convey public sentiment and the full force of state authority' (p. 349). Irish researchers have suggested that a combination of media interest and political adoption of phrases like 'war on crime' and 'zero tolerance' (O'Donnell and O'Sullivan, 2001, 2003) were representative of this new punitiveness, although it seems that Ireland has managed to avoid much of both the inflated rhetoric and punitive policy developments more common in the USA and England and Wales (Kilcommins, O'Donnell, O'Sullivan and Vaughan, 2004).

For Probation Officers, a more punitive approach may play out in the way in which a community sanction is perceived in relation to the findings of a risk assessment. In a Canadian study by Bonta, Rugge, Sedo and Coles (2004), the mandate of the court as reflected for example in the conditions imposed as part of a probation order took precedence in the eyes of Probation Officers over the direction a risk assessment might

provide for a supervision plan. Irrespective of what an actuarial assessment determined about the likelihood of reoffending, and therefore possibly the level and intensity of supervision and intervention, Probation Officers were more likely to pay attention to a court order in terms of supervision of an offender. The authors found that ‘this “mandate driven” case management restricts the probation officer’s own assessment of the offender’s needs and could potentially interfere with effective case management’ (Bonta et al., 2004, p. 28; see also Bonta, Rugge, Scott, Bourgon and Yessine, 2008). Research with Probation Officers’ supervision of conditional sentences (a form of house arrest) (Bracken, 2007) supported Bonta et al.’s findings of a few years earlier with respect to the imperative of a court-mandated level and intensity of supervision/surveillance as the major focus of case management. In that research, Probation Officers interviewed made it clear that irrespective of their own finding of the risk of reoffending, the sentence of the court dictated restrictions on movement, frequency of reporting and ability to participate in community-based programmes. Addressing criminogenic needs (and other needs for that matter) was clearly secondary.

The research on which this paper is based was part of a larger study on educational preparation and training for working with offenders. It was comparative in nature, and examined criminal justice social work in Scotland and Ireland and to a lesser extent in Canada.

Four focus groups were held, two in Dublin and two in Cork, in February 2007. Probation Officers from the Dublin North and South regions participated in the two Dublin sessions. The Cork sessions included participants from offices in the southwest, southeast and midlands regions of the Probation Service. A total of 30 Probation Officers participated in the four focus groups. Of those, 23 had a social work qualification either at the diploma level (NQSW, CQSW, etc.) or the Master’s level. Four of these were from Scotland or England, and two were from Northern Ireland. The rest had taken their social work training and/or Master’s degree at UCD, UCC or Trinity College. The seven without a social work qualification all had degrees in social science, sociology, psychology or criminology. Experience prior to coming into the service was extensive, and included child care, hospital work, working with youth, with addictions, etc.

As part of the focus group discussions, questions were asked about the impact of a priority on community safety in the Service and also in society generally, on establishing a relationship with the offender under

supervision, on undertaking what might be termed 'welfare work' (non-criminogenic need issues) with offenders, and the use of risk assessment as it relates to practice generally and in particular the development of a supervision plan.

Several themes emerged in the analysis of the data of the four groups on questions related to establishing a relationship and dealing with rehabilitative work. The major ones were: the change in societal attitudes about working with offenders, often reflected in a change in the language used in corrections work (community safety/public protection agenda) as part of a push for more punishment and less rehabilitation; the fear that developments in probation practice were being driven by changes elsewhere, especially the UK and Canada; the fear that a strong community safety agenda could imply a de-skilling in the sense that establishing a good relationship with the offender as a foundation to more rehabilitative or 'welfare' work would be devalued, and finally the need to find the balance between the control (compliance, supervision of risk, etc.) and the care elements (building the relationship, including the family and environmental factors, etc.).

If we assume a community safety/public protection agenda to refer to 'public order, the management of fear and insecurity, inter-ethnic violence, routine violent and pecuniary crimes against the person, personal and public property, women, children and elderly' (Stenson, 2005, p. 265, quoted in Croall, 2009, p. 166) and it guided public policy with respect to management of offenders, then assessing the risk of reoffending or risk of dangerousness would be a priority. The comments below do not reflect a particularly negative attitude towards the direction in which society had apparently moved, but rather are a commentary on what has happened, and resonate more with a public perception (often as portrayed in the media), and the implications this had on how the Service was responding rather than an explicit criticism of the service itself.

But I think it affects the broader shift in society as well in that, you know, the communities that probation clients typically but not always come from, are increasingly marginalised.

And definitely the service is going towards looking at sort of the issue of community safety and sort of our whole assessment process is going more towards looking at, like is this person, does this person pose a risk to the

community? And that is the basis of which our work is now being based on, so definitely.

The literature on effective use of risk assessment points to the need for a structured approach through an actuarially based risk assessment process, which could ideally lead to effective case management (Harris, 2006; Gottfredson and Moriarty, 2006). Some in the groups, however, saw a 'structured approach' in terms of a highly standardized process and on a path that for some devalued professional skills in working with offenders but for others was a positive approach.

But that is what we were talking about in terms of in practice how useful is that? Is that meant to be a very useful thing in terms of really reducing risk, or are we ticking boxes here? That is the question we have to ask ourselves ... I like the fact that the risk assessment is based on that tool rather than on our own intuition and our own feelings.

But now it's almost like, you write a report and you do the risk assessment, and it will be then where else will you shove that person off to, you know ... The one bit we have held on to is that we still are the people who write reports for judges. But really anybody else can do everything else.

Others, while worried that the perceived de-skilling processes in England and Wales could come to Ireland if people do not remain vigilant, at least recognized that they were not, as of 2007, in Ireland yet.

I think it's a concern that we have in this jurisdiction that we might go the way they have gone across the water, a worry of this tick-boxing.

I think everyone here has been in a situation where a client has come in and there has been a crisis, you know, and we still have that scope, that freedom [to make decisions on how to manage the case], like I'd say in England that's been ... That's been eroded quite a bit, you know.

Several themes emerged from the discussions on risk as part of practice. Risk as an organizing principle in practice was juxtaposed with the concept of identified need – in terms not of criminogenic need, but rather of needs within a welfare context. It was clear that the emphasis

on risk in practice, to some practitioners in the focus groups, meant there was a danger that welfare needs an offender had could be at best minimized and at worst abandoned. To others, as seen in the third person quoted below, there should be a direct connection between criminogenic and other needs in order for these other needs to be addressed within a criminal justice context.

An LSI acknowledges that somebody lives in a high-crime neighbourhood. An LSI acknowledges that somebody has poor education. It acknowledges all the aspects of marginalisation that you are talking about, but it acknowledges them in a very kind of dry way, it's kind of detached from a social justice agenda, but they are there as part of the evidence base.

Perhaps a person, while they may be low risk, they have a lot of needs, now that does not mean to say that you drag them into criminal justice system, but you don't just send them on their merry way.

I think I'd only work on those welfare issues if I felt that they would contribute to or for criminal offending, as opposed to just working with them because they are welfare issues.

The discussion on risk as a key component in developing supervision plans and just generally guiding intervention brought out two contrasting views. One view saw risk assessment in a positive light, as a major factor in developing a clear focus of intervention and supervision. The other view saw the technology of risk assessment, and in particular the completion of an assessment form, as part of a process that reduced the role of professional judgement. Supporters of the two views were not necessarily in open conflict, and in many cases people expressed both views. The consensus was not inconsistent with the literature in that those in the groups saw risk assessment as a significant tool with which to develop a strategy of management and intervention, but for many it was not the only available method. The mix of 'gut instinct' and broader view of practice experience, social context, etc. gave examples of how practitioners try to integrate risk scores with other factors in developing an approach to managing a case.

I think that's where your, sort of gut or your instincts says, I'm not so sure about this, a person, you add up all their score, and if the score says low

risk, but your instinct says there's something here I can't quite put my finger on, and I reckon this person is, if there is no intervention they will be back.

I sort of fall back on my own broader assessment ... make it in a sort of comprehensive assessment, of strengths as well as problems, and who the person has on their social network and what they aspire for themselves, and the whole thing of where I work and social control and society, and all those bits have to come into the picture.

The quotes below take the integration one or two steps further, showing how the use of a risk score may assist in developing an intervention plan, and in a practical way as providing support for decisions taken in a pre-sentence report.

Now the next stage is actually saying well that same framework [risk assessment] that helps you to have better clarity around your recommendation and the way forward with the client can be used to guide your intervention plan.

Now as I say, you'd know what areas to focus on instinctively, so it's in addition to that way, it [the LSI-R] isn't the be-all and end-all but it's quite a useful additional tool, and again it makes our pre-sentence reports more defensible in court if we're ever challenged by solicitors. Now to date, I've never been challenged on an LSI-R in court, but it's a good back-up to have, I think.

The final two quotes below reflect the differences between two positions: the risk assessment as a replacement for human judgement with its potential for bias, and risk assessment as an aid to human judgement.

I think it's very useful to use it with the client and it's very focused ... I personally find it very good. I like the fact that the risk assessment is based on that tool rather than on our own intuition and our own feelings.

I think the use of the LSI-R, I mean I feel very strongly that we should look on it as a tool, as part of our, it is our clinical judgement, you know, because really even to fill it out properly, you're not going to be able to fill it out properly unless you have the skills to engage with somebody and to get the information ... But in the end, I decide what the risk is. The piece of paper doesn't.

Conclusion

Risk decision making is a 'situated activity,' that is located in a particular social setting and embedded in the sense making practices that risk assessors use to navigate the indeterminate nature of their assessments, and subject to many 'it depends' ... Risk is not self-evident but is arrived at through a complex process of reasoning. (Kemshall, 1998, p. 141)

The comments of the Probation Officers in the four focus groups would suggest that Kemshall's finding about risk assessment being a 'situated activity' is true for Irish Probation Officers as well. The concern about the impact of a publicly expressed punitive approach to community safety on the work of the Service provided an important context to Probation practice in general, and risk assessment as an integral part of that practice in particular.

Another piece of the particular social setting and the sense-making practices of the Probation Officers who participated in the focus groups was the tension between dealing with needs in the more traditional sense of requirements of survival and opportunities for a good life, and the sense of needs as criminogenic and therefore a major focus of work with an offender.

Traditional welfare needs are often considered within a framework of social structural issues that are significant obstacles to these needs being met, and demand both individual and societal change. Criminogenic needs, on the other hand, are most frequently cast in terms of individual deficiencies, disconnecting the offender from her/his social context. For many the LSI-R is capable of identifying the individual needs that arise from, for example, social deprivation. However, individualized risk assessment was seen by many in the groups as being divorced from a 'social justice' context. This led some to ask where the influence of the offender's social context fits in professional practice situations.

In terms of everyday practice, it would seem that most Probation Officers in the focus groups would agree with Robinson's conclusion from her examination of the use of risk assessment in two English probation areas. For them, 'while risk assessment has a valid and useful contribution to make, it is best regarded as a starting point, or as one of a number of factors to be considered in the decision-making process' (Robinson, 2003) This would seem to go somewhat beyond the

recognition of the need for clinical skills expressed by Harris (2006) and Gottfredson and Moriarty (2006). For them, clinical skills are necessary to gather the right information so as to get a more accurate actuarial risk score. But the data here would suggest that Probation Officers would prefer to go one step further in the sense that their experience and analysis of other factors provide them with a more varied 'set of tools' than simply the LSI-R.

The issue may be to work on, 'the next stage', as one group member said, which is to use the information gathered, with the risk assessment helping to structure that gathering and analysis 'to guide your intervention plan'. The balance one develops between what actuarial assessment provides – based in part on the skill of the person completing the assessment – in terms of identifying individual needs, and the contextual information one gathers in other ways about an offender, to use in developing a supervision/case management plan, may be one of the keys to effective practice.

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