

# Irish Probation Journal

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

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October 2015



An tSeirbhís Phromhaidh  
The Probation Service



**PBNI**  
Probation Board For Northern Ireland

# Irish Probation Journal

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

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

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# Contents

Editorial	3
Building Trust and Confidence – Challenges and Opportunities for the Garda Síochána NÓIRÍN O’SULLIVAN	7
Examining the Use of Community Service Orders as Alternatives to Short Prison Sentences in Ireland KATE O’HARA and MARY ROGAN	22
Parole and Probation in Northern Ireland: Experiences and Reflections from Practice CHERYL LAMONT and CHRISTINE GLENN	47
Are the Needs of Adult Offenders with Mental Health Difficulties being met in Prisons and on Probation? LAURA COTTER	57
Research Review: The Impact of Domestic Violence on Children JOHN DEVANEY	79
Probation Practice with Non-Irish National Offenders in the Republic of Ireland DENIS C. BRACKEN	95
The Management of Serious Violent or Sexual Offenders who are Mobile across the European Union: The Challenge of Mobile Offenders SARAH HILDER and HAZEL KEMSHALL	113

The Sector for Probation in the Republic of Croatia JANA ŠPERO	131
Community Return: A Unique Opportunity GERRY MCNALLY and ANDREW BRENNAN	141
The Representation of Offending Women in the Irish Press: A Content Analysis LYNSEY BLACK	160
Literacy in the Irish Reformatory School MAIGHREAD TOBIN	179
The Greentown Crime Network: Introducing its Cast of Principal Actors SEAN REDMOND	205
The Development of Restorative Practice with Adult Offenders in the Probation Board for Northern Ireland CHRISTINE HUNTER	229
Building Bridges: An Independent Evaluation of Le Chéile's Restorative Justice Project. Research Findings MARTIN QUIGLEY, AGNIESZKA MARTYNOWICZ, CAROLINE GARDNER	241
Court Report	258
Book Reviews	261

## Editorial

Welcome to the twelfth edition of the *Irish Probation Journal*. The *Irish Probation Journal*, now in its second decade, is an established and respected publisher of research and evaluation, policy and practice developments and critical analysis with a growing international readership and reputation.

The *Irish Probation Journal* seeks to ensure that each edition features a range of research studies, practice reports, policy commentaries and book reviews of relevance and interest to practitioners, policymakers, academics, legislators and students in the broad criminal justice and social policy fields. The broad range of contributions in this edition will, we hope, demonstrate that the *Irish Probation Journal* continues to achieve that objective.

Of particular note in this edition of the *Irish Probation Journal* is the number of valuable papers on criminal justice themes and issues which have not previously attracted the examination and study in Ireland that they merit. These include papers on sentencing, supervision of non-Irish nationals, working with offenders with mental illness, domestic violence, the operation of criminal networks and the historical role of literacy and education in Irish reformatory schools.

Garda Commissioner Nóirín O'Sullivan delivered the 8th Martin Tansey Memorial Lecture. Her paper features a clear focus on innovation, collaboration and partnership for An Garda Síochána. The Commissioner outlines her vision and programme for the transformation of An Garda Síochána to ensure a modern and professional culture founded on openness and transparency; good governance and robust policy oversight.

Kate O'Hara and Dr Mary Rogan present findings on sentencing patterns in Irish courts from a ground-breaking study on outcomes of short prison sentences and Community Service Orders. In the first study of its kind, the authors match offender characteristics across the groups, analyse the use of the sanctions and explore sentencing patterns. The

findings have value and relevance for sentencers and practitioners as well as policymakers and legislators as the debate about the use of short prison sentences continues.

Recall to custody of offenders on licence in Northern Ireland is considered by Cheryl Lamont and Christine Glenn. They outline the changes and impact of the new sentencing framework put in place by the Criminal Justice Order 2008 as well as considering recall data and the Department of Justice in Northern Ireland Review looking at reasons for recall. There is an emphasis on collaboration and shared learning to ensure that both the PBNI and Parole Commissioners continue to develop practice in this critical and sensitive task.

Laura Cotter's fascinating study explores the prevalence of mental illness amongst offenders in the prison and probation populations in the Republic of Ireland, a neglected but very significant topic. She examines the treatment of mentally ill offenders in prison and under community supervision, and critically reviews recent policy and practice developments. Drawing on international literature she makes proposals for the development of probation policy and practice in this important and sensitive field.

In his review of research on the prevalence and impact of domestic violence on children, John Devaney provides evidence to inform how professionals should respond to children's needs to best provide support and ensure their safety.

Denis Bracken, in a follow-up to his insightful study 'Probation Practice with Travellers' in the *Irish Probation Journal 2014*, reports on his study on practice with probationers from minority groups, in particular those from different cultural and ethnic backgrounds and discusses his findings.

In a timely article in this era of freedom of movement across borders in Europe Sarah Hilder and Hazel Kemshall report on an EU project examining the use of existing information exchange mechanisms and the monitoring, management and tracking systems available to Member States for use with serious violent or sexual offenders who travel across Europe.

Staying with the European theme, Jana Špero tells us of the relatively recent development of probation in Croatia, some of the particular challenges arising and also the energy and commitment Probation Officers are contributing to the reduction of offending and enhancing of public safety in Croatia.

Community Return is a unique innovative programme developed in Ireland which combines supervised release, resettlement after custody and community service to provide better resettlement outcomes and reduce the prison population. Gerry McNally and Andrew Brennan describe the development and implementation of the Community Return Programme, the results of a descriptive evaluation of its first twenty-six months, discuss key issues arising and look to the future of the Community Return Programme.

Lynsey Black examines the representation of offending women in Irish newspapers. She investigates how reports of offending women are constructed around a binary of 'good' and 'bad' and identifies how the detrimental effects of crime reporting extend beyond the prison and reinforce societal stereotypes which diminish all women.

Investigation of the effect of residential institutions over the last century in Ireland on the children and young adult residents has revealed serious allegations of institutionalised abuse and neglect over many years. Education in residential schools and other institutions has received little attention. Maighread Tobin examines literacy assessment and education in the Reformatory and Industrial Schools, the absence of detailed oversight and the consequences for the child residents in the care of the State.

In an innovative study Sean Redmond provides a new insight into the operation of criminal networks in Ireland and, in particular, their influence on children who become engaged in network activities. He explores the role of 'network' as an aggravating factor in influencing the career paths of children involved in criminal behaviour and argues that understanding of such involvement is a critical element for policy makers and practitioners in seeking solutions.

Christine Hunter looks at the development of restorative justice in Northern Ireland and considers how to enhance restorative practice for adult offenders in that jurisdiction. Continuing the restorative justice theme, Martin Quigley, Agnieszka Martynowicz, and Caroline Gardner report on their independent evaluation of Le Chéile's Restorative Justice Project, Ireland's first and only non-statutory youth restorative justice service.

This year, for the first time, the *Irish Probation Journal* includes a report on an important judgment at the Northern Ireland Court of Appeal which impacts directly on the work of the Probation Board for Northern Ireland in the application of risk assessment. The *Irish Probation Journal* will, in

future editions, include reports on court decisions and judgments in Ireland and in other jurisdictions which have relevance and import for probation practice, where available. If readers are aware of judgments or decisions, the *Irish Probation Journal* will welcome notice of such judgments or decisions and submissions by authors.

In each edition the *Irish Probation Journal* seeks to include reviews of significant publications of interest and relevance. This year we have three valuable reviews of important books which we anticipate will promote discussion and debate as well as contributing to understanding and practice. The *Irish Probation Journal* appreciates the contribution of reviewers in this and previous editions, invites books for review and welcomes review submissions for consideration.

Innovation, collaboration and effective partnership working permeate many of the contributions in this edition of the *Irish Probation Journal*. Co-operation among the criminal justice agencies as well as with statutory bodies and communities is increasingly being acknowledged as essential in the delivery of effective interventions. The engagement of the person as active participant in change is recognised as critical in the achievement of positive outcomes. The *Irish Probation Journal* is committed to encouraging and supporting development by providing a forum for research and evaluation, sharing practice, fostering innovation and promoting dialogue in criminal justice.

Gerry McNally  
The Probation Service

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The Probation Board for Northern Ireland

# Building Trust and Confidence – Challenges and Opportunities for the Garda Síochána<sup>1</sup>

Nóirín O’Sullivan<sup>2</sup>

**Summary:** This paper, presented at the 8th Martin Tansey Memorial Lecture in April 2015, outlines the Garda Commissioner’s vision for An Garda Síochána and the programme for the transformation of An Garda Síochána to ensure a modern and professional culture founded on openness and transparency, good governance and robust policy oversight. Focusing on An Garda Síochána as a police service, its relationships with communities and building on the strengths of community policing, the paper describes the commitment of An Garda Síochána to respond to an increasingly diverse Ireland with enthusiasm as a human rights centred, world-class service.

**Keywords:** An Garda Síochána, police service, Ireland, community policing, transformation, change, human rights, victims, diversity, governance, leadership, organisational culture.

It is an honour and a privilege for me to have been invited to deliver the 8th Martin Tansey Memorial Lecture for the Association for Criminal Justice Research and Development (ACJRD).

The title of my talk this evening is ‘Building trust and confidence – challenges and opportunities for An Garda Síochána’.

I am mindful that we are here tonight in honour of Martin Tansey. He was a huge supporter of criminal justice initiatives such as the Juvenile Liaison Scheme.

The Garda Juvenile Liaison Scheme, established in October 1963, is just over fifty years in existence and was originally modelled on the Liverpool City Police scheme.

<sup>1</sup> This paper comprises the text of the 8th Annual Martin Tansey Memorial Lecture sponsored by the Association for Criminal Justice Research and Development delivered at the Criminal Courts of Justice Complex, Dublin on 1 April 2015.

<sup>2</sup> Nóirín O’Sullivan is Commissioner of An Garda Síochána, the national police service of Ireland. Email: commissioner@garda.ie, website: www.garda.ie

1963 in Ireland saw a rise in crime committed by juveniles and resulted in an inter-departmental committee being formed which made recommendations to deal with juvenile crime. The JLO scheme had no statutory legal origins and it was an extension of the common legal principle of police discretion. The second inter-departmental review in the late 1990s and early 2000 and the Children Act 2001 placed the JLO scheme on a statutory footing. Part IV of the Act introduced the Diversion Programme.

The objective of the Diversion Programme is to divert young people from further offending.

It has been described as the 'jewel in the crown' of the Irish criminal justice system and it continues to be one of our most celebrated interventions. Martin Tansey is described as a persistent advocate of community sanctions, where the justice system worked with the offender to give him/her a second chance.

As I indicated at my address to the Oireachtas Justice Defence and Equality Committee<sup>3</sup> on Wednesday last, the last few years have been very challenging for An Garda Síochána. Like all public sector bodies, we have had to do more with less. We have also learnt some difficult lessons, and we are determined to build on our strengths such as the professionalism and dedication of our people to provide the best possible policing service to the communities we serve.

The invitation to address you this evening offered me the chance to set aside – albeit briefly – the 'little round of deeds and days' which occupy the week of a Garda Commissioner and, instead, to stand back and look at an organisation with a proud history, a complex present and a future filled with change and opportunity.

We, in An Garda Síochána, are committed to providing a policing and security service with the objectives of preserving peace and public order, protecting life and property, vindicating human rights, protecting the security of the State, preventing crime, bringing criminals to justice, including detecting and investigating crime, and regulating and controlling road traffic and improving road safety.

An Garda Síochána has a long-established tradition of fostering and developing close relationships within the communities it serves. The trust and integrity which has been built up between An Garda Síochána and the

<sup>3</sup> Joint Committee on Justice, Defence and Equality, Wednesday, 25 March 2015, Annual Policing Plan 2015: Garda Commissioner, available at [www.oireachtas.ie](http://www.oireachtas.ie)

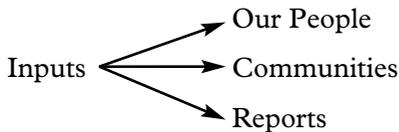
public is largely due to our proactive community engagement strategies.

Building and sustaining positive partnerships with all of our community stakeholders is the lifeblood of effective policing. In this regard, I believe that the concept of ‘community policing’ offers excellent potential for An Garda Síochána to optimise its delivery of an accountable, transparent and professional policing service to the people of Ireland.

I am committed to ensuring that we build on the strong ‘ethos’ of ‘community policing’ instilling a sense of community in all of our people, which will result in an increased level of community partnerships, a more visible Garda presence and a reduction in crime and the fear of crime in our communities.

Our 2015 Policing Plan, ‘Renewing the Past, Creating the Future’ focuses on how we are going to continue to discharge these duties while at the same time commencing on our journey of transformation.

### **Transformation Programme**



Transformation for An Garda Síochána is not just about change. It is about reforming An Garda Síochána to ensure a modern and professional culture which is founded on openness and transparency, good governance and robust policy oversight.

### **The drivers of transformation**

Recent reports<sup>4</sup> have found certain deficiencies in the way An Garda Síochána carries out its work. To address these, a significant amount of time has been spent listening and learning. Some of the work undertaken includes:

- 700 recommendations from forty-one key inputs were reviewed and distilled into unique and overlapping recommendations.

<sup>4</sup> Report of the Garda Síochána Inspectorate on Crime Investigation 2014, available at [www.gsinspec.ie](http://www.gsinspec.ie)

- The recommendations were collated into a logical Programme of Work and fifty-eight unique initiatives were identified.
- Initiatives were categorised into three distinct areas: ICT, HR and Strategy.
- The programme must be delivered as a whole due to the vast amount of interdependencies between each initiative.
- Held Internal Staff Survey and face-to-face meetings.
- Quarterly Public Attitude Survey.
- Feedback from key internal and external stakeholders.
- Studied international policing change programmes in UK, US, New Zealand and Australian police services.
- A Strategic Transformation Office (STO) has been established to drive the successful implementation of Policing 2020 and Beyond. This office will plan, manage and co-ordinate the programme from design through assessing the benefits post-implementation. The STO will ensure a professional approach is applied, rigor and quality are embedded and successful implementation is achieved. The STO are working to finalise a five year plan to implement prioritised initiatives on a phased basis by 2020. Phase 1 is currently in progress and Phase 2 is in planning.
- Utilised a Strategic Spine – Risk, Compliance and Continuous Improvement Officers have been specifically assigned to ensure the initiatives are embedded in the regions, delivered consistently, specific benefits are realised and to ensure that risks/issues are highlighted and addressed.

We will also invest in our people – the right people in the right place at the right time – and ensure that a high regard for human rights led policing is instilled in all of our members.

We have started this process with 299 students in the Garda College with new training programmes and supports. They've received training that is innovative, unique and up to the minute. Training grounded in the day-to-day realities of policing.

On human rights, and reflecting on my earlier days as a young uniformed Garda and later on as a Drug Squad detective, I am conscious that in the course of every investigation – every search, every arrest, every contact with suspects, witnesses and victims and their respective families – that by engaging in a simple respectful and fair manner, respecting their disposition in life, that I was upholding these human rights standards.

My role was to ensure that every case I was involved in would be thoroughly investigated while at the same time ensuring that the constitutional guarantees held by every individual were adhered to.

Statistics are often assumed to be grey and boring, but one particular statistic from An Garda Síochána in the last year is the opposite.

Here it is:

Twenty-five thousand, five hundred (25,500). That's the number of applications Ireland's police service recently received for 200 Garda training positions in Templemore in the first Garda recruitment drive since 2009.

That tells us that, despite a couple of tough and defensive years, An Garda Síochána is a magnet employer. With a phenomenal reach:

- women, men
- twenty somethings and older
- applicants from Garda families and from new citizens
- from techies and athletes.

Twenty-five and a half thousand of them wanted to join the service. That's a statistic that says so much. It is a confirmation of the Minister for Justice's definition of An Garda Síochána as:

*A national body with a proven and proud track record, widely trusted to do a complex and constantly evolving task.*

The statistic – when set beside the numbers actually accepted for training in Templemore – also means that the much smaller number of those accepted represents the brightest and best of an impressive cohort.

You will note that, this morning at the Association of Garda Sergeants and Inspectors Conference in Trim, Co. Meath, our Minister announced that two new groups of 125 trainees will enter the Garda College over the coming months. This cohort, coupled with the 299 already in the system will ensure that the heartbeat of policing is reignited.

When they throw their caps in the air at the passing out ceremony, it will mark their joining the ranks of a service immeasurably different – and measurably the same – as the one I joined in 1981.

That moment with the flying caps. That moment – year after year, generation after generation – is filled with a powerful sense of pride, of collegiality, of belonging to something special, something that matters.

I joined an organisation I knew was special and that did something that mattered. At that time, the organisation included women but had no idea what to do with them. The only clarity was that women shouldn't be put in 'operationally dangerous' jobs. The organisation held little pools of unexamined protectionism – kindly meant, but restrictive of career-building.

I had a throwback to this recently when I watched footage of Gardaí at water protests. They were being pushed, jostled, challenged and abused both at the protest scenes and later on social media. Some of them were men. Many were women.

We've come a long way ... in the make-up of the service and in a whole plethora of other ways.

But we have also stayed the same. The pride is there. The sense of being at a point in a continuum of achievement, contribution and – yes, sacrifice. Because the reality is that today, just as was true fifty or forty or thirty years ago, sworn members of An Garda Síochána put their lives on the line each and every day.

The reality is that today, just as was true in the past, individual Gardaí go above and beyond the call of duty in a way that rarely gets noticed. But when it does get noticed, it makes a significant impact on the reality and the perception. In just one recent instance, two anglers, in the spirit of their civic duty, reported suspicious items to their local Garda in Roundwood.

The Garda walked into a reservoir to retrieve abandoned items glinting in the shallow water – and he changed history.

He contributed to justice for one individual, and he contributed to how the police service is viewed, not least because he didn't see himself as exceptional. As the Garda put it himself, versions of what he did were undertaken every day in locations right around the country.

It's what Guards do. Likewise, and not to diminish the excellent input of the full investigation team, the meticulous work undertaken by one of our civilian analysts Sarah Skedd is worthy of note and again has contributed enormously to positive public perception. It represented a true fusion of old fashioned diligent police work with modern forensic and analytical tools and the presentation of complex evidence to the jury in an understanding way.

The fact that these interventions became so public turned them into major contributions to the retrieval of trust that had been impacted.

It is painful to acknowledge loss of trust, but it is a reality.

Without trust, our job's impossible. That's why, since the day I became Commissioner, I've welcomed the opportunity to discuss the future of An Garda Síochána with anyone – group or individual – who wants to inform our thinking.

Now, whilst we can make changes, we need to ensure that they have a sustained impact.

And furthermore, when we set our priorities to service the community, we need to ensure we hear the voice of the community. We need to be able to measure the impact of our policies and the demand of the communities.

The data we receive from victims is the report of the actual crime. Whilst this is important information for any subsequent investigation it tells us little about the experience of the victim. Indeed, over the last few years there have been no regular mechanisms by which to systematically judge the public and victims' perceptions and experience of crime.

Furthermore, there have been no regular mechanisms for us to systematically measure the crime issues that the public want the organisation to focus on.

To fix this, last year we launched a new Public Attitudes Survey. It's designed so that:

- It runs on a quarterly basis.
- We measure what people feel our priorities should be, perceptions and experiences of crime, as well as perceptions and experiences of An Garda Síochána.
- We do this by interviewing 1,500 respondents. We do this across the country and aim for a nationally representative sample of the Irish population.
- Our aim in the first year is to build up the survey to cover four quarters (6,000 respondents) and then look for statistically significant change on a rolling quarterly basis. We will be able to do this by Q4 2015.

This will provide us a means of not only assessing individuals' perceptions of us as an organisation, but to measure change on an on-going basis in satisfaction, confidence and trust in the organisation.

We will use this survey to assess and track whether we are successful in the public view and the victim's experiences.

We have already had some indicative findings from the first survey run in Q4 2014.

There have been some interesting insights into how people have a different view of crime levels nationally versus in their locality and the potential impact this has on how they feel we are delivering community policing.

When asked what we should focus on, the emphasis was on crimes against the person: assaults, sexual offences and robberies. Indeed, human trafficking offences also scored high.

Respondents on the whole want increased visibility, whether working with the local community or foot and bike patrols.

These are some indicative findings – we will obviously wait for the sample size to increase for us to have greater confidence in the findings – but it is clear that there are challenges we must translate into opportunities to improve the service we provide. An opportunity to transform into a modern, effective, twenty-first century policing service.

But before anybody gets the idea that I'm criticising previous administrations, I'm not. They met the needs of their time. The needs of our time are different, and we've learned that the hard way.

Sometimes, change comes gradually, and sometimes – as in, right now – it happens explosively. When it happens explosively, then the task is to be out in front of reform, to drive change from within, not just accept it under duress.

This means taking control of our future, while welcoming stronger oversight from the proposed Independent Authority, as well as GSOC and the Garda Inspectorate. Equally important, it means remaining accountable to the communities we serve.

It means building on what is good in our culture – and there's much that's good about our culture – our esprit de corps, our community ethos, our dedication to duty and public service that are essential to our ability to delivering policing – while recognising and exorcising the negative elements of that culture – our insularity, our deafness to external criticism, and our instinctive rejection of internal dissent.

We, An Garda Síochána, are proud of what we do and where we have come from. We are ready to step up to becoming a human rights centred, world-class police service.

In the legal context, I am very much aware that effective policing must ensure that all actions are taken with due consideration of the provisions

of the Constitution, the Garda Síochána Act 2005, Irish statute and common law, the European Convention on Human Rights, European Convention on Human Rights Act 2003 and the United Nations Convention against Torture. An Garda Síochána have recognised that external independent advice on human rights is essential.

The Strategic Human Rights Advisory Committee (SHRAC) plays a valuable role in providing advice both to me and Garda Management in the context of the following:

- developing a human rights framework for monitoring actions of An Garda Síochána
- progressing human rights compliance through training, learning and development
- human rights proofing and auditing of policies, procedures and guidelines.

I mentioned the Garda Síochána Act 2005 which was a significant legislative initiative that brought clarity to the management and oversight of policing in this country. But it is legislation that's approaching its tenth anniversary.

Ireland has changed, changed utterly in those ten years. Economically. Demographically. In terms of diversity, expectation – everything. The Act is currently being revised to reflect these changes.

Bottom line: the Act needs revising and a key element of that revision is the establishment of an Independent Policing Authority.

The way I envisage it working is that the Garda Commissioner would be accountable to the Policing Authority in respect of all policing matters.

And on national security, the Commissioner would report to the Minister, the Oireachtas and the Government. This is a model used in a number of other countries, particularly in Scandinavia.

Whatever model proves best we'll implement. An Garda Síochána is not standing still. We are making our own changes for the better.

As I outlined, we are finalising our transformation programme. A comprehensive five year plan, incorporating a number of inter-dependent initiatives, prioritised on the basis of community impact.

We have commenced implementation across a number of initiatives – most importantly, our attitude and approach to victims.

As the Garda Inspectorate's recent report and surveys of victims of crime have found, An Garda Síochána generally provides a good service

to victims of crime, but many felt disappointed by the lack of information and consistency in the delivery of the service. I set about ensuring the implementation of a better and more consistent victim support service within An Garda Síochána.

The implementation of new Divisional Victim Service Centres will provide a central point of contact for any questions, issues or problems victims of crime are experiencing as their case is being investigated and moves through the criminal justice system.

The United Nations and the Parliament and Council of Europe have acknowledged crime victims as a group deserving of rights and as a result the EU Directive 2012/29/EU is being transposed into domestic legislation in November 2015.

It will establish the minimum standards for the rights, support and protection of victims of crime.

I am confident that An Garda Síochána will be fully compliant with this Directive to establish the minimum standards for the rights, support and protection for victims of crime.

As such, victims of crime will be placed at the centre of An Garda Síochána and I am committed to providing a respectful, reassuring, responsive and reliable victim centred service addressing the needs and expectations of all victims of crime. This work will be conducted in partnership with community groups, statutory agencies and voluntary organisations.

This Divisional Victim Service is in addition to the service provided by all operational members who are responsible for ensuring the delivery of an honest, accountable, respectful and professional Garda service to all victims of crime in accordance with legislation and Garda policy, regardless of their background or social status. Gardaí will be conscious of the protection needs of victims at all times, particularly vulnerable victims.

I referred earlier to how Ireland has changed so much in the last ten years. We are an increasingly diverse society.

The Ireland v Poland football international at the Aviva Stadium last Sunday bears testimony to this change, with the Polish team appearing to almost be playing a 'home game'.

In policing such a diverse Ireland we must remember that that difference can lead to discrimination. To this end, An Garda Síochána understands the need to work sensitively with the vulnerabilities attached to the nine strands of diversity as specified in the Equal Status Act 2000.

Society is confronted with the phenomena of intolerance in its many forms including racism and homophobia.

An Garda Síochána must be sensitive to the reality of the impact of these crimes on individual victims in the greater community. We must together treat it with the seriousness it deserves, aiming to eradicate it from society in its entirety.

An Garda Síochána's network of Ethnic Liaison Officers (ELO) was established to provide a sensitive and sensitised service to members of minority communities based on the understanding of their needs and fears as potential victims of racism and hate crime, and most importantly in relation to their subsequent contact with the Gardaí.

ELOs are appointed nationwide and their main role is to instigate and maintain contact with local community groups and employ innovative means to break down barriers in assisting the more marginalised in our society to gain access to Garda services.

Notwithstanding the fact that we are extremely attentive to the vulnerabilities pertaining to the very fact of being a member of a minority group, we realise the necessity for maintaining constant consultation with groups in order to be acquainted with any developments that require professional Garda attention.

Our members endeavour to be vigilant in relation to the everyday concerns of minorities, which include: fear of violence, ridicule and discrimination by society; fear of reporting hate/racist incidents because of perceptions of ridicule, discrimination and inaction.

I am aware that many of these concerns emanate from the history of discrimination suffered by minorities worldwide. These are some of the real concerns that I hope that our ELOs can continue to assist minority individuals to overcome while at the same time encouraging the reporting of any crime, racially motivated or otherwise, to An Garda Síochána.

The Garda Racial Intercultural and Diversity Office (GRIDO) established in 2000 continues to promote Garda policies which serve to integrate minority ethnic groups in Ireland, and which promote social inclusion, equality, diversity and participation of immigrants in the social, political and cultural life of their communities.

This is done directly through regular consultation by Garda management with minority community representatives at local level; the appointment of ELOs within every Garda district; the Garda station 'Open Day' initiative; the recruitment policy regarding members of

ethnic and cultural minorities; and the taking of steps to prevent and detect racism in Irish society.

The existence of GRIDO continues to play a vital role in endeavouring to ensure the provision by Garda staff of a quality non-discriminatory, sensitised and personalised service to minorities throughout Ireland.

I was encouraged to see representatives of various religious minorities attend our recent annual Garda Mass for Deceased Members – Hindus, Sikhs, Pentecostal, Presbyterian, Jews and Muslims gathered and prayed with us at Aughrim Street Catholic Church.

For me, to witness members of the Sunni, Shia, Ahmadiyya and Sufi Muslim sects sitting side by side during the ceremony struck me and stays with me as a display of respect and acceptance of all groups in Irish society regardless of differences – religious or otherwise.

All those present hold a stake in policing in this society through their constant engagement with An Garda Síochána.

They proffer assistance and guidance to us on what it is they want from a professional police service that enables anti-discrimination based Garda service provision.

Following the Minister's announcement this morning of additional recruitment for An Garda Síochána, I was delighted to read that the move was welcomed by the Immigrant Council of Ireland which asked us to make an effort to encourage applications from people of a migrant background.

My response – you are pushing an open door!

One of the history buffs in Garda Headquarters pointed out to me, over the past few days that the Peelian Principles – the basic tenets underpinning the British police service – were not actually developed by Sir Robert Peel, but by the police commissioners of the day. The division was clear and productive, back then:

- It was Robert Peel's job to lay down policy, to establish the mission and controls for the new service.
- It was the job of the commissioners to take that policy and drive it into understood standards and lived behaviours within the police service.

In the same way, Garda management must drive Government policy into understood standards and lived behaviours within the police service. Into what is called the 'culture' of An Garda Síochána.

Culture is how any organisation does its business. It's as simple as that.

Some of what constitutes ‘culture’ can be governed or at least informed by stated standards or mechanisms like the Protected Disclosures legislation or regulations protecting people from being bullied, harassed or victimised in the workplace.

I will certainly not tolerate bullying, harassment or intimidation of any type of any of our members.

But culture is much more than minimum standards and protection of people in the workplace.

- It’s about pride and place.
- It’s about trusting colleagues and being trusted by the people we serve.
- It’s about wanting to be, not best in class, but better than best in class, from the reserve to the topmost ranks.

That’s it, as far as I’m concerned. For as long as I serve in this role, I’ll drive ahead on all of those objectives. We cannot afford to stand still.

Our transformational plans will see significant changes in how the organisation is managed and how we deliver our service. They must meet the needs articulated by the Minister and the aspirations articulated by rank-and-file Gardaí right around this country.

They will move An Garda Síochána beyond apology to full confident delivery on a refreshed agenda.

Our mission is to stand between the citizen and chaos, guarding the peace that is essential to civilised living.

We’re out on the streets, twenty-four hours a day, seven days a week, three hundred and sixty-five days a year.

We’re stopped by tourists, we’re stopped for a chat, and we’re stopped by those in distress. We’re in constant and varied interaction with the public, all day, every day.

As a bare minimum, the public we exist to serve is entitled to a police service that treats it with respect and courtesy, not to mention dignity.

As a bare minimum, our police service must respond to an increasingly diverse Ireland with enthusiasm and openness.

One encounter at a time.

One of the oldest principles in police investigation applies here. I remember being fascinated the first time I read about Dr Edmond Locard,<sup>5</sup> the ‘Sherlock Holmes of France’.

<sup>5</sup> Dr. Edmond Locard (1877–1966).

Because – long before electron microscopes or DNA testing – Locard worked out that, as he put it, ‘Every contact leaves a trace.’

Wherever he touches, whatever he leaves, even without consciousness will serve as a silent witness against him. His fingerprints or footprints. His hair. The fibres from his clothes, the glass he breaks, the tool mark he leaves, the paint he scratches, the blood or semen he deposits or collects. All of these and more, bear mute witness against him. (Locard’s Exchange Principle<sup>6</sup>)

Locard was talking about physical evidence back at the beginning of the twentieth century. In the twenty-first century, we’ve begun to realise that, in addition to shedding fibres and cells, we shed impressions.

Locard’s assertion that ‘Every contact leaves a trace’ applies to more than the inanimate. Every contact between every member of An Garda Síochána and a member of the public leaves a trace on both sides. It’s up to us to make sure it’s a good impression.

We’re at a point in the organisation’s history where we are being given the chance to remould it. We have the personnel: over 15,000 dedicated highly professional men and women. We have a great history.

And – above all – we have the positive impetus provided by negative events. Negative events force us to stand back from what the Minister has called the ‘accretion of habits’ and re-examine ourselves and our organisation in a brutally honest way.

As a result, this is an incredibly exciting time to be leading An Garda Síochána. It’s an opportunity wrapped up in a challenge with URGENT written all over it.

Decisions made over the next few months will have repercussions for society for decades – and for the dedicated men and women of An Garda Síochána in their service of that society.

It is critical that we strike the right balance between continuity and change so that what is good about An Garda Síochána is retained, and what is not is rectified.

And that we never lose sight of the wider goal, which is to build a police service for Ireland which is quite simply the best of its kind in the world.

<sup>6</sup> Paul Kirk (1953), *Crime investigation: physical evidence and the police laboratory*, New York: Interscience Publishers, Inc.

Yes, we have also learnt some difficult lessons and we are determined to build on our strengths such as the professionalism and dedication of our people to provide the best possible policing service to the communities we serve.

We are part of what Martin Tansey described as the Criminal Justice Family, the work of which requires patience, humility, courage, an understanding that there are competing human rights, and the capacity to balance those rights.

Before I conclude, one final point.

From the day I was appointed Deputy Commissioner, I have always referred to An Garda Síochána as the Irish Police Service. I have never referred to An Garda Síochána as ‘The Force’.

Because I believe that term is a dated one, unrelated to current realities.

We are a service:

- to individuals
- to communities
- to a country.

I belong to a great organisation.

We are the Guardians of the Peace.

For now and for the future.

# Examining the Use of Community Service Orders as Alternatives to Short Prison Sentences in Ireland

Kate O'Hara<sup>1</sup> and Mary Rogan<sup>2</sup>

**Summary:** Ireland's highly discretionary sentencing system provides a rare opportunity to study the behaviour of judges when relatively free of externally imposed constraints. While this is so, few studies have investigated sentencing trends. In 2011, Ireland introduced the Criminal Justice (Community Service) (Amendment) Act 2011 requiring courts to consider imposing Community Service Orders (CSOs) in cases where sentences of less than twelve months are deemed appropriate. A CSO is a direct prison alternative requiring offenders to complete between forty and 240 hours unpaid community work in lieu of a prison term. In order to complete comparative analysis, administrative data pertaining to all cases sentenced to a short term of imprisonment or CSO between 2011 and 2012 were linked and analysed. Analysis of offence groups showed that more cases convicted of drug, public order, and robbery or related offences received Community Service than was expected; however effect sizes were small. Findings showed the average number of Community Service hours equivalent to one month of imprisonment differed by offence type and District Court jurisdiction. As the first of its kind in Ireland, this study provides a rare glimpse of the use of these two alternative criminal justice sanctions. Findings and their implications are discussed.

**Keywords:** courts, sentencing, Ireland, Community Service Order, short term imprisonment, alternatives to imprisonment, community sanctions, Irish judiciary.

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## **Introduction**

Ireland's overuse of imprisonment as punishment has been well documented (Healy and O'Donnell, 2005; IPRT, 2009; Walsh, 2005). Recent European prison statistics revealed that Ireland's adjusted imprisonment rate of 86.5 per 100,000 head of population was less than the median European Prison Population Rate [PPR] of 133.5 prisoners per 100,000 in 2013. However, in 2012 a prison committal rate of 375.6 per 100,000 was much greater than a median of 163.5 per 100,000 across other European countries (Aebi and Delgrande, 2015). In Ireland, the majority of people are sent to prison for short periods. In 2014, 90.2 per cent of sentenced committals totalling 11,596 were for less than twelve months (Irish Prison Service, 2015).

In comparison, on 31 December 2013, the number of persons under the supervision or care of the Irish Probation Service was 143.4 per 100,000; while the European average sat at just over 209 per 100,000. The number of persons sanctioned to serve any community sanction or measure under the supervision of the Probation Service during 2013 was 136.2 per 100,000; considerably lower than the European average of 254.6 per 100,000 (Aebi and Chopin, 2014). These aggregate statistics demonstrate Ireland's use of imprisonment as its default approach to punishment, when compared to community based sanctions. As will be discussed below, these trends are worth noting as recent political and policy rhetoric attempts to stimulate greater use of non-custodial sanctions, in particular, the use of Community Service as an alternative to short prison sentences (Department of Justice Equality and Law Reform, 2009; McCarthy, 2014).

The Criminal Justice (Community Service) Act 1983 legislated for the use of Community Service Orders (CSOs) in Ireland. A CSO requires an offender to complete a specified number of hours' unpaid work in lieu of a custodial term.<sup>3</sup> Legislation enacting the use of CSOs in Ireland was introduced amidst growing prison committals, an increase in the use of short prison sentences, the use of longer prison sentences, and the associated cost of growing prison numbers (O'Donovan, 1990; Walsh and Sexton, 1999; Whitaker, 1985; Rogan, 2011). It is clear that legislation

<sup>3</sup> See McCarthy (2014) for a full account of how the CSO scheme operates in Ireland.

and policy introduced in England and Wales during the previous decade was used as a springboard to the development of Ireland's own legislation and policy in the area (Kilcommins, 2002;<sup>4</sup> Rogan, 2011).

In 2011, the introduction of the Criminal Justice (Community Service Amendment) Act 2011 which amended the Criminal Justice (Community Service) Act 1983 marked an important indicator of a governmental desire to encourage the use of Community Service by the Irish judiciary. Since October 2011, Irish courts are required to consider imposing CSOs in cases where a custodial sentence of twelve months or less is deemed appropriate. This amendment strengthened the original legislation as it now referred to the use of the CSO as a direct alternative to prison sentences, up to a specified length.

Notably, this amendment was introduced during major economic crisis in Ireland, as significant cuts to public sector funding were introduced. The cost of Ireland's prison system came under scrutiny during the so-called 'bailout' and reducing costs formed part of Ireland's National Recovery Plan 2011–2014 (Rogan, 2013). Encouraging the greater use of Community Service as a 'cost-effect' community measure (Comptroller and Auditor General, 2004; Department of Justice, Equality and Law Reform, 2009) was twinned with the need to alleviate prison overcrowding and the continued use of short prison sentences (McCarthy, 2014). McCarthy recognises a lack of clear ideology underpinning the CSO in Ireland, claiming it is at a 'crossroads' in Irish criminal justice policy and practice; its new evolving practice model as part of the Community Return Programme,<sup>5</sup> as well as its proposed use as an alternative to imprisonment for fine default recognises the 'potential elasticity' of Community Service in Ireland.

To date there has been a dearth of large scale empirical analysis on the use of Community Service in Ireland, in particular, its use as an alternative to imprisonment. A small scale examination of the scheme published in 1999 ( $n = 289$ ) concluded that unemployed, young, single males, who were poorly educated and living in their parental home, were those most likely to receive a CSO in Irish Courts. Over half of the sample had previous criminal records and a high proportion had previously been imprisoned. Court observations highlighted variability in how CSOs were imposed across District Courts. Orders imposed in rural

<sup>4</sup> See Kilcommins (2002) for an examination of the historical development of the CSO.

<sup>5</sup> A back-door strategy for the early release of long term prisoners.

compared to urban courts were shorter. Notably, the length of orders and alternative prison sentences differed substantially. The authors concluded that some CSOs were issued in instances where custodial sentences were not considered appropriate (Walsh and Sexton, 1999). A similar experience has been reported in England and Wales (Mair, 2011; Pease, 1975; 1985).

The Comptroller and Auditor General (2004), during their review of the Probation Service, concluded that the decline in the use of Community Service could be attributed to a lack of suitability of such orders for offenders with substance misuse problems, a decline in requests for pre-sanction reports assessing suitability for Community Service, and a fall in unemployment rates meaning that ‘fewer offenders are available to undertake work in the community during normal work hours’ (p. 23).

In 2009 the Department of Justice, Equality and Law Reform published an evaluation of how the CSO scheme operated in Ireland. It identified that during 2006 a small number of District Courts were responsible for sanctioning the majority of CSOs; 60 per cent ( $n = 695$ ) of the total CSOs made in 2006 were from twelve courts. The equivalence rate between number of Community Service hours and month of alternative imprisonment ranged widely. The review identified that the low use of CSOs in certain areas could be attributed to judicial discretion, a lack of suitable Community Service projects, and/or the unsuitability of offenders. The review identified a clear underutilisation of Community Service and outlined a number of recommendations for future implementation. These included disseminating information to the judiciary, targeting the use of CSOs in specific areas, and upgrading information systems to collect relevant data (Department of Justice, Equality and Law Reform, 2009).

Sentencing in cases on the cusp of a custodial or non-custodial sanction, such as those that may attract a short prison sentence or alternative CSO, has attracted some research interest. It is acknowledged that the decision to imprison is influenced by a variety of confounding factors, and untangling the process is challenging (Meeker, Jesilow, and Aranda, 1992). Some sentencers refute the existence of ‘borderline’ or ‘cusp’ cases, claiming that if such choice was available a case would ‘never be tipped in favour of custody’ (Tombs, 2004, p. 48). Nevertheless, the majority of sentencers agree that certain factors influence their decision to imprison instead of imposing a non-custodial sentence, and vice versa (Tombs, 2004; Hough, Jacobson and Millie, 2003).

The location of the court is also said to have an effect on sentencing in borderline cases (Flood-Page, Mackie and Britain, 1998). The availability of community alternatives in a particular area may influence sentencers' decisions. If community alternatives are not available, the judge may perceive there to be no other option, but to impose custody. Some courts are more active than others and process more cases daily; this is particularly relevant in Ireland when caseloads of rural and urban courts are compared. This may have an influence on sentencing decisions as the judiciary may be required to pass a variety of sentencing decisions, on a variety of cases, on a particular day and then may not process similar cases for weeks in between (Charleton and Scott, 2013).

Studies show that the predominant influences when imposing imprisonment were the gravity of the offence, an offender's prior record, and their past experience of community sentences (Tombs, 2004; Hough *et al.*, 2003). Tombs (2004) reported the majority of sentencers chose imprisonment because of offenders' previous community sentence failures. Sentencers admitted that imprisonment was unlikely to be constructive, especially short term sentences. However some did trust that even short prison sentences have value, as they removed prolific offenders from their communities, and enabled sentencers to display the seriousness of particular offences. Notably, Hough *et al.* (2003) found that sentencers did not attribute a lack of suitable community sanctions as a reason for imprisoning offenders. Across both studies, a significant number of sentencers did not consider community sentences as equally punitive as a prison sentence.

The factors considered when imposing a community sanction encompassed an offender's current state and particular circumstances. Such factors included their age, health status, motivation to change, family situation, relationship status and employment status. Particular circumstances including previous convictions, related previous convictions, guilty plea, level of remorsefulness and co-operation with authorities were mentioned by participants as influential in their decisions (Hough *et al.*, 2003; Tombs, 2004). Remorse was cited as an important consideration when assessing cases on the cusp of community sanctions. If the judge was adequately convinced that an offender's remorse was authentic, and the offence was out of character, they would show greater compassion (Tombs, 2004). The subjective nature of imposing a community sanction appears to place much emphasis on an

offender's character and sentencer's perception of its likelihood of success (Tombs, 2004; 2008).

### **Sentencing research in Ireland**

Empirical research examining sentencing decisions in Ireland has also explored the imposition of custodial and non-custodial sanctions. Maguire (2008) found that variation in sentencing was most pronounced when Irish judges were required to choose between different non-custodial sanctions, for example, fines and CSOs. When participants agreed on what non-custodial sanctions should be imposed, there was dissimilarity in the level of penalty imposed. Community Service Order hours for an assault case varied between sixty and 200 hours, and for a burglary case hours varied between 120 and 240. When the decision to impose a prison sentence was reached, sentence lengths also varied considerably. Sentence lengths ranged from fourteen days to five months in an assault case, while for a theft case sentences ranged between thirty days and nine months and between two and twelve months in road traffic and burglary cases. According to Maguire (2010), her participants disagreed on the suitability of particular sanctions when judging the same case. She concludes that this irregularity may relate to how the Irish judiciary view particular offences, and in particular, certain types of offenders.

Riordan (2009) found reluctance amongst District Court judges to equate alternatives to prison with that of a custodial sanction. They believed CSOs were applicable to offenders who were out of employment, as it taught them about routine. However, offenders with drug or alcohol problems were not considered suitable. Riordan found that the judiciary were more likely to impose an alternative sanction when risk was low, be that reoffending risk, risk to the victim, or risk to the offender's community. Variation in the length of a CSO and alternative prison sentence if an offender breached the terms of their order was also observed. This again reiterated the differing patterns among sentencers when imposing non-custodial sanctions. This has been identified by the Court Service as a feature of Irish sentencing practice (Katharine Howard Foundation and Irish Penal Reform Trust, 2007).

As identified, there is a dearth of large scale empirical analysis of how the CSO scheme operates, in particular when compared to the use of short prison sentences. This paper aims to explore the use of CSOs in lieu of imprisonment in Ireland, by comparing offender characteristics

across groups, analysing the use of these alternative sanctions, as well as geographical sentencing patterns by District Court jurisdiction.

## Methodology

### *Participants*

The final data set created in this research consisted of  $n = 5,231$  Community Service Orders (CSOs) and  $n = 6,784$  short term prison sentences<sup>6</sup> (STPs) sanctioned between 2011 and 2012. A number of individuals in the short term prison group had been committed to prison on multiple occasions during 2011 and 2012, as well as between 2011 and 2012. This was also the case among CSO recipients. The 6,784 short term committals to prison during 2011 and 2012 represented 5,411 different persons. Similarly the 5,231 Community Service Order cases represented 4,824 different individuals during these two years. For analysis, individual records were included in each sentence dataset for as many times as they had received the relevant sanction during 2011 and 2012.

The total CSO sample were aged between sixteen and sixty-eight ( $M = 28.69$ ,  $SD = 8.45$ ), with 92 per cent ( $n = 4801$ ) of the sample being male and 8 per cent ( $n = 430$ ) female. Information regarding criminal convictions since 2003 was available for 61 per cent ( $n = 3202$ ) of the CSO sample; participants had on average 8.22 previous convictions ( $SD = 18.27$ ) with a median of 4.00. For the remainder of the CSO sample ( $n = 2029$ ) no prior criminal history since 2003 and no information available could not be delineated, therefore inferences about the number of first time offenders in the CSO group could not be made [see limitations]. The most common offence type committed by the CSO sample was public order and other social offences (22 per cent,  $n = 1125$ ).

The total short term prison (STP) sample were aged between sixteen and seventy-five ( $M = 29.7$ ,  $SD = 9.45$ ), sentenced to immediate imprisonment for a period of less than twelve months. 91 per cent ( $n = 6182$ ) of the sample were male and 9 per cent ( $n = 602$ ) female. On average, participants reported leaving full-time education aged 15.3 years ( $SD = 2.302$ ). Those serving a short term of imprisonment had an average of 8.74 previous convictions ( $SD = 8.78$ ) with a median of 7.00. 12 per cent ( $n = 764$ ) had no recorded previous convictions since 2003.

<sup>6</sup> Those committed to prison for less than twelve months, excluding those imprisoned for fine default and those missing sentence length information on prison committal records.

Theft and related offences was the most common offence group among the STP sample (20 per cent,  $n = 1366$ ).

#### *Court distribution*

The vast majority of cases were processed through the District Court (91.4 per cent,  $n = 10548$ ). The Circuit Court processed 8.4 per cent of cases ( $n = 973$ ) while other courts processed .1 per cent of cases ( $n = 15$ ). Over half were dealt with by an urban court<sup>7</sup> (56 per cent,  $n = 6160$ ) while 52 per cent were dealt with by a court in close proximity to a closed prison<sup>8</sup> ( $n = 5767$ ).

#### *Procedure*

##### Ethical procedure

Ethical approval was received from Dublin Institute of Technology (DIT) Research Ethics Committee, the Irish Prison and the Probation Service and An Garda Síochána. Access to data was facilitated by the Crime Section of the Central Statistics Office.

##### Data procedure

Data was collected from: the Irish Prison Services' prisoner information management system (PIMS) formally PRIS, the Probation Service's case management records and An Garda Síochána's PULSE system. Data from two offender populations was collated. The first, prisoners committed under sentence to Irish prisons for a period of less than twelve months between 1 January 2011 and 31 December 2012. The second, those required to complete a comparable CSO in lieu of a custodial sentence under the supervision of the Probation Service during that period. Data collected from the PRIS system included: prison establishment, principal offence committed, sentence length, sex, age, address, education level and attainment details, employment status at prison committal, court type, court location, and prisoner nationality. Data obtained from the Probation Service's case management records system included: principal offence committed, alternative sentence length (in lieu of a custodial sentence), sex, age, address, court type, and

<sup>7</sup> Urban areas were defined as Limerick city, Cork city, Dublin, Waterford city and Galway city.

<sup>8</sup> Courts in close proximity to a closed prison included Dublin, Portlaoise, Limerick, Cork and Castlereagh.

court location. Number of previous convictions since 2003 was calculated using Court data recorded on An Garda Síochána's PULSE system. Data was accessed at Central Statistics Offices in Cork where the researcher (first author) was assigned an office and a standalone computer for the duration of her data analysis. The linking of Prison and Probation Service generated data with data from An Garda Síochána was completed at Central Statistics Office premises by a designated member of the crime division of the CSO, using a combination of name, date of birth, and address details from both data systems. A mixed-model method incorporating automatic and manual matching was designed by the CSO to achieve 95 per cent matching between Irish Prison Service, Probation Service and An Garda Síochána's data systems in this research study.

### Statistical procedure

Chi-square analysis using Pearson's  $X^2$  and independent t-tests were carried out. The assumptions for these tests were met, and each prison committal or CSO received contributed to only one cell of the contingency table (Field, 2009).

## Findings

### *A comparison of Community Service Order and short term prison groups*

Chi-Square tests and independent t-tests were conducted to establish whether demographic and offence variables differed between Community Service Order (CSO) and short term prison (STP) groups. On average, cases in the STP group ( $M = 29.7$ ,  $SD = 9.5$ ) were older than those in the CSO group ( $M = 28.7$ ,  $SD = 8.4$ ). This difference was significant  $t(11755) = 6.18$ ,  $p < .001$ ; however the magnitude in the differences in the mean (mean difference = 1.01, 95 per cent CI: 0.7 to 1.3) was very small,  $r = .06$ . For those with recorded previous convictions since 2003, cases in the STP group ( $M = 8.7$ ,  $SD = 8.8$ ) had on average slightly more previous convictions compared to those in the CSO group ( $M = 8.2$ ,  $SD = 18.3$ ). This difference was not significant  $t(3955) = 1.51$ ,  $p = .13$  and represented a very small effect size  $r = .02$ . Significant associations were detected in the thirteen offence categories as presented in table 1. Analysis showed that more cases convicted of a drug or public order offence received Community Service than was expected, however these effect sizes were small.

**Table 1:** Associations between sanction type, demographic, and offence characteristics

<i>Demographic and offence characteristics</i>	<i>CSO group</i> <i>n</i>	<i>CSO group</i> <i>%</i>	<i>STP group</i> <i>n</i>	<i>STP group</i> <i>%</i>	<i>Chi-squared test</i>	<i>Stan. Res.</i>	<i>Effect Size</i>
Gender					$X^2 = 1.607, df = 1, p = .205$		.01
Male	4801	91	6182	91		0.3	
Female	430	8	602	9		-0.9	
Offence categories							
Sexual offences**	14	22	50	78	$X^2 = 11.857, df = 1, p = .001$	-2.6	.03
Assaults and related offences***	564	48	610	52	$X^2 = 12.777, df = 1, p = .000$	2.6	.03
Dangerous and negligent acts**	304	38	491	62	$X^2 = 8.324, df = 1, p = .004$	-2.1	.03
Robbery and related offences**	52	61	33	39	$X^2 = 11.360, df = 1, p = .001$	2.5	.03
Burglary and related offences**	272	37	463	63	$X^2 = 11.992, df = 1, p = .001$	-2.5	.03
Theft and related offences***	833	38	1366	62	$X^2 = 30.341, df = 1, p = .000$	-3.8	.05
Fraud and related offences*	132	37	226	63	$X^2 = 5.903, df = 1, p = .015$	-1.8	.02
Drug offences***	594	59	419	41	$X^2 = 108.465, df = 1, p = .000$	7.5	.09
Weapons and explosives offences**	130	36	234	64	$X^2 = 8.429, df = 1, p = .004$	-2.2	.03
Crimes against property**	256	38	421	62	$X^2 = 8.285, df = 1, p = .004$	-2.1	.03
Public order offences***	1125	51	1076	49	$X^2 = 70.037, df = 1, p = .000$	5.7	.07
Road traffic offences*	756	46	901	54	$X^2 = 4.863, df = 1, p = .027$	1.5	.02
Offences against government***	109	24	346	76	$X^2 = 70.937, df = 1, p = .000$	-6.2	.07

#Homicide, kidnapping, and offences not elsewhere classified were omitted due to low cell counts.

\* $p < .05$ ; \*\* $p < .01$ ; \*\*\* $p < .001$

*The use of Community Service Orders and short prison sentences*

There has been notable fluctuation in the use of short term prison sentences and CSOs over recent years. Most recent figures show a decline in the use of both short prison sentences and Community Service Orders. As can be seen in table 2, the numbers of CSOs imposed have decreased: from 2,738 in 2011; to 2,569 in 2012; to 2,354 in 2013; to 2,197 in 2014. Since 2011, committals to prison for less than twelve months, excluding those committed for fine default, have declined at an even greater rate when compared to CSOs.

**Table 2:** A comparison of the use of short custodial sentences and Community Service Orders: 2010–2014

<i>Year</i>	<i>Committals 12 months</i>	<i>% change</i>	<i>Committals 12 months minus those committed for fine default</i>	<i>% change</i>	<i>Number of CSOs</i>	<i>% change</i>
2010	10,928	-	4,240	-	1,972	-
2011	11,214	+2.6%	3,700	-12.7%	2,738	+38.8%
2012	11,844	+5.6%	3,540	-4.3%	2,569	-6.2%
2013	11,182	-5.6%	3,061	-13.5%	2,354	-8.4%
2014	11,596	+3.7%	2,617	-14.5%	2,197	-6.7%

#Figures were extracted from the Irish Prison and Probation Services’ annual reports 2011–2014.

During 2011, across all cases, an average short prison sentence amounted to 4.8 months. In 2012 this fell to 3.6 months. In the case of CSOs, an alternative prison sentence was attached to each order by the presiding judge. An offender may have had to serve this sentence if found to have breached their order. During 2011 and 2012 the average length of a CSO was 153 hours [5.2 months’ equivalent prison sentence] and 150 hours [5.8 months’ equivalent prison sentence] respectively.

Across the entire CSO sample, the average equivalence was 27.6 Community Service hours per alternative month of imprisonment [ $n = 5225$ ]. This average differed noticeably by offence category. The average equivalence was highest for dangerous and negligent acts (31 hours), public order offences (36.2 hours) and offences against government (34

hours) and lowest for sexual offences and robbery and related offences, both 13.3 hours. See table 3.

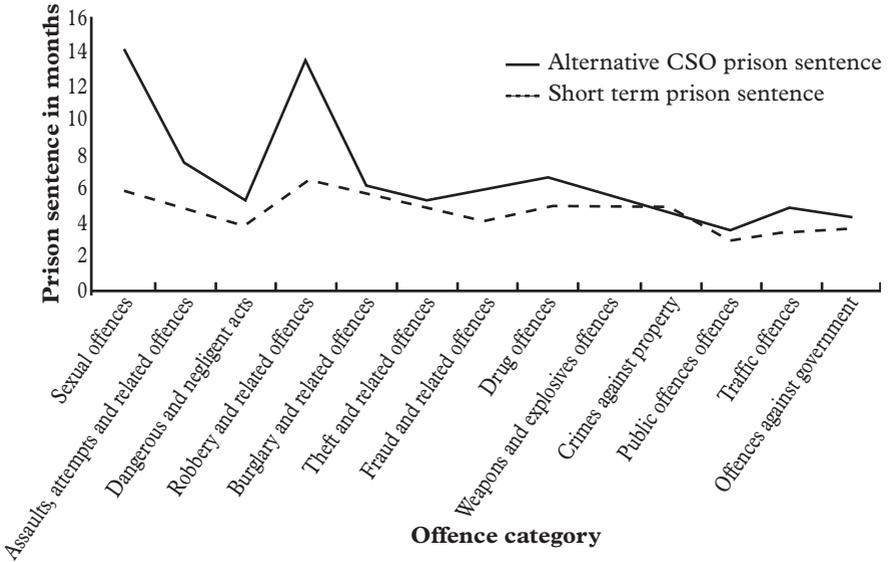
Figure 1 is a comparison of average alternative prison sentence to average short prison sentence received by the STP group, by offence category. Prison sentences received by the short term prison group were longer for all offence categories except crimes against property for which they were equal. This increased length was most pronounced for sexual offences and robbery and related offences.

**Table 3:** A comparison of equivalence rate per month of imprisonment and average alternative prison sentence by offence category\*

<i>Offence categories</i>	<i>CSO N</i>	<i>Average CSO length</i>	<i>CSO hours equivalent to one month of imprisonment</i>	<i>Average alternative prison sentence in months</i>
Sexual offences	13	$M = 189 \text{ hrs } SD = 51.6$	13.3	14.2
Assaults, attempts and related offences	564	$M = 164 \text{ hrs } SD = 60.8$	21.8	7.5
Dangerous and negligent acts	304	$M = 165 \text{ hrs } SD = 55.7$	31	5.3
Robbery and related offences	52	$M = 181 \text{ hrs } SD = 59.8$	13.3	13.6
Burglary and related offences	271	$M = 156 \text{ hrs } SD = 60.1$	25.3	6.2
Theft and related offences	832	$M = 144 \text{ hrs } SD = 58.2$	26.7	5.4
Fraud and related offences	132	$M = 156 \text{ hrs } SD = 60.7$	25	6.2
Drug offences	593	$M = 164 \text{ hrs } SD = 56.1$	24.3	6.7
Weapons and explosives offences	130	$M = 149 \text{ hrs } SD = 58.1$	26.2	5.7
Crimes against property	255	$M = 146 \text{ hrs } SD = 60.6$	29.3	5
Public order offences	1124	$M = 131 \text{ hrs } SD = 54$	36.2	3.6
Traffic offences	756	$M = 162 \text{ hrs } SD = 55.2$	33.9	4.9
Offences against government	109	$M = 148 \text{ hrs } SD = 53.8$	34	4.4
Total equivalence rate	5225	$M = 151 \text{ hrs } SD = 58.5$	27.6	5.5

\*Homicide, kidnapping, and offences not elsewhere classified are not displayed due to low cell counts.

**Figure 1:** Short prison sentence and alternative prison sentence attached to Community Service Orders by offence category



More detailed analysis by specific offence type displayed similar results. The most common offence types across both groups were: no insurance by the user, an offence contained in the traffic offences category [CSO:  $n = 230$ , STP:  $n = 663$ ]; theft contrary to section 4 of the Theft Act 2011, contained in the theft and related offences category [CSO:  $n = 669$ , STP:  $n = 927$ ] and threatening/abusive/insulting behaviour in a public place, contained in the public order offences category [CSO:  $n = 369$ , STP:  $n = 700$ ]. As can be seen in table 4, the average alternative sentence attached to recipients' Community Service Orders was longer than the custodial time received by the short term prison group for these specific offence types.

**Table 4:** A comparison of average alternative prison sentence and short custodial sentence received by specific offence type

<i>Offence types</i>	<i>Alternative sentence attached to recipients CSOs [months]</i>	<i>Prison sentence received by STP group [months]</i>
No insurance by the user	4.4 ( <i>n</i> = 230)	3.5 ( <i>n</i> = 663)
Theft contrary to section 4 of the Theft Act 2011	5.2 ( <i>n</i> = 669)	4.6 ( <i>n</i> = 927)
Threatening abusive behaviour in a public place	2.6 ( <i>n</i> = 369)	2.5 ( <i>n</i> = 700)

*Analysis of the use of Community Service Orders and short prison sentences by court type*

Table 5 identifies the average number of Community Service Order hours equivalent to one month's imprisonment by court type. The average equivalence per month of imprisonment was highest across District Courts (34) and lowest across Circuit Courts (10.1).

**Table 5:** CSO hours equivalent to one month's imprisonment by court type

<i>Court type</i>	<i>N</i>	<i>Average CSO length</i>	<i>CSO hours equivalent to one month of imprisonment</i>	<i>Average alternative prison sentence in months</i>
District Courts	4784	<i>M</i> = 149 hrs <i>SD</i> = 56.9	34	4.4
Circuit Courts	436	<i>M</i> = 179 hrs <i>SD</i> = 67.4	10.1	17.7
Urban courts	2466	<i>M</i> = 152 hrs <i>SD</i> = 57.1	29.2	5.2
Rural courts	2252	<i>M</i> = 154 hrs <i>SD</i> = 59.2	26.9	5.7
Courts close to prison	2235	<i>M</i> = 152 hrs <i>SD</i> = 57.5	29	5.2
Courts close to prison (excluding Dublin Courts)	605	<i>M</i> = 146 hrs <i>SD</i> = 51	35.8	4.1
Court not close to a prison	2483	<i>M</i> = 154 hrs <i>SD</i> = 58.7	27.2	5.7
Dublin courts	1630	<i>M</i> = 154 hrs <i>SD</i> = 59.6	27.2	5.7
Courts outside Dublin	3088	<i>M</i> = 152 hrs <i>SD</i> = 57.3	28.5	5.3

Analysis of court characteristics was carried out through the creation of a number of dichotomous variables. Courts were classified according to three criteria: whether they were in a rural or urban location, if they were in close proximity to a prison, and finally if they were located within the Dublin Metropolitan region. There were significant associations between sanction received and whether the court was located in a rural or urban area: more CSOs than expected were sanctioned by rural courts [ $X^2(1, n = 11,029) = 43.648, p = .000, \phi = .1$ ]. The odds of receiving a CSO in a rural court were 1.2 times higher than receiving a short prison sentence in a rural court. In courts not located close to a prison more people than expected received a CSO [ $X^2(1, n = 11,029) = 80.685, p = .000, \phi = .1$ ]. This was also the case in courts located outside the Dublin region [ $X^2(1, n = 11029) = 17.091, p = 0.000, \phi = .04$ ]. Noteworthy, however, was that all effect sizes were very small.

*Analysis of geographical sentencing patterns by District Court jurisdiction*

Across all District Courts the average number of Community Service Order hours per month of imprisonment was thirty-four. This varied when examined by District Court jurisdiction. District Courts are organised on a regional basis into twenty-three District Court jurisdictions, as well as the Dublin Metropolitan District.<sup>9</sup> In District 18 the average equivalence was 70.5 hours, in comparison to twenty-three hours in District 15. Examination by offence category showed that Community Service hours per month of alternative prison sentence also fluctuated across District Court jurisdictions. For example, an offender in District 6 received an average of twenty-three hours' Community Service per one month alternative prison sentence for a public order offence, whereas an offender in District 9 received an average of 92.6 hours per one month alternative prison sentence. More detailed analysis of the offence threatening/abusive/insulting behaviour in a public place ( $n = 366$ ), a crime within the public order offence category, indicated notable variation. On average, offenders received 50.1 hours' Community Service Order per month of alternative prison sentence; however this ranged from 102 and thirty hours when examined across all District Court jurisdictions. This was also observed for the offence intoxication in a public place ( $n = 400$ ), another crime within the public order offence category. Community Service Order hours per alternative month imprisonment ranged between

<sup>9</sup> District Court (Districts) Order, 2013.

91.4 and thirteen hours across District Court jurisdiction for this specific offence.

Analysis also examined the association between sanction received and District Court jurisdiction. Quite a number of significant associations were detected. As can be seen in table 6, only those reaching Cohen's criteria for a small effect are worth noting. More Community Service Orders were sanctioned in District 1 than expected, whereas fewer than expected were sanctioned in District 4 and District 13. The odds of receiving a CSO in District 1 were seven times higher than receiving a short prison sentence. The odds of receiving a short prison sentence in District 4 were eleven times greater than receiving a CSO and in District 13, four times higher.

## Discussion

### *A comparison with existing evidence*

Between 1996 and 1997, the average length of a Community Service Order was 141 hours (Walsh and Sexton, 1999). This fell to 136 hours in 2006 (Department of Justice, Equality and Law Reform, 2009). In 2006 a public order offence attracted an alternative prison sentence of 3.5 months, while a drug offence carried on average an alternative prison sentence of 6.7 months (Department of Justice, Equality and Law Reform, 2009). During 2011, the average length of a CSO was 152 hours. This decreased slightly during 2012 to 150 hours. During 2011 and 2012 a public order offence carried an average equivalent custodial sentence of 3.6 months, while a drug offence attracted an alternative prison sentence of 6.7 months. Findings show that although the mean number of Community Service Order hours per order is now greater, the average alternative custodial sentence has remained broadly similar when stratified by offence category.

There are no guidelines regarding the appropriate number of Community Service Order hours per one month of alternative imprisonment to be set by the judiciary. Walsh and Sexton (1999) found that on average, one month of imprisonment equalled twenty-seven hours of Community Service, but substantial variations were detected when courts were examined individually. During 2006, the average alternative prison sentence was thirty hours per one month's imprisonment (Department of Justice, Equality and Law Reform, 2009). During 2011

**Table 6:** Association between sanction and District Court jurisdiction

<i>District Court jurisdiction versus sanction</i>	<i>CSO group</i> <i>n</i>	<i>%</i>	<i>STP group</i> <i>n</i>	<i>%</i>	<i>Chi-squared test</i>	<i>Stan. Res.</i>	<i>Effect Size</i>
Dublin Metropolitan District***	1482	40	2232	60	$X^2 = 23.607, df = 1, p = .000$	-2.9	.05
District 1 County Donegal***	261	82	56	18	$X^2 = 206.093, df = 1, p = .000$	10.7	.1
District 2 Counties Leitrim, Donegal and Sligo	45	38	74	62	$X^2 = 1.342, df = 1, p = .265$	-0.9	.01
District 3 County Mayo	66	40	101	60	$X^2 = 0.859, df = 1, p = .386$	-0.7	.01
District 4 Counties Galway and Roscommon***	13	7	188	93	$X^2 = 111.902, df = 1, p = .000$	-7.9	.1
District 5 Counties Cavan and Monaghan***	234	61	151	39	$X^2 = 51.362, df = 1, p = .000$	5.3	.07
District 6 County Louth***	240	65	127	35	$X^2 = 77.615, df = 1, p = .000$	6.5	.09
District 7 County Galway	103	37	174	63	$X^2 = 3.987, df = 1, p = .049$	-1.5	.02
District 8 County Tipperary	67	51	65	49	$X^2 = 3.247, df = 1, p = .077$	1.4	.02
District 9 Counties Longford and Westmeath**	137	36	247	64	$X^2 = 8.833, df = 1, p = .003$	-2.2	.03
District 10 Counties Louth and Meath***	19	10	179	90	$X^2 = 92.153, df = 1, p = .000$	-7.2	.1
District 12 Counties Clare and Galway	58	37	100	63	$X^2 = 2.626, df = 1, p = .106$	-1.2	.02
District 13 County Limerick***	54	17	274	83	$X^2 = 91.121, df = 1, p = .000$	-7.2	.1
District 15 Counties Laois and Offaly***	179	57	133	43	$X^2 = 26.964, df = 1, p = .000$	3.9	.1

District 16 County Wicklow*	49	34	96	66	$X^2 = 5.133, df = 1, p = .028$	-1.7	.02
District 17 County Kerry***	8	8	88	92	$X^2 = 47.627, df = 1, p = .000$	-5.2	.1
District 18 Cork County 1***	50	25	148	75	$X^2 = 26.071, df = 1, p = .000$	-3.8	.1
District 19 Cork City	601	45	733	55	$X^2 = 2.533, df = 1, p = .116$	1.1	.02
District 20 Cork County 2*	101	50	100	50	$X^2 = 4.344, df = 1, p = .044$	1.6	.02
District 21 Counties Tipperary and Waterford**	99	56	79	44	$X^2 = 11.688, df = 1, p = .001$	2.6	.03
District 22 Counties Carlow and Kilkenny	100	46	116	54	$X^2 = .953, df = 1, p = .332$	0.9	.01
District 23 County Wexford***	119	64	68	36	$X^2 = 32.960, df = 1, p = .000$	4.3	.1
District 24 Waterford City***	131	67	65	33	$X^2 = 46.160, df = 1, p = .000$	5.1	.1
District 25 County Kildare	133	45	161	55	$X^2 = 0.596, df = 1, p = .473$	0.6	.01

\* $p < .05$ ; \*\* $p < .01$ ; \*\*\* $p < .001$

and 2012 the average alternative prison sentence was just under twenty-eight hours per one month's imprisonment. The average equivalence was highest for dangerous and negligent acts (thirty-one hours) and lowest for robbery and related offences and sexual offences (13.3 hours). Across all District Courts the average number of Community Service Order hours per month of imprisonment was thirty-four. This ranged considerably when stratified by District Court jurisdiction. Variability across offence category and District Court jurisdiction outlined in this paper, identified unpredictability of Community Service Order hours and equivalent custodial sentence allocation in Ireland, in particular when examined by District Court jurisdiction, offence category, and even specific offence type.

Analysis of offence types showed that public order offences (27 per cent), road traffic offences (15 per cent), theft (14 per cent), drug offences (9 per cent), assault (9 per cent), and criminal damage (4 per cent) accounted for the majority of Community Service Orders sanctioned during 2006 (Department of Justice, Equality and Law Reform, 2009). During 2011 and 2012 a similar distribution was observed. The majority of CSOs were sanctioned for public order and related offences (22 per cent), road traffic offences (15 per cent), and theft and related offences (16 per cent). Notably, the majority of short prison sentences were received for theft and related offences (20 per cent), public order and related offences (16 per cent) and road traffic offences (13 per cent).

Results identified that drug offences received proportionally more CSOs than short prison sentences. Interestingly, previous research in this jurisdiction identified that the judiciary did not consider a Community Service Order suitable for those with substance misuse problems (Comptroller and Auditor General, 2004; Riordan, 2009). This finding is dissimilar to analysis of sentencing trends in Scotland, which identified no notable patterns in the types of offences receiving custodial and non-custodial sanctions, except those sentenced for drug offences. In Scotland offenders convicted of a drug offence received proportionately more custodial sentences (Tombs, 2004).

### *Implications of findings*

Thanks to improvements in ICT, data collection, and multi-agency working between Irish criminal justice agencies, a national comparison of the use of these two alternative sanctions could be completed. This is the first national study comparing case characteristics between sanctions.

Although differences were evident, they were not as stark as expected. More detailed data is required in order to complete more meaningful analysis between groups. Recent strategy documents have committed to increased evaluation across the criminal justice system (Irish Prison and Probation Service, 2015; Department of Justice and Equality, 2015). A co-ordinated overarching strategy for the collection and dissemination of criminal justice data would greatly enhance future research.

Findings revealed strong variation in the use of Community Service Orders and short prison sentences across court type and jurisdiction. A case had slightly greater odds of receiving a CSO rather than a short prison sentence from a rural compared to an urban court. More notable were the much greater odds of receiving a short prison sentence in some District Court jurisdictions. In only eight District Court jurisdictions were more Community Service Orders made compared to short custodial sentences imposed. The low use of Community Service Orders when compared to short term imprisonment highlights further Ireland's preference for the use of imprisonment as punishment.

It has been claimed that members of the judiciary do not consider the function of non-custodial sanctions equivalent to that of imprisonment, nor are they confident that adequate alternatives can achieve the deterrent effect of imprisonment. This seems to apply in Ireland, as well as across jurisdictions (Ashworth, 2010; Hough *et al.*, 2003; Mair, 2011; Millie, Tombs, and Hough, 2007; Riordan, 2009; Tombs, 2004). The alternative sentence attached to a CSO, in case of breach, was higher for all offence categories except crimes against property. This was also evident when detailed analysis of three specific crime types was completed. Attaching very punitive equivalent prison sentences to Community Service Orders may be a method employed by the Irish judiciary of increasing the deterrent effect of Community Service. As outlined by Riordan (2009), the judiciary are more likely to impose an alternative sanction when risk is low. Attaching a long alternative prison sentence may be a method of avoiding or minimising risk by the judiciary, as a CSO's punitive bite if breached is much greater. This, however, may result in the up-tariffing of offenders in receipt of Community Service or may deter them from consenting to complete the Community Service in the first instance.

It has been established that offenders who receive high-tariff community sanctions expend alternatives to prison more quickly; therefore, they attract prison sentences early in their criminal careers (Hine, 1993;

Hough *et al.*, 2003; Tombs, 2008). As stated by Walsh, 'the CSO benefits from a degree of legislative and executive regulation that is unparalleled in any other criminal justice sanction in Ireland' (2005, p. 75) as it can only be used as an alternative to imprisonment; however the judiciary's aversion for the restrictive nature of the Criminal Justice (Community Service) Act 1983 has been stated on a number of occasions (Riordan, 2009; Department of Justice, Equality and Law reform 2009; Walsh and Sexton, 1999). Unfortunately whether those in receipt of a CSO were more likely to be a first time offender compared to those in receipt of a short prison sentence could not be ascertained definitively. The large number of CSO recipients without previous convictions since 2003, which included those for whom information regarding previous criminal convictions was unavailable, tentatively suggests that a large proportion of cases may have been first time offenders. This tends to suggest that the sanction is not being used as a direct alternative or substitute for a custodial sanction in all cases. This is similar to experiences in other jurisdictions (Mair, 2011; Pease, 1975; 1985). A more nuanced approach to monitoring sentencing practice in Ireland is required to prevent large scale net widening across the criminal justice system.

### *Limitations*

In Ireland a court may impose, together with a CSO, an additional penalty for the same offence. This data could not be accessed; therefore some cases in the CSO group will have received another criminal justice sanction alongside their CSO. Demographic data collected by criminal justice agencies is not comparable. It is important to note the limitations of the analysis completed above. The data available for analysis was weak. Comparing group differences using only the variables available does not provide a comprehensive overview of how similar or dis-similar both groups were. Number of previous convictions dates from 2003, therefore it is only a limited indicator of criminal history. Those in the CSO group with no prior convictions and those whose information could not be accessed could not be separated due to the structure of the data set and a lack of unique identifier across criminal justice agencies; this limited the interpretation of the use of CSOs for first time offenders. Details of prior imprisonment and prior experience of Community Service across samples, and the availability of Community Service by District Court jurisdiction were unavailable at the time of analysis;

however the authors hope that this information can be obtained and results updated accordingly.

## **Conclusion**

A pragmatic approach to criminal justice policy making in Ireland is particularly evident during times of crisis (Campbell, 2008; Rogan, 2011). The Criminal Justice (Community Service) Act 1983 was implemented in order to relieve strains on accommodation across the prison system. Economic pressure and cuts to public sector funding motivated the amendment of the original Act, attempting to increase the use of Community Service as an alternative to short term imprisonment. As McCarthy (2014) notes, a ‘preoccupation with increased quantity’ (p. 150) has dominated discourse among criminal justice actors, whereas discussion of the quality and experience of Community Service has been neglected.

Ireland affords high levels of discretion to its sentencers, the use of mandatory sentencing is limited, and scholars claim it is largely avoided by the judiciary (Bacik, 2002; O’Malley, 2006). It is unclear whether the Criminal Justice (Community Service Amendment) Act 2011 is having the desired decarcerative effect. There has been a decrease in the number of Community Service Orders made; however, an even greater decrease in the use of short prison sentences has been observed over the past number of years when you exclude those imprisoned for fine default. As the first study of its kind, the findings outlined in this paper contribute to a better understanding of how the judiciary use Community Service Orders and short term imprisonment in Ireland.

A shift towards evidence informed practice across criminal justice policy and practice has gained considerable momentum in recent decades. The strive towards ‘effectiveness’ is said to have been ‘a particular preoccupation in Anglophone jurisdictions’ (McNeill and Beyens, 2013, p. 7). The purposes of community based sanctions and alternatives to custody, like the Community Service Order, are not well defined; therefore the types of evidence used to evaluate such community interventions need to be ‘varied and diffuse’ (McNeill, Farrall, Lightowler, and Maruna, 2012, p. 3). Comparative recidivism analysis planned as part of a wider doctoral study will provide much needed analysis of the outcomes of these two facets of the Irish criminal justice system. A co-ordinated,

standardised, evaluation and review process focussing on outcomes from this policy change, as well as other policies and interventions in the criminal justice system is urgently required.

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# Parole and Probation in Northern Ireland: Experiences and Reflections from Practice

Cheryl Lamont and Christine Glenn<sup>1</sup>

**Summary:** The Criminal Justice (NI) Order 2008 introduced far-reaching changes to criminal justice in Northern Ireland, particularly in relation to public protection with a knock-on impact on the role and operation of probation and the Parole Commissioners. This article looks at progress made by both organisations since 2008, in particular, at the area of recalls as well as future challenges.

**Keywords:** The Criminal Justice (NI) Order 2008, sentencing framework, probation, parole, public protection sentences, workload, profile of offenders, recall, training, audits.

## Introduction

Nowhere in Europe has the criminal justice landscape changed as significantly in the last two decades as it has in Northern Ireland. After years of violence, conflict and political negotiations, the Agreement reached in Belfast on Good Friday 1998 paved the way for a review of criminal justice (Criminal Justice Review 2000) that led to fundamental changes in the structure, delivery and accountability of justice throughout Northern Ireland. In this changing environment, and acknowledging the need to review the legislative provisions in place in Northern Ireland, a policy consultation was held in 2005 on a Review of the Sentencing Framework for Northern Ireland, seeking views on sentences and sentencing; dealing with dangerous offenders; discretionary release and post-release supervision; electronic monitoring and fine default amongst other topics. That Review and consultation identified a need for additional provisions in Northern Ireland for the management of

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dangerous violent and sexual offenders. This in turn led to one of the most significant and far-reaching pieces of Northern Ireland criminal justice legislation being given Royal Assent on 7 May 2008 – the Criminal Justice (NI) Order 2008 (Bailie, 2008).

The Criminal Justice (NI) Order 2008<sup>2</sup> put in place a new sentencing framework and powers for dangerous sexual and violence offenders, established post-release supervision on release from prison, removed automatic remission (which was 50 per cent in Northern Ireland) for sentenced prisoners and created new powers to manage the risk posed by certain sexual and violent offenders in the community. It also created a body of independent Parole Commissioners for Northern Ireland (PCNI) to assess dangerous offenders' suitability for release into the community, make recommendations on the recall of all prisoners with a sentence of twelve months or more and to review recalled prisoners for re-release.

There had been a full local public consultation on the proposed changes in sentencing powers and there was widespread local community and media support for the proposals. In particular, the 50 per cent remission scheme for sentenced prisoners which meant all prisoners in NI were eligible for release after serving only half of their sentence had been widely criticised. In 2003 Attracta Harron, a 65 year old retired librarian, was abducted and murdered while walking home from Church. Trevor Hamilton, who was convicted of her murder, was found to have carried out the crime having been released from prison four months early under the 50 per cent remission scheme. One of Northern Ireland's daily newspapers, the *Belfast Telegraph*, ran a campaign to end the practice of 50 per cent remission such was the public outcry to the murder and strength of feeling about current sentencing policy. The 'Justice for Attracta' campaign received widespread public and political support and the issue was raised with the British Prime Minister and European Parliament (McGreevy, 2013). The emphasis on public protection was, therefore, universally welcomed in Northern Ireland as were the proposals to put violent and sex offender risk management arrangements on a statutory footing.

Along with the development of risk assessment and management procedures, the Criminal Justice (NI) Order 2008 introduced extended and indeterminate sentences for public protection. The sentences within the new framework have two components: a period in custody followed

<sup>2</sup>The Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I.1)).

by a period of post-release supervision by PBNI. For offenders who commit a specified sexual or violent offence and who are assessed by the courts as 'dangerous', their release from custody is dependent upon evidenced risk reduction.

The legislation defines 'dangerousness' as 'significant risk to a member of the public of serious harm occasioned by the commission by the offender of further specified offences.' 'Serious harm' is defined as 'death or serious personal injury whether physical or psychological.' Dangerous offenders can be dealt with by an indeterminate custodial sentence (ICS) where release is subject to licence which could potentially last for life; or an extended custodial sentence (ECS) where an extended licence period is served which may last for a maximum of eight years for sexual offences and a maximum of five years for violent offences.

This means that dangerous sexual and violent offenders are unlikely to be released into the community until the risk they pose is considered by the Parole Commissioners to be at a level which is then manageable. They will then be released under the supervision of the Probation Board, and the multi-agency arrangements will be used to make the management of their risk as effective as possible. Provision was also made for the increased use of electronic tagging, and the multi-agency arrangements known as 'The Public Protection Arrangements Northern Ireland' were put on a statutory footing.

This article considers the changes made, since the introduction of the 2008 legislation, to practice by both the Probation Board and the Parole Commissioners to adapt to the new legislation and fulfil their statutory requirement to help make communities safer and prevent reoffending, and highlights learning for other jurisdictions.

### **The role of the Probation Board for Northern Ireland and the Parole Commissioners for Northern Ireland**

The Parole Commissioners for Northern Ireland (PCNI)<sup>3</sup> are an independent body made up of individuals with professional qualifications or experience in the legal, medical, criminological and rehabilitative fields. Similarly the Probation Board for Northern Ireland (PBNI) is an independent non-departmental public body with representatives drawn from across all communities in Northern Ireland. Independence, effective

<sup>3</sup> <http://www.parolecomni.org.uk>

accountability and community representation are key features of both organisations.

Both organisations are concerned with assessing risk. As a result of the 2008 Criminal Justice Order and the resulting new Sentencing Framework, the Probation Board developed a Best Practice Framework in 2011 in a practitioner led approach to support the professional judgement of Probation Officers who are qualified social workers. In Northern Ireland, Scotland and the Republic of Ireland probation has retained the requirement of a social work qualification which is a fundamental in preventing reoffending. The skills acquired in social workers' training and continuous professional development, namely assessing the needs and risk of people and their circumstances, promoting engagement and participation, and dealing with complexity to help individuals positively change and stay safe, are a critical component of PBNI's delivery of quality probation services as evidenced by reoffending rates.

The role of the PCNI is to consider the risk factors presented and then to consider whether there are protective factors, and weigh those up when considering whether somebody should be released, recalled or not recalled.

The introduction of the new legislation put significant demands on the PBNI in terms of an increased workload. Its 2012–13 Annual Report (PBNI, 2013) notes that there was a 15 per cent increase in caseload over three years and a 54 per cent increase in the caseload in prisons. Likewise, the most recent Annual Report of the Parole Commissioners 2013–2014 (PCNI, 2014) highlights the continued increase in workload and the demands placed on the Parole Commissioners. In 2013–14 the workload of the Parole Commissioners increased by 18 per cent on the previous year with an increase in new referrals from 492 to 580.

The profile of offenders who are being dealt with has also changed as a result of the legislation.

Until the introduction of the new sentences Probation Officers dealt mainly with offenders subject to probation and community service orders who had to 'consent at court' to being made subject to such orders. Under the new sentencing arrangements, Probation Officers have had to engage, motivate and manage those individuals who are more resistant to change and essentially are often assessed at higher levels of likelihood of reoffending. There is also a heightened profile of mental health issues with over 40 per cent of PBNI offenders having addiction issues.

Arising out of the new legislation and enacted through a later piece of legislation (the Coroners and Justice Act 2009<sup>4</sup>) offenders whose index offence is related to terrorism are also subject to the new sentencing framework. The terrorist risk of attack is primarily from dissident republican groups across Northern Ireland. This is a complex area of work for everyone across the justice system and as such the Probation Officers' approach is through a resettlement framework with individuals in their local communities. This is an area of practice where frontline staff are seeking to develop their work and a Professional Practice Development Forum has been established to enable staff to develop greater professional confidence and awareness in this area.

Therefore not only has the legislation resulted in an increase in workload for both the PBNI and PCNI but there has also been a change in the profile of offenders being risk assessed and managed.

It has therefore been essential to put in place initiatives to increase collaboration and enhance practice to ensure the protection of the public. Some of those initiatives are outlined below.

## **Recalls**

In terms of recall to prison, it is the role of the Probation Board for Northern Ireland acting on behalf of the Department of Justice to submit a request for a recommendation for the revocation of a licence on the basis of evidence of an increase in risk of harm/serious harm to the public.

The Commissioner will make a recommendation to either recall the prisoner to prison or not. This recommendation is sent to the Offender Recall Unit in the Department of Justice who will make the final decision. The table below shows the requests for recalls and the numbers of recalls made from 2010–2014.

The chart below shows that the vast majority of recalls requested by the PBNI were actioned by the Parole Commissioners. Over 90 per cent of requests for recall were recommended which demonstrates the confidence Commissioners have in the professional judgement of Probation Officers. However the significant number of recalls has impacted upon the numbers of people in custody in Northern Ireland.

<sup>4</sup> [www.legislation.gov.uk/ukpga/2009/25/contents](http://www.legislation.gov.uk/ukpga/2009/25/contents)

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**RECALL METRICS 05 June 2014 (Statistics provided by ORU)**


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<i>Year</i>	<i>Total Requests</i>	<i>Not Recalled</i>	<i>Recalls</i>	<i>DCS</i>	<i>ECS</i>	<i>Oral Hearings</i>
2010	24	2	22	22	0	0
2011	97	18	79	75	4	6
2012	161	27	134	123	11	10
2013	213	17	196	176	20	47
05/06/14	71	3	68	63	5	35
<b>TOTAL</b>	<b>566</b>	<b>67</b> <sup>5</sup>	<b>499</b>	<b>459</b>	<b>40</b> <sup>6</sup>	<b>98</b>
<b>TYPE</b>	<b>Released on Licence</b> <sup>7</sup>		<b>Recalled</b>		<b>Indicative Recall Rate</b>	
DCS	1,642		459		28.0 per cent	
ECS	60		40		66.7 per cent	
<b>TOTAL</b>	<b>1,702</b>		<b>499</b>		<b>29.3 per cent</b>	

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A review in February 2014 undertaken by the Department of Justice in Northern Ireland of the factors leading to the growth in prisoner numbers between 2009 and 2013 reported that recalls under the Criminal justice (NI) Order 2008 are bringing substantial numbers of licensees back to prison (Department of Justice, 2014). Whilst the principal reason for seeking recall in these cases was to prevent the commission of a further offence, which is an appropriate reason for recall, many of those recalled (42 per cent) had not committed further offences but had increased their level of risk through regression into former chaotic lifestyles including drug/alcohol addiction and homelessness. Indeed the review found that:

- Alcohol and drugs issues featured in the index offence of 93 per cent of the recall cases scrutinised (all but two).
- Courts recommended that 48 per cent of these individuals participate in alcohol/drug counselling and/or treatment programmes whilst on supervision.
- Some prison staff felt that it would be helpful if the court's stipulated action be taken during the offender's imprisonment, to ensure the necessary support package was provided pre and post release.

<sup>5</sup> Includes three cases where ORU did not accept a recommendation to recall from the PCNI.

<sup>6</sup> Includes one Article 46 Recall (serious harm test).

<sup>7</sup> Numbers at 5 June 2014.

- A number of these individuals were highly vulnerable and had been on multiple SPAR's (self-harm/attempted suicides) and had addiction problems.
- The offenders who were chaotic, addicted and socially excluded found it difficult to comply with their licence conditions and were more likely to be returned to custody. The absence of through-care and support in the community left them disadvantaged by the recall system.
- A number had been recalled to custody on several occasions and were less likely to complete their licence period successfully given the chaotic nature of their lives, their vulnerability and social exclusion.
- Offenders released to hostels/approved accommodation were at high risk of recall.

Therefore the review recommended that a number of actions should be taken across the criminal justice system to prioritise desistance. This includes that assessment should translate into direct interventions in prison, where appropriate programmes should be delivered during prisoners' sentences to address their risk-factors and offending behaviour.

It also stated that the discharge process should be linked to the Department's desistance strategy to provide a smooth transition to community life and avoid the 'cliff-edge experience' familiar to many offenders leaving prison.

One important development in that regard has been the recent opening of Burren House which is based on the previous Crumlin Road Prison site in North Belfast with accommodation for up to twenty-two prisoners at the pre-release stage. Burren House is a working out unit which is a 'step down' and preparatory/testing out facility for prisoners usually serving longer sentences. This initiative, led by the Prison Service and supported by the PBNI, is a progressive step in providing 'testing out' facilities for offenders prior to integration and resettlement in their local communities.

While the number of recalls actioned demonstrates the value placed on probation's assessment of risk the impact of recalling such high numbers has undoubtedly increased the prison population.

## **Audit of recalls**

In order to ensure the consistency and quality of recalls the PBNI has conducted two internal audits of recall reports. The first audit was conducted on 30 March 2011 and considered thirty-two recall reports completed between February 2010 and March 2011. This audit focused primarily on the quality of recall reports and whether staff in completing such reports were adhering to guidance and joint protocols. A further audit conducted on 3 May 2013 considered fifty-two recall applications, all initiated during 2012. The sample of reports examined included all unsuccessful applications (twenty-two) and thirty randomly selected successful recall applications. The second audit sought qualitative feedback from the auditors in relation to their assessment regarding the quality of the recall report in addition to staffs' adherence to guidance and joint protocols. Whilst recognising that the auditors' perception regarding the quality of the reports was subjective it was deemed important to get a sense of the quality of the reports we are submitting to the Parole Commissioners.

From a quantitative perspective the feedback was generally positive with auditors highlighting some areas requiring attention/improvement. However from a qualitative perspective no reports were rated as 'poor' and half stated that the report was 'very good' or 'excellent'.

Following completion of the 2013 audit of recall reports the findings were considered and shared with PBNI staff. In particular PBNI Area Managers were encouraged to share the report with those staff responsible for supervising licensees and preparing recall reports.

## **Joint training**

Joint training has proven to be of immense value to probation staff alongside Parole Commissioners. Whilst both the PBNI and PCNI undertake their own training, the benefits of joint training sessions, especially through seminars and case discussion, has enabled greater levels of understanding of both roles and created clarity around process and systems issues. The first event in October 2013 was hosted by both authors. It is clear that we create a greater aptitude for learning and seeking knowledge when we deal with real people through case examination and discussion. The PBNI has also assisted the PCNI in providing sessions at their induction training for new Parole Commissioners and annual plenary events, as well as providing assistance for interview panels.

## Conclusion

As we move forward, further audits on recall are planned with the PBNI and research is being undertaken by a member of the PCNI on specific aspects of recall which in the future can inform our practice and learning. In terms of practice development, there is no doubt that the ongoing collaborative work and joint training events on recall and oral hearings between the PBNI and PCNI will enhance levels of understanding and continue to reinforce elements of practice and learning.

It will also be important to continue dialogue with the Departmental Administrative Unit that oversees the recall function (Offender Recall Unit) and prison colleagues.

One of the main challenges now facing all of the public sector in Northern Ireland is that of constraints on public expenditure. The affordability of the current criminal justice system in Northern Ireland is now under heavy scrutiny. The Minister for Justice, David Ford MLA, has noted that up to now the Department has largely managed to protect the frontline justice agencies by taking more significant cuts in the core department. The PBNI and PCNI will not be immune to ongoing efficiency savings and budget reductions. The challenge for both these organisations is how to ensure they continue to deliver on their statutory functions as effectively and efficiently as possible. Innovation and seeking to work in a collaborative manner across the criminal justice system and across other departments will certainly stimulate and hopefully broaden the range of initiatives and interventions that can be used for the benefit of those with whom the PBNI work to enable them to desist from offending. One thing that remains certain, however, is the commitment and professionalism of staff in the PBNI, PCNI and other organisations within criminal justice as we work together to create safer communities for everyone in Northern Ireland.

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# Are the Needs of Adult Offenders with Mental Health Difficulties being met in Prisons and on Probation?

Laura Cotter<sup>1</sup>

## Summary:

‘Fact: If you’ve a mental illness you’re far more likely to go to prison’  
(The Prison Trap, Irish Times, 2013, p. 1).

People with mental illness are significantly overrepresented in the criminal justice system. Many policy makers and practitioners have labelled this phenomenon the ‘criminalisation of the mentally-ill’ (Ringhoff *et al.*, 2012). This article reports on a study exploring the prevalence of mental illness amongst offenders in the prison and probation populations in the Republic of Ireland. It examines the treatment of mentally ill offenders in prison and under community supervision. Recent policy and practice developments in this area are critically explored. Drawing on international literature a number of proposals are made for the development of probation policy and practice in this area.

**Keywords:** offenders, mental illness, mentally ill offenders, mental health difficulties, mental disorder, diversion programmes, probation, prison, criminal justice system, criminal behaviour, treatment needs, punishment of mentally ill offenders, human rights, mental illness and penal reform.

## Introduction

My interest in the treatment of mentally ill offenders stemmed from growing up in Monaghan, a small Irish town where I lived opposite a psychiatric hospital. I was always intrigued by the red brick building and wondered if it was humane for people to spend their entire lives as in-patients. As an undergraduate Social Science student I was given the task of completing a research project and conducted a random sample survey of the characteristics of the patients admitted to the ‘Monaghan District

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Lunatic Asylum' at the turn of the twentieth century, their diagnoses, the perceived cause of their 'madness' and their treatments. This data was gathered from the census forms in the National Archives entitled 'Return of Idiots and Lunatics in Institutions' in 1901 and 1911.<sup>2</sup> The primary reasons for being admitted ranged from masturbation and religious excitement to loss of property or cattle.

In my own practice as a Probation Officer on Dublin's Circuit Court Assessment Team, I prepare reports for the Court. Offenders' mental health difficulties are often cited as a contributing factor in their offending. I often struggle with the 'criminalisation hypothesis' and wonder if in fact I am helping or hindering clients in the long run by recommending probation as a disposal for their case, questioning whether interaction with the criminal justice system can damage a mentally disordered offender further.

### **Research rationale, aim of the study, policy context and methodology**

The law in Ireland regarding mental disorder and criminal insanity was radically reformed in 2006 with the full implementation of the Mental Health Act 2001 and the enactment of the Criminal Law (Insanity) Act 2006. The latter defines 'mental disorder' as 'mental illness, mental disability, dementia or any decrease of the mind but does not include intoxication'. A mentally disordered offender convicted of a criminal offence and detained in a mental institution will be detained under both the Mental Health Act 2001 and the Criminal Law (Insanity) Act 2006. The Report from the Expert Group on Mental Health Policy, *'A Vision for Change'* (2006) sets out a blueprint for mental health service provision in Ireland and recommends that 'every person with serious mental health problems coming into contact with the forensic system should be afforded the right of mental healthcare in the non-forensic mental health services unless there are cogent and legal reasons why this should not be done' (Department of Health, 2006, p. 137).

Set against the backdrop of changes in the law regarding mental disorder, this study is driven by two needs. The first is to examine the treatment of offenders with mental health difficulties in Irish prisons following a long period of what Mulcahy (2013, p. 141) characterises as

<sup>2</sup> [www.nationalarchives.ie](http://www.nationalarchives.ie)

‘neglect and inaction by the Irish state’. The second is to explore alternatives to custody for this client group. Three approaches have been used. While it is primarily a literature review, data is also drawn from the Probation Service’s collated *Level of Service Inventory Revised Assessments* (LSI-R)<sup>3</sup> conducted in 2012. *LSI-R* is a risk and needs assessment instrument used nationally. It aims to identify dynamic areas of risk/needs that may be addressed in order to reduce risk (Andrews and Bonta, 2004). Permission was sought from the Probation Service and provided to use and examine the data for this study. The third approach involves consultation with key personnel within the mental health field. These consultations were not analysed and were conducted within the context of providing background to the literature.

### **A sociological perspective of mental illness**

According to Foucault (1965) ‘madness’ in the Middle Ages was considered more a part of everyday life. With the Enlightenment a shift occurred which Foucault calls ‘the great confinement’, when the mad were no longer seen as citizens and were placed in asylums away from society lying outside the boundaries of ‘truth’. Walker (2006) states that the powerful in society promote a dominant discourse of ideas and practices that often pathologises and devalues practices of non-dominant cultures and marginalised groups, and often mental health practice and the profession itself acts as an agent of society in this way. This is of particular interest when the powerhouse of control within prison and probation populations is added to the picture.

The last couple of decades have witnessed the closure and downsizing of institutionally based care arrangements in Ireland. Deinstitutionalisation shifted the focus of care for people with mental illness away from psychiatric hospitals to local community mental health centres. It is argued that deinstitutionalisation became the single largest contributing factor to the criminalisation of the mentally ill as this process resulted in a significant number of individuals with mental illness being directed towards the criminal justice system (Teplin, 1984; Lurigio and Swartz,

<sup>3</sup> The Level of Service Inventory–Revised™ (LSI-R™) is a quantitative survey of offender attributes and their situations relevant to level of supervision and treatment decisions. It was developed by Don Andrews, Ph.D. and James Bonta, Ph.D and is published by Multi-Health Systems Inc. (MHS) [www.mhs.com](http://www.mhs.com)

2000). Writing in the US context, Ringhoff *et al.* (2013) argue that the policy of deinstitutionalisation was never properly implemented. While it achieved the goal of reducing bed numbers in state hospitals, it never succeeded in providing adequate, appropriate or co-ordinated treatment in the community for those suffering with mental disorders.

Gunn (2004) reports a steady reduction in psychiatric beds over the past twenty years in Ireland with a continuing increase in the number of mentally ill offenders in the prison population with major mental illness. Penrose's Law (1939) is a theory demonstrating an inverse relationship whereby if the population of one institution of control (e.g. the mental hospital) decreases the population of another (such as the prison) rises. Penrose's theory proposes that a constant number of people with psychiatric disorders will always require institutional care. As a result, if the psychiatric hospitals are unavailable or unwilling to treat patients, they are housed elsewhere, such as prisons, and become criminalised (Teplin, 1984).

In their discussion of 'coercive confinement' in Ireland, O'Donnell and O'Sullivan (2012) documented the plight of tens of thousands of men, women and children detained in Ireland in a network of institutions including: psychiatric hospitals, mother and baby homes, Magdalen homes, reformatory schools, industrial schools, prisons and borstals. This account takes on a special importance as Irish society continues to grapple with the legacy of its extensive use of institutionalisation. This raises the question of how offenders with mental illness in Ireland are being 'managed' today. In line with Penrose's theory, has there been a displacement from one form of institutionalisation to another?

### **The relationship between mental illness and offending**

A wide range of research documents the link between mental illness and offending. Woodward *et al.* (1999) document the category of 'offenders with mental disorders' covering a wide range of persons with criminal behaviour, from those who have committed violent crimes to petty offenders. There is an extensive body of research on the predictors of mental health problems and antisocial behaviour. However the interface between the two becomes more complicated as much of the literature concentrates on violence which is neither the only, nor the most prevalent offence committed by offenders with mental health difficulties (Hagell and Dowling, 1999).

Assessing the causal link between mental illness and crime is complex (Frank and McGuire, 2010). Some research indicates connections between mental illness and criminal behaviour (e.g. Ringhoff *et al.*, 2013), while some argue that ‘no pathogenesis between mental illness and crime has ever actually been established’ (Lurgio, 2011, p. 15). Much of the research exploring the relationship between mental illness and offending highlights a number of other relevant factors. Many studies focus on the relationship between mental illness and social problems such as unemployment and financial difficulties (Mocan and Tekin, 2006). A higher prevalence of intellectual disabilities, health and social care needs are also highlighted (Ringhoff *et al.*, 2013). Keene (2001) notes as many as 90 per cent of adult prisoners in the United States have a diagnosed substance misuse problem, mental illness or both.

The basic challenges are what one might expect in working with a population with serious mental illness. These include low levels of education, limited or absent social and/or family network and poor access to care (Trestman, 2013). However, one of the biggest issues highlighted in a range of international research concerns the association between mental illness and housing, as homelessness has been strongly linked to the elevated risk of re-incarceration of the mentally ill (Constantine *et al.*, 2010; Serowik and Yanos, 2013). Further challenges faced by this client group include substantial levels of stigma, both in relation to mental illness and as a result of contact with the criminal justice system. In some instances this can be further compounded by substance misuse (Trestman, 2013).

### **Prevalence of mental illness among prisoners**

A landmark study on admissions to Sing Sing prison in New York in 1918 highlighted, for the first time, the large number of mentally ill people in custody (Fazel and Baillargeon, 2011). Since then a vast body of evidence worldwide has shown high rates of psychiatric morbidity among prisoners indicating approximately one in seven prisoners has a treatable mental illness (Fazel and Danesh, 2002; Coid *et al.* 2003; WHO, 2007). A more recent study indicates that of the 10 million people currently incarcerated worldwide approximately one million suffer from a significant mental disorder with an even higher proportion experiencing more common mental health problems such as depression and anxiety (Fazel and Baillargeon, 2011, p. 956).

A worldwide systematic review of serious mental disorders in prisoners showed the pooled prevalence of psychosis was 4 per cent and major depression was indicated at 10.2 per cent (Fazel and Danesh, 2002, p. 359). A more recent review covering 33,588 prisoners in 24 countries found a pooled prevalence of psychosis of 3.6 per cent in male and 3.9 per cent in female prisoners. The pooled prevalence of major depression was 10.2 per cent in male and 14.1 per cent in female prisoners (Fazel and Seewald, 2012, p. 365). Both reviews corroborated widely reported findings that prisoners have elevated rates of psychiatric disorders (including psychosis, depression and schizophrenia), compared with the general population.

Similar findings have been confirmed in studies on the Irish prison population (Duffy *et al.*, 2003; Linehan *et al.*, 2006). Research conducted in 2009 on psychiatric morbidity within the male prison population indicated prevalence rates for psychosis of 5.1 per cent for remand prisoners and 2.6 per cent amongst the sentenced population. The prevalence rates for major depressive disorders was found to be similar for both the remand and sentenced populations (4.5 per cent and 4.6 per cent respectively). Schizophrenia and organic psychoses were the most common psychoses and the findings of the study overall indicate there is significant psychiatric morbidity in Irish committal prisoners (Kennedy *et al.*, 2009, p.169).

### **Prevalence of mental illness among probationers**

While research has demonstrated the high prevalence of mental illness in the prison population, relatively little is known about those serving community sentences. In the United States each year approximately five million offenders are subject to community supervision and approximately 16 per cent of this population are estimated to have a serious mental illness (Wolff *et al.*, 2013). In the United Kingdom a survey of the population subject to probation supervision in Lincolnshire, estimated that approximately 39 per cent of individuals in the probation population had a current mental illness with anxiety disorders being the most common diagnosis (Brooker, 2012).

To date no research exists on mental illness within the probation population in the Republic of Ireland, highlighting a major knowledge gap in this area. To address this gap, statistical data was obtained from the Irish Probation Service on the prevalence of mental health difficulties

among offenders on probation. This data is drawn from collated Level of Service Inventory – Revised (LSI-R) Assessments,<sup>4</sup> conducted in 2012. The unpublished data on the population of offenders under supervision in 2012 suggests the prevalence of mental illness among offenders on probation in Ireland is high.

Probation Officers conducted a total of 6,018 LSI-R assessments in 2012 on 4,884 clients nationally. Analysing the responses to five questions<sup>5</sup> specifically targeting psychological or psychiatric functioning, it emerged that 33.7 per cent of clients assessed in 2012 responded as having had ‘mental health treatment in the past’. 15.8 per cent were engaged in some form of psychiatric treatment at the time of the assessment. 12.6 per cent identified as requiring a psychological assessment, while 3 per cent were identified as having an active psychosis. Finally, 30.8 per cent were classified as experiencing ‘moderate interference’, meaning they were assessed as exhibiting some signs of distress, mild anxiety, or mild depression.<sup>6</sup>

In offering an interpretation of these figures, it is important to point out that scoring of questions relating to ‘moderate interference’, ‘severe interference’, ‘active psychosis’ and ‘psychological assessment indicated’ are at the discretion of the interviewer (Andrews and Bonta, 2004). It may be that the incidence of mental health needs is under-estimated or over-estimated as a result. Although Probation Officers are trained in using the LSI-R risk assessment instrument, there is no specific mental health awareness training provided. Notwithstanding these limitations, the overall data indicates that Probation Officers have assessed a high proportion of people on probation caseloads with mental health needs. However there are no practice guidelines, protocols or a specific mental health policy within the Probation Service in Ireland currently for working with this client group. This is an area that clearly requires attention.

### **How offenders with mental health difficulties are treated in prisons**

Jails and prisons have become the largest de facto treatment settings for the mentally ill (Lurigio, 2011). The contribution of prisons to illness is

<sup>4</sup> See Appendix (i) for further information on the LSI-R.

<sup>5</sup> See Appendix (ii) for description, from the LSI-R User Training Manual, of the five questions relating to the ‘Emotional/Personal’ sub-component of the LSI-R assessment instrument.

<sup>6</sup> See Appendix (iii) for responses and analysis of the data from the LSI-R Assessments, 2012.

unknown. However, according to Fazel and Baillargeon (2011) their shortcomings in treatment and aftercare provision contribute to adverse outcomes. The challenges mentally ill offenders face in prison are exacerbated by a lack of adequate funding, hazards and inadequacies in facilities, healthcare and psychiatric care. These challenges are documented in a report to the Government of Ireland by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT, 2011).

Lord Bradley's review of people with mental health difficulties in the criminal justice system in the United Kingdom documents the growing consensus that prison is not an appropriate environment for those with severe mental illness and that custody can exacerbate mental ill health, heighten vulnerability and increase the risk of self-harm and suicide (Bradley Report, 2009). These sentiments are echoed in the *Report of the Thornton Hall Project Review Group* (2011) regarding the Irish situation. The World Health Organisation highlights specific factors in prisons which contribute to mental ill-health such as overcrowding, violence, enforced solitude or lack of privacy, lack of activity, isolation from social contact, insecurity about the future and inadequate health services (in particular mental health services) (WHO, 2001).

The European Committee for the Prevention of Torture and Degrading Treatment have carried out five visits to Irish prisons and the fifth report in 2011 is the most critical yet (Brennan, 2012). It reports the prison system is failing to meet the most basic human rights standards of safe and humane custody. Other research into the specific needs of mentally ill prisoners highlights a lack of treatment programmes, lack of beds for psychiatric treatment, lack of appropriately trained staff, deficiencies in mental state screening, absent psychiatric aftercare, underfunding and insufficient co-operation with the general health systems (Dressling and Salize, 2009; IPRT, 2011).

### **Overcrowding and in-cell sanitation**

The use of imprisonment has been on the rise in recent years. The prison population more than doubled between 1995 and 2013. A report on deaths in prisons conducted by the Department of Justice, Equality and Law Reform (1999) and the report from the CPT (2011, p. 21) both suggest that 'forced integration of mentally ill offenders with regular offenders as a result of overcrowding may be a contributing factor to the

increased rates of mental ill-health, suicide and violence within the prison system'. The management of vulnerable prisoners, in particular those with mental health difficulties within prison has been the subject of concern and criticism over a number of years. Mountjoy Prison has come in for particular criticism. It has consistently experienced high prison numbers, overcrowding, high turnover and inadequate infrastructure that greatly impacts on offenders with mental illness (Pilon, 2012; Williamson, 2012).

As far back as 1998 the CPT stated that overcrowding in Irish prisons was 'endemic' (CPT, 1999, p. 30). A subsequent report in 2011 highlighted the fact that the situation had deteriorated further, as many prison cells originally designed for single occupancy had three prisoners per cell in Cork, and in Limerick prison many inmates were sleeping two to a bed. Pilon (2012) stressed that both overcrowding and the presence of bio-hazardous waste is not only dehumanising but is particularly harmful to mentally ill prisoners. The Irish Prison Service (IPS) published its census of 2013 relating to cell occupancy and in-cell sanitation. At this time out of 3,090 usable cells in Irish prisons, 1,799 prisoners were in single cells, 1011 held two or three prisoners and thirty held four or more. Regarding in-cell sanitation, 504 prisoners (12.3 per cent) were required to slop out. Furthermore a large number, 1,606 (39.3 per cent), were required to use the toilet in the presence of another prisoner (IPRT, 2013).

However, some positive developments have begun to emerge. According to the IPS, the numbers 'slopping out' will eventually fall to approximately 300 prisoners as a result of the Forty Month Capital Plan of expenditure for refurbishment which was announced in 2012 (IPS, 2012). This, as described by Mulcahy (2013, p. 142), is ironic 'as Ireland is currently on its knees financially, plans for the "super prisons" have now been shelved, yet resources have had to be made available to refurbish Mountjoy, a prison which in the past was described as beyond redemption'.

### **Use of isolation**

Studies in the United States indicate that prisoners with mental illness are at increased risk of being placed in solitary confinement (Haney, 2006). Behaviour stemming from psychiatric morbidity may be perceived and dealt with by the prison system as a disciplinary problem rather than

treated as illness-related behaviour (Coid *et al.*, 2003). A report commissioned by the Irish Penal Reform Trust exploring the use of solitary confinement amongst mentally ill prisoners reports similar findings in the Irish context. Bresnihan (2001), in the 'Out of Sight, Out of Mind' Report, highlighted the concern for the first time that mentally ill prisoners were being put into solitary confinement without receiving proper treatment. The report found that 78 per cent of those in isolation were mentally ill, that solitary confinement makes sick people sicker, yet those certified as insane were regularly confined. The report also found that most prisoners were kept naked, were not permitted books, radios or personal belongings, had no means of calling for help and were left in cells with smelly slopping out buckets, a dirty mattress and blanket (IPRT, 2001, p. 5).

At this time, the IPRT called for some immediate recommendations to be put in place including the ratification of the United Nations Covenant against Torture, Degrading and Inhumane Treatment, the implementation of all recommendations from the European Committee for the Prevention of Torture and a radical overhaul of the entire prison health system. To date the former recommendations have failed to be implemented in Ireland (IPRT, 2013). However, some progress is emerging regarding the overhaul of the prison health system.

### **A policy move in the right direction**

'*A Vision for Change*' (2006) set out a comprehensive framework for mental health policy proposing that the delivery of prison based mental health services should reflect those in the community. A major objective of this policy framework was to see forensic psychiatric patients treated in full compliance with the standard set by the Mental Health Act 2001.

The establishment of a ten bed high support unit (HSU) in Mountjoy Prison has been a welcome development. However according to Giblin (2012) capacity remains an issue. Despite some improvements the reality remains that 'In many cases jails and prisons are the final stop on the institutional circuit that includes homeless shelters, psychiatric institutions and substance abuse residences' (Lurigio, 2011, p. 75). Poor prison policy and practice have existed for decades regarding the treatment of offenders with mental illness and while recent initiatives are welcome concerns will remain in relation to prisoners with serious mental illness being incarcerated in the first place.

## **Diversion services**

A significant policy development over the past number of decades has been the shift in emphasis for diverting mentally ill patients away from in-patient treatment or incarceration to care in the community. As O'Neill (2013, p. 3) notes 'the majority of crimes committed by the mentally ill are minor and non violent.' Ireland's first Diversion and Liaison Service was established at Cloverhill remand prison (McInerney *et al.*, 2013). The aim of this service is to identify offenders with mental health needs, facilitate treatment in healthcare settings in the least restrictive environment in the community, for the process to take place as rapidly as possible and to broker 'joined up' care for these offenders/patients by liaising between the patient, community psychiatric services, the judiciary and correctional staff (McInerney *et al.*, 2013).

Over a six year period (2006– 2011) the programme diverted 572 prisoners with severe mental illness to varying levels of care. Eighty-nine to the CMH ,164 to community mental health hospitals and 319 to community mental health services. The achievements of this service have received positive commentary and support (IPS, 2011). However, one must consider this service is limited as it is confined to only one prison in the state. Diversion services ideally should be delivered at the earliest point of contact with the criminal justice system and one must be reminded that any period of incarceration exacerbates mental ill-health.

## **The Probation Service and mental health**

The Probation Service has four main roles: to support offenders in prison, to supervise and support offenders in the community, to supervise offenders who have been released from prison and to write reports for courts to assist in decisions about sentencing (The Probation Service, 2014). Recent changes within the Irish Probation Service due to budgetary constraints and increasing numbers of prisoners being released, have seen a significant shift in priorities (Martynowicz and Quigley, 2010). Increased responsibility for post-release supervision orders and risk assessments means that the Probation Service now focuses largely on risk management.

Through consultation with the Probation Service the researcher has been informed of a commitment to develop a Probation Service mental health policy on working with offenders with mental illness as, to date, no such policy exists. It would appear the Irish Probation Service is

currently at a crossroads in relation to which policy model to follow in offering best practice and improved service and treatment delivery for offenders with mental illness.

### **Mental health models being implemented by Probation Services in the US**

Wolff *et al.* (2014) examine specialised mental health caseloads (SMHC), as an effective means of addressing the treatment needs of offenders with mental illness on probation in the community. This study points to the fact that a large and growing number of persons with mental illness are under probation supervision and examines the inter-relationship between mental health symptoms, compliance with mental health treatment, probation supervision and recidivism. SMHC is a relatively new intervention designed to effectively engage probation clients with mental illnesses in successful completion of probation supervision.

Wolff *et al.* (2013) discuss the SMHC model which operates in New Jersey. The specialised mental health Probation Officers receive training on psychopathology, co-occurring disorders, criminal thinking styles, case management, problem-solving skills, motivational interviewing and stress management. Smaller, more specialised, caseloads are managed by expert officers and are expected to be more effective in securing much needed resources in treatment as well as social housing and public benefits through advocacy and collaboration with mental health service providers and community agencies (Babchuk and Lurigio, 2012). This is to be achieved by working with clients towards goals of treatment compliance and by engaging clients in styles and patterns of interpersonal interactions to increase compliance with general and special conditions of supervision. Wolff *et al.*'s (2013) findings generally support the effectiveness of the SMHC model. Crucial to its effectiveness is on-going specialist training and support for Probation Officers in recognising, understanding and responding to mental illness.

### **Mental health awareness training for Probation Officers**

While probation staff in the United Kingdom receives some mental health training, it is not specialised (Brooker, 2012). In 2009 the Confederation of European Probation (CEP) held a conference centring on the concept of a Pan-European Probation Training Curriculum which

considered mental health training. Sirdifield *et al.* (2010) draw on results from an evaluation of a specialised training model developed and piloted in the UK. Results from this pilot create a strong case for mental health specialised training to form part of a common training programme across Europe. Fundamental aspects of the training included factors impacting on mental health, stigma and stereotypes, relevant legislation, bi-polar affective disorder, schizophrenia, self-harm and suicide, post-traumatic stress disorder, learning disability, depression, eating disorders, mental health and probation practice, local mental health service provision and referral procedures.

### **The need for a treatment philosophy: perspectives from mental health clinicians**

Whether or not the criminal justice system is the proper place for the mentally ill, their presence creates a number of treatment challenges (Lindhorst and Lindhorst, 2013). The lack of alternatives and funding for appropriate service provision is highlighted time and time again throughout the literature (Bewley and Morgan, 2011; O'Keefe and Schnell, 2007). Lamb (1999, 2004) calls for a treatment philosophy that strikes a balance between individual rights and public safety, clear treatment goals, a close liaison between psychiatric treatment staff and Probation Officers, incorporation of the principles of case management, understanding of the need for structure, appropriate and supportive living arrangements and the inclusion of family members when possible. Trestman (2013) calls for mental health clinicians to extend their notions of inter-disciplinary teams to include Probation Officers as joint working provides opportunities not otherwise available to support this client group.

### **Proposals and implications for probation/social work practice**

For some individuals, a custodial sentence will be necessary. Where this is the case, prisoners should have access to appropriate treatment, rehabilitation and resettlement services (Bradley Report, 2009). While recent efforts from the Irish Prison Service have been acknowledged in improving and safeguarding basic human rights, it is important, as Probation Officers and social workers, to maintain a focus on those experiencing deprivation of any kind. Isolation should not be used for prisoners with pre-existing mental illness. Meaningful rehabilitation is

simply impossible in such conditions. This practice should be eradicated to alleviate the long-term negative consequences for the prisoner and for society (IPRT, 2013).

Evidence based practice calls for a ‘whole systems’ approach and stresses the importance of joint working. Consultation for this study with key personnel in the Diversion Programme at Cloverhill Prison and the Central Mental Hospital resulted in a recommendation for a pilot programme involving the Probation Service, the Diversion Programme and community mental health clinics to improve service delivery for this client group.

Based on the findings from the Probation Service 2012 unpublished LSI-R data suggesting a high rate of mental health difficulties for offenders engaged with the Probation Service, I propose that a specific national study should be undertaken on the prevalence of mental health disorder among persons subject to Probation Service supervision in Ireland. It is likely that without such data, access to community based mental health services for offenders on probation supervision will remain restricted and inconsistent. It is of concern that high levels of mental disorder are not recognised or addressed by probation policy or practice currently. The complex needs of this neglected client group require urgent prioritisation by the Probation Service. A specific mental health policy needs to be implemented by the Probation Service as a matter of urgency.

In conjunction with a policy, provision of mental health awareness training would enable Probation Service staff to better recognise the signs and symptoms of mental health disorder, would increase their knowledge of local mental health services and legislation and improve their confidence in working effectively with the many individuals with mental health disorders on their caseloads (Sirdifield *et al.*, 2010). The provision of such training could influence future probation practice.

Given that the Probation Service has experience in working with offenders with mental illness, particularly on the Homeless Offender’s Team, staff should be supported by specialised training. This model should be developed further by implementing reduced specialised mental health caseloads. Protocols urgently need to be developed between the Probation Service and community mental health clinics and public funds should be invested in mental health services. While economic pressures are acknowledged, it would appear that an initial investment has the potential to offset the much higher costs of in-patient psychiatric care and imprisonment (WHO, 2007).

## **Concluding comments**

Mentally ill offenders are often placed in a hopeless situation. While incarcerated, their mental health deteriorates. Upon release, they are often unable to access available community treatment because of a lack of adequate services or because of mental health service providers' reluctance to treat them. As a result many offenders with mental illness repeatedly churn through the criminal justice system, going from street to Court to cell and back again without ever receiving the assistance needed (Dencla and Berman, 2001). As economic realities force administrators of the mental health and criminal justice systems to reduce the number of facility beds and address overcrowded conditions, the importance of effective community supervision of offenders with mental illness exponentially increases (Dressing and Salize, 2009). A consistent application of best practices and therapeutic intervention is required to assist in providing effective treatment to offenders with mental illness in prison and on probation which will also contribute towards community safety.

## **Appendix (i)**

### **The Level of Service Inventory-Revised (LSI-R) Assessment Instrument**

The Level of Service Inventory-Revised (LSI-R) is an assessment instrument based on the general principles of cognitive psychology, social learning theory and the risk-needs-responsivity model. The LSI-R is a quantitative survey of attributes of offenders and their situation relevant to level of service decisions. The LSI-R is composed of 54 items. Each item is answered 'Yes or No,' or a '0 to 3' rating. The items are grouped into the following subcomponents (with number of items in parentheses):

- Criminal History (10)
- Education/Employment (10)
- Financial (2)
- Family/marital (4)
- Accommodation (3)
- Leisure/Recreation (2)
- Companions (5)
- Alcohol/Drug Problems (9)
- Emotional/Personal (5)
- Attitudes/Orientation (4)

Many of the subcomponents consist of items that are changeable or 'dynamic'. These dynamic factors are risk factors and by reducing the number of dynamic risk

variables, it is likely a reduction in the probability of future criminal activity will occur. In this way many of the LSI-R items and subcomponents act as treatment targets.

When complete the ten subcomponent scores are added together to give a total score. This score is translated into a low, medium or high-risk score that predicts the likelihood of future offending over the following twelve-month period. There is a facility in the assessment for the practitioner to document features of an offender's situation that may require special consideration or may override the final assessment.

Of particular relevance to this piece of work is the subcomponent 'Emotional/Personal'.

'Interference' refers to an individual's ability to respond to life's stressors and to the quality of that person's functioning in the real world. The instrument assists in determining if the individual's ability and functioning are affected by psychological or psychiatric problems. Client's level of adaptive functioning with regard to the past year is assessed (Andrews and Bonta, 2001).

## **Appendix (ii)**

### **Selected Responses (Q46–50) from LSI-R Assessments (2012)**

Total LSI-R assessments	6,018
Total individuals	4,884
Q – 46	#
No Response	9
Response = No	4,150
Response = Yes	1,845
Response = omit	14
% Response = Yes	30.8%
Q – 47	#
No Response	14
Response = No	5,815
Response = Yes	179
Response = omit	10
% Response = Yes	3.0%
Q – 48	#
No Response	18
Response = No	3,959
Response = Yes	2,014
Response = omit	27
% Response = Yes	33.7%

Q – 49	#
No Response	14
Response = No	5,048
Response = Yes	949
Response = omit	7
% Response = Yes	15.8%
Q – 50	#
No Response	82
Response = No	5,112
Response = Yes	739
Response = omit	85
% Response = Yes	12.6%

(Probation Service Data unpublished)

### Appendix (iii)

#### Extract from The Level of Service Inventory-Revised (LSI-R) Manual Emotional/Personal subcomponent (Q46–50)

##### *Emotional/Personal*

“Interference” refers to an individual’s ability to respond to life’s stressors and to the quality of that person’s functioning in the real world. Is his or her ability and functioning affected by psychological or psychiatric problems? Assess client’s level of adaptive functioning with regard to the past year

##### 46. Moderate interference.

The scoring of this item is left to the discretion of the interviewer. However, if item 47 is answered “Yes”, this item must also be answered “Yes”. Examples of moderate interference or emotional distress: signs of mild anxiety (insomnia, worrying); signs of mild depression (quiet, under-assertive). Consider also the client whose emotional and cognitive functioning seems stabilised through mental health intervention.

##### 47. Severe interference, active psychosis.

This item should be answered “Yes” based on any indicator(s) of client’s mental health problems. The intent of the item is to detect active psychosis in a client. Severe emotional and cognitive interference may also be detected by observing the following types of indicators during the interview:

- excessive sweating
- extreme passivity or aggression
- verbal abusiveness

- odd or strange verbalisations
- very slow or very fast speech
- rambling conversation
- reports of auditory and/or visual hallucinations
- delusional thinking

48. Mental-health treatment past.

50. Psychological assessment indicated.

If the client has been assessed within the past year and the interviewer has knowledge of the problems and the assessment indicated they were present, then answer “Yes” for this item and note what that assessment indicated.

If the client has never been assessed, or if it is unknown whether the client has ever been assessed, but there are indicators of problems with the following, answer “yes” for this item. Note the problems that the client’s behaviours indicate, for example:

- intellectual functioning
- academic/vocational potential
- academic/vocational interests
- excessive fears; negative attitudes toward self; depression; tension
- hostility; anger; potential for assaultive behaviour; over-assertion/aggression
- impulse control; self-management skills
- interpersonal skills; under-assertive
- contact with reality; severe withdrawal; over-activity; possibility of delusion/hallucination
- disregard for feelings of others; possibility of reduced ability or inability to feel guilt/shame; may be superficially “charming”, but seems to repeatedly disregard rules and feelings of others
- criminal acts that don’t make sense or appear irrational
- other (specify)

LSI-R Training Manual: (Level of Service Inventory – Revised) Multi-Health Systems (MHS) Inc. 2002

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# Research Review: The Impact of Domestic Violence on Children

**Dr John Devaney<sup>1</sup>**

**Summary:** This paper reviews the research on the prevalence and impact of domestic violence on children, and considers how professionals should respond to children's needs to best provide support and ensure their safety.

**Keywords:** domestic violence, impact on children, child abuse, coping mechanisms, brain development, toxic stress, interventions, child protection.

## Introduction

Domestic violence is a significant problem for those whose life is affected by this issue, the social, health and criminal justice agencies that respond to it, and wider society that must bear the costs. Whilst domestic violence is not a new phenomenon, the past thirty years has seen increasing public awareness and a growing political consensus that something needs to be done, even if what should be done is less clear (Holt and Devaney, 2015). Over time our understanding about the presentation, dynamics and impact of domestic violence has developed, resulting in the need to define what is it that society needs to tackle. This, however, has not been a trouble free endeavour, with definitions and understanding of violence varying across research studies, regions and cultural settings (European Union Agency for Fundamental Rights, 2014). In Northern Ireland domestic violence (also referred to as domestic abuse or intimate partner violence in the literature) has been defined as:

Threatening, controlling, coercive behaviour, violence or abuse (psychological, physical, verbal, sexual, financial or emotional) inflicted

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on anyone (irrespective of age, ethnicity, religion, gender or sexual orientation) by a current or former intimate partner or family member.

(Department of Health, Social Services and Public Safety and Department of Justice, 2013)

In a British Crime Survey it was reported that half of those who suffered domestic violence in the previous year were living with a child aged sixteen years or younger (Mirrlees-Black, 1999). Within the United Kingdom it is estimated that up to one million children have been exposed to domestic violence (UNICEF, 2006). Yet in spite of these stark statistics there has been, until recently, a systemic failure by public agencies to appreciate that the presence of domestic violence should be an indicator of the importance of assessing the needs of children to both support and protection when living in the same household as the victim. This article seeks to summarise the key messages from the research literature on the prevalence and impact of domestic violence on children, and to draw some conclusions about how professionals should respond to children's needs for safety and support.

### **The extent of domestic violence**

In Northern Ireland the most comprehensive statistics on domestic violence were published in the Northern Ireland Crime Survey (a continuous, representative, personal interview survey of the experiences and perceptions of crime of 3,856 adults living in private households throughout Northern Ireland). In this survey women reported a higher victimisation rate than men (18 per cent compared with 10 per cent) (Carmichael, 2008). In Northern Ireland, three in ten victims believed that their worst incident had been seen and/or heard by their children. The survey also reported that 21 per cent of female victims had suffered threats and/or force from a partner while they were pregnant. Victims claimed that half (50 per cent) of the perpetrators were under the influence of alcohol and 9 per cent were under the influence of drugs at the time of their worst incident. Analysis of repeat victimisation revealed that 59 per cent of all victims experienced domestic abuse from the same perpetrator on more than one occasion, with 35 per cent victimised four times or more. Over three-fifths (64 per cent) of victims sustained injuries as a result of their 'worst' incident of abuse. The most frequently reported type of injury was 'mental or emotional problems' – reported by

a third (34 per cent) of the victims recalling their worst incident (Carmichael, 2008). A comparable study involving 3,077 adults in the Republic of Ireland was conducted in 2003 and established that 15 per cent of female respondents and 6 per cent of male respondents experienced severe abusive behaviour of a physical, sexual or emotional nature from a partner at some point in their lives, with the result that 11 per cent of the Irish population had experienced a pattern of abusive behaviour with actual or potential severe impact (Watson and Parsons, 2005).

The evidence from international surveys suggests that only between 10 per cent and 15 per cent of women experiencing domestic abuse actually report it to the police. As such recorded crime statistics represent only a fraction of all incidents and the scale of the problem is likely to be far greater (Watson and Parsons, 2005). The Northern Ireland survey reinforces this point with victims reporting that the police only knew about 20 per cent of the worst incidents of domestic violence, and the survey in Ireland found that only 29 per cent of women and 5 per cent of men reported incidents of domestic violence to An Garda Síochána. In fact, fewer than 25 per cent of those severely abused reported to An Garda Síochána, and 33 per cent of those who had been severely abused had never told anybody. For those who do not report the abuse to the police, the most common reasons given (based on data gathered in England as comparable data does not exist in either jurisdiction in Ireland) are that the abuse was too trivial or not worth reporting (42 per cent), it was a private, family matter and not the business of the police (34 per cent) or the victim did not think the police could help (15 per cent) (Smith *et al.*, 2012).

The most prevalent forms of domestic violence are psychological and emotional abuse and these are often impossible to measure and difficult to prove. The controlling tactics can be so contrived that the victim can come to believe the perpetrator's behaviour is the result of the victim's failings. At the extreme end of the continuum domestic homicide accounts for approximately one in four of all murders, manslaughters and attempted murders in Northern Ireland (Northern Ireland Policing Board, 2011). In England and Wales it is estimated that 140 individuals are killed each year by the crime of uxoricide – the killing of one parent by another (Coleman *et al.*, 2006). The crime is overwhelmingly committed by men, and results in children being deprived of both the parent who has been murdered and subsequently the parent who is incarcerated. Even when couples have separated the risk to women of being

killed by their former partner increases (Monckton Smith *et al.*, 2014; O'Hagan, 2014).

### **Children's experiences of domestic violence**

There is a growing awareness of children's experiences of domestic violence. This has sometimes been referred to as 'witnessing' the violence, but this fails to capture the ways in which children become caught up in incidents of abuse. It also fails to acknowledge that far from watching passively children experience the violence with all of their senses. Therefore it may be more accurately referred to as children being exposed to or experiencing domestic violence. Children may not always observe the violence (and in many instances the abuse is manifested in psychological and controlling behaviour by the perpetrator) but they are still aware that the abuse is happening (Øverlien and Hydén 2009; Swanston *et al.*, 2014).

A major limitation of most crime surveys that have been undertaken is the lack of data on children's victimisation. One useful source of information has been the prevalence survey of child maltreatment undertaken by the NSPCC across the United Kingdom in 2009. Respondents reported that 12 per cent of under elevens, 18 per cent of eleven to seventeen year olds and 24 per cent of eighteen to twenty-four year olds had been exposed to domestic violence between adults in their home during childhood. 3 per cent of the under elevens and 3 per cent of the eleven to seventeens reported exposure to domestic violence in the year prior to the survey. Overall, 24 per cent of young adults reported witnessing at least one episode of violence between their parents, with 5 per cent of the children reporting that the violence was frequent and ongoing (Radford *et al.*, 2011). This equates to 19,000 children in Northern Ireland being exposed to frequent and ongoing domestic violence.

Risk of severe abuse for both men and women in the Republic of Ireland was found by Watson and Parson's (2005) crime survey to increase with the presence of children, with this enhanced threat significantly higher for women when compared with men. This, the authors suggest, may arise from the increased stress of parenthood, greater difficulty leaving a relationship or restricted options for moving on when children are involved. This study also notes that nearly three-quarters of women seeking refuge from domestic violence are accompanied by children and that the risk of severe abuse for women who have

children increases by more than 50 per cent at the point of separation. Indeed O'Hagan (2014) has highlighted the very real dangers for women with children trying to leave their abusive partner, and the poor understanding of the phenomena of filicide-homicide in the context of separation and divorce.

Research conducted with children has also highlighted that their awareness of the abuse is greater than their parents acknowledge. Children are neither untouched by the violence nor passive bystanders (Buckley *et al.*, 2007; Swanston *et al.*, 2014).

### **Domestic violence and child abuse**

It is now widely accepted that children living with domestic violence are also at greater risk of experiencing neglect, physical and/or sexual abuse. For example, in the UK the NSPCC prevalence study found that young people experiencing family violence were between 2.9 and 4.4 times more likely to experience physical violence and neglect from a caregiver than those young people not exposed to family violence (Radford *et al.*, 2011). Similarly, Moffitt and Caspi's (2003) New Zealand study found that children's risk of abuse was three to nine times higher in homes where parents fought one another than for other children in their study. At the most basic level, living in an emotionally charged and violent household has negative implications for children's emotional and mental health in both the immediate and longer term (Kitzman *et al.*, 2003; Wolfe *et al.*, 2003; Evans *et al.*, 2008).

The frequent co-existence of domestic violence and child abuse can be accounted for in a number of ways. First, violent adults may often not discriminate between different family members. Second, adult victims may not be able to meet the physical, emotional or supervisory needs of their children as a result of physical injury and/or poor mental health. And third, children may be injured whilst trying to intervene or while being carried by the adult victim at the time of assault. Whilst there is some evidence that biological fathers have been found to be more likely than social fathers to express concern about the effects of their domestically violent behaviour on their children, they are no more likely than the social fathers to express an intent to stop their violence or to take action to reduce the impact on their children (Rothman *et al.*, 2007), raising the need for professionals to identify ways to effectively work with perpetrators without increasing the risk to victims (Devaney, 2014).

## **Impact of domestic violence on children**

Studies seeking to overview the key research have affirmed that a significant majority of the children exposed to domestic violence are affected by the experience in both the immediate and longer term (Stanley, 2011). While the research has established associations between exposure to domestic violence and adverse outcomes for children, there is now a growing body of convergent evidence that suggests that the association is a causal one (Goddard and Bedi, 2010). A series of meta-analyses of research studies examining the effects of children's experience of domestic violence have indicated that exposure is related to a range of subsequent emotional, behavioural and social problems (Kitzman *et al.*, 2003; Wolfe *et al.*, 2003; Evans *et al.*, 2008). The pathway is a complicated one involving children's reaction to what they have seen and heard, the decrease in parental warmth and caring in a household where violence takes place and the protective factors that ameliorate some of the negative effects (Stanley, 2011).

The most robust evidence of the impact of domestic violence on psychosocial outcomes for children comes from a meta-analysis of 118 studies (Kitzmann *et al.* 2003). It showed significantly poorer outcomes on 21 developmental and behavioural dimensions for most of the children exposed to domestic violence compared to children who had not been exposed to such abuse.

There is growing recognition of the heightened risk of domestic violence to women during pregnancy. It has been estimated that around 30 per cent of domestic violence begins during pregnancy, and that between 11 per cent and 44 per cent of pregnant women who had been abused in the past, were assaulted during pregnancy. In 90 per cent of all settings this abuse was carried out by the father of the unborn child (British Medical Association, 2007). During pregnancy women are less able to protect themselves and their unborn babies, resulting in possible miscarriage or long-term disability for a child. The impact of domestic abuse during pregnancy is recognised to be a significant contributory factor to maternal and foetal mortality and morbidity (CEMACH, 2009). There is a need to ensure that health professionals working with new and expectant mothers routinely ask about domestic violence and are clear about how to respond if disclosures are made (Lazenbatt and Thompson-Cree, 2009).

Other research has shown that children as young as one year old can

manifest heightened distress in response to verbal conflict between parents (Overlien, 2010). Children living with domestic violence generally have significantly more frequent behavioural and emotional problems than their peers who do not live with domestic violence (Meltzer *et al.*, 2009). Children who have also been physically abused display the highest levels of behavioural and emotional disturbance. It is important to recognise that individual children may react in different ways to the violence to which they are exposed. Some children may 'externalise' their feelings and confusion through aggressive or anti-social behaviour, whilst others may 'internalise' the behaviours resulting in higher levels of depression, anxiety and trauma symptoms. Research indicates the impact of domestic violence on both boys and girls is similar with regard to internalising behaviours, but that boys are more likely to display externalising behaviours (Evans, Davies and DiLillo, 2008).

Currently, research does not indicate that a child's age makes any significant difference in respect of whether they are more or less affected by their exposure to domestic violence, although the ways in which they are affected may differ. For example, babies living with domestic violence appear to be subject to higher levels of ill health, poorer sleeping habits and excessive screaming, along with disrupted attachment patterns. Children of pre-school age tend to be the age group who show most behavioural disturbance such as bed wetting, sleep disturbances and eating difficulties, and are particularly vulnerable to blaming themselves for the adult violence. Older children are more likely to show the effects of the disruption in their lives through under performance at school, poorly developed social networks, self-harm, running away and engagement in anti-social behaviour (Humphreys and Houghton, 2008).

### **Coping at the time of the violence**

There is some evidence that indicates that not all children exposed to domestic violence appear to suffer from poor outcomes (Kitzmann *et al.*, 2003). A secure attachment to a non-violent parent or other significant carer has been cited consistently as an important protective factor in mitigating the trauma and distress associated with exposure to domestic violence (Holt *et al.*, 2008). Therefore practitioners and service providers should develop interventions that seek to repair and promote these positive attachments, either between children and their parents, or, if necessary, another significant adult such as a grandparent.

A limited number of studies have also sought to analyse children's own strategies and actions for coping when living with domestic violence (Øverlien and Hydén, 2009). This does not mean that children should have to cope, but that children have to use coping mechanisms to survive. Coping in this context has been defined as the constantly changing cognitive and behavioural efforts to manage specific external and/or internal demands that are appraised as taxing or exceeding the resources of the person (Lazarus and Folkman, 1984). An important component of the model is that it distinguishes between emotional-focused coping (managing and reducing stress, such as a child withdrawing from violent episodes and distracting themselves by listening to music or playing with toys), and problem-focused coping (changing the problematic situation, for example, by attempting to intervene physically, by distracting the violent parent or summoning help). It is common for children to use different strategies at different times, although younger children are more likely to use emotional-focused coping, and in particular emotional disengagement, rather than problem-focused coping. This is to be expected, as a younger child will be less able to intervene and is at greater risk of sustaining injury and will, therefore, be more likely to seek to block out the sights and sounds associated with a violent episode. This might mean that professionals responding in the immediate aftermath of a violent incident might misinterpret a child sitting quietly playing or listening to music as meaning the child has been unaffected. However, research indicates that emotional-focused coping is associated with higher levels of mental health problems in the longer term (Øverlien and Hydén, 2009).

### **A developmental perspective on the consequences of living with domestic violence**

There are a number of theories that seek to explain why children's exposure to domestic violence is likely to adversely affect their development. It is accepted that children, and in particular infants and toddlers, are totally dependent upon the care of others, and that they have an inbuilt need to form an attachment to at least one significant care giver, typically their mother. Attachment theory states that, within close relationships, young children develop mental representations, or working models, of their own worthiness based upon other people's availability and their willingness to provide care and protection (Howe, 2011). If an

adult's ability to provide care to a child is compromised, or is less than optimal, then a child's attachment can suffer. Domestic violence undermines this developmental need for security and stability, through the main care giver's lack of availability and the child's exposure to a hostile atmosphere. This can result in the child developing attachments of poor quality (Shemmings and Shemmings, 2011). A chain reaction starts whereby the child manifests this poor attachment through their behaviour further challenging parents who are already struggling to cope with their own emotions and need for safety (Bentovim *et al.*, 2009). Unsurprisingly, research has shown that mothers with young children in such circumstances experience more parenting difficulties than others, in turn reinforcing the difficulties within the parent-child relationship (Levendovsky *et al.*, 2003). This can bring the family to the attention of child protection services, which may focus on the presenting problem of the parent-child relationship, without being aware of, or enquiring about, the underlying domestic violence (Devaney, 2008).

Other researchers have started to focus on the impact of exposure to domestic violence on children's brain development. The structure of the brain is developed over a succession of sensitive periods, each of which is associated with the formation of specific neural pathways (i.e. connections between brain cells) that are associated with specific abilities. The development of increasingly complex skills builds on the neural pathways and skills that were formed at earlier stages of development. Through this process, early experiences create a foundation for lifelong learning, behaviour, and subsequent physical and mental health. A strong developmental foundation in the early years increases the probability of positive outcomes, whilst a weak foundation increases the odds of later difficulties (National Scientific Council on the Developing Child, 2007). There is emerging evidence that young children who have witnessed domestic violence score lower on cognitive measures even when controlling for mother's IQ, child's weight at birth, birth complications, the quality of intellectual stimulation at home, and gender. Exposure to domestic violence particularly in the first two years of life appears to be especially harmful (Enlow *et al.*, 2012).

The development of neural pathways appears to be the result of the continuous and mutual influence of both an individual's genetic make up and their environment. Whilst genes determine when specific neural pathways are formed, individual experiences shape how that formation unfolds. Whilst children are pre-programmed to respond to stressful

situations, such as hunger, meeting new people or dealing with new experiences, it is clear that some stressors are more harmful than others. The strong and prolonged activation of the individual child's stress management system results in *toxic* stress. In situations where a child's stress levels are high, such as in situations of domestic violence, persistent elevations of stress hormones and altered levels of key brain chemicals produce an internal physiological state that disrupts the structure of the developing brain and can lead to difficulties in learning, memory, and self-regulation. Continuous stimulation of the stress response system can also affect the immune system and other metabolic regulatory mechanisms, leading to a permanently lower threshold for their activation throughout life. As a result, children who experience toxic stress in early childhood may develop a lifetime of greater susceptibility to stress-related physical illnesses (such as cardiovascular disease, hypertension, and diabetes) as well as mental health problems (such as depression, anxiety disorders, and substance abuse) (National Scientific Council on the Developing Child, 2007). They also are more likely to exhibit health damaging behaviours, such as smoking, and adult lifestyles, such as drug taking, that undermine well-being, and subsequently lead to earlier death (Brown *et al.*, 2009).

### **Intervening to support and protect children**

Whilst we have an increasing understanding of the processes that underpin risk and protective factors in children exposed to domestic violence, we have substantially less knowledge about how to influence these processes in order to increase a child's resilience (Stanley, 2011). Risk factors heighten the probability that children will experience poor outcomes in both the immediate and longer term whereas resilience factors increase the likelihood that children will resist or recover from their exposure to adversities.

There is a debate about whether instigating child protection investigations into situations of domestic violence where children are present is always helpful (Stanley *et al.*, 2009). This is because the majority of referrals to the police and children's social services do not meet the threshold for intervention. However, this is not the same as saying that the children are not in need of support services (Hayes and Spratt, 2014). Regardless of whether a child is in need of a child protection plan or not, the research evidence indicates that all children living with

domestic violence or its aftermath can benefit from individual and group work to help them understand what has happened to them and their families, to overcome the negative impact of living with abuse, and to move forward in their lives (Mullender, 2004). Such work can raise awareness about the issues, help children to learn strategies for keeping safe, ensure that they feel less isolated and 'different', and help them to feel better about themselves. It needs to be done sooner rather than later. Involvement of the child's mother in this work has been found to be helpful, although this should usually be done in parallel with individual work for the mother in her own right (Mullender, 2004). There is also emerging evidence of involving fathers who have perpetrated domestic violence in such work, with benefits for some children, and both the victim and perpetrator (McConnell *et al.*, 2014).

Additionally, there is strong evidence to show that children and their families can be better supported by professionals who have undertaken training in responding to domestic violence, underpinned by clear protocols between agencies setting out their respective roles and responsibilities (Stanley *et al.*, 2009). For example, training of police officers can both dispel myths about the nature and seriousness of domestic violence as well as better equipping officers in how to respond effectively and helpfully (Eigenberg *et al.*, 2012). Schools have a key role in identifying children who may be living with domestic violence and in providing a safe place for children to receive support (Sterne and Poole, 2009). Similarly, health professionals working in adult mental health teams are well placed to ask sensitively about domestic violence and to identify children who may be currently exposed to domestic violence or living with its legacy (British Medical Association, 2007).

### **Work with perpetrators of domestic violence**

There is a growing concern however that whilst victim support services have increased, the incidence of domestic violence appears to be growing. Indeed there is statistical evidence to show that referrals to the police and children's social services are on the increase in the United Kingdom (Stanley *et al.*, 2009). Whilst this may be partly to do with increased public and professional awareness that domestic violence should not be tolerated, there is also some evidence to show that domestic violence has one of the highest rates of recidivism. Questions though are now being asked about whether the interventions currently

being used with the perpetrators of domestic violence are effective as a means of reducing repeat revictimisation (Gadd, 2012). While a review of the literature on working with perpetrators of domestic violence is beyond the scope of this article, it is relevant to mention three emerging issues.

First, there is a debate in the academic and clinical literature about whether a criminal justice approach to working with perpetrators of domestic violence is the most useful. Whilst the use of criminal justice sanctions such as pro-arrest polices and prosecution is important in dealing with individuals and also symbolical of society's abhorrence of these types of behaviour, the evidence of effectiveness in terms of recidivism of individuals and as a disincentive to others is very mixed (Buzawa *et al.*, 2012). Next, there is growing evidence that some perpetrators of domestic violence do appreciate that they need their behaviour to change and do want to seek help. However, the range and number of services designed to work with domestically violent individuals is impressively small given the size of the issue. Finally, as McGinn *et al.* (2015) note, effective work with perpetrators of domestic violence must be built upon a better understanding of how and why they change their behaviour. If we believe that some individuals can be supported to take responsibility for their behaviour towards their current or former partners, and their children, then we need to explore who might be amenable to changing, in what ways and under what circumstances (Mahon *et al.*, 2009). This requires a greater appreciation of perpetrators as being heterogeneous, and a fuller understanding of how professionals should respond (Gondolf, 2012). Initiatives such as *Caring Dads* (McConnell *et al.*, 2014) and *Strength to Strength* (Stanley *et al.*, 2012) show the importance of seeing male perpetrators as fathers and responding to this aspect of their identity, whilst also bearing in mind the potential for some men to use their children as a means of continuing the victimisation of their partner (O'Hagan, 2014).

As such professionals and their employing agencies need to have clear processes and tools for assessing and managing the risk that is associated with domestic violence.

## **Conclusion**

This article has argued that for the significant number of children living with domestic violence, the experience is often traumatic and the

consequences in both the immediate and longer term are significant for the majority of these children. Children who appear to cope better tend to have strong attachments to a non-violent parent or other significant adult, and to have had the opportunity to engage in therapeutic work sooner rather than later. Professionals working in criminal justice organisations can and should intervene whenever they suspect that a child is being exposed to domestic violence. This should involve a range of measures including:

- clear procedures within organisations for safeguarding the child based on a clear assessment of the child's needs, their parents' capacity to provide for these needs and any wider environmental or family factors that may impact on the home situation
- agreed inter-agency procedures for working with the child, the victim and the perpetrator of the abuse
- the provision of therapeutic support services to the child and adult victim
- a response that aims to work with perpetrators to get them to take responsibility for their behaviour and the impact it has on others
- a range of services that are tailored to the specific needs of perpetrators based on their ability to engage and willingness to change.

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# Probation Practice with Non-Irish National Offenders in the Republic of Ireland

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**Summary:** Probation practice with probationers from minority groups, in particular those with different cultural and ethnic backgrounds, presents challenges to Probation Officers. This paper examines how Probation Officers view practice skills and methods of probation supervision with non-Irish national offenders from minority ethno-cultural backgrounds. Overcoming language barriers and cultural differences in areas such as engaging with offenders, encouraging compliance and gathering information for use in assessing risk are issues that were raised in focus group discussions with Probation Officers. These issues are explored and findings from the focus groups are summarised and discussed.

**Keywords:** culture, ethnicity, race, minorities, identity, inclusion, exclusion, marginalisation, offending, probation, Ireland.

## Ethnicity and crime

Research on links between ethnicity and crime has often been broken down into two different, but not necessarily discrete perspectives. One perspective focuses on a culture conflict between ethnic minorities and a criminal justice system that represents a dominant ethno-cultural majority. The second perspective considers the impact of the racialisation of interactions between minority populations and agents of the criminal justice system (Durrance *et al.*, 2010; Lewis, 2009; Webster, 2012). These two related strands bring with them issues of individual and systemic racism and discriminatory treatment at various decision points in the criminal justice system. (These include decisions to arrest and/or

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prosecute, potential bias in findings of guilt or innocence, disparities in sentencing and difficulties in working with minority ethnic offenders in terms of compliance and engagement.) Such strands can be further complicated by suggestions that ‘criminal justice-based discrimination is symptomatic of structural racial inequality’ and/or that ‘historical legacies of racial injustice’ are part of the ‘collective memory’ of indigenous and immigrant minorities resulting from slavery and colonialism (Webster, 2012, p. 111). Ireland has neither a history of slavery (at least not a recent history) nor of being a colonial power. There is insufficient Irish research to suggest that either of these are at work in Ireland or indeed relevant to the Irish context, with the possible exception of the emerging literature on the criminal justice system and Travellers (Mulcahy, 2012).

### **Ethnic minorities in Ireland**

There is an extensive and more general literature on the issue of ethnic minorities in Ireland, particularly within the context of Celtic Tiger and post-Celtic Tiger immigration, including both economic migrants and asylum seekers (Mac Éinrí and White, 2008; Fanning, 2012; Loyal, 2011; Gilmartin *et al.*, 2013). This includes literature that addresses the issues of racism and also examines discriminatory practices against minorities although very little of it looks at issues directly related to criminal justice. The Roma has been the one group of non-Irish Nationals that has received some criminal justice attention, but it has been limited (Horgan, 2007).

One possible reason for this lack of research focus may simply be one of quantity. Non-Irish nationals have not been recorded by the criminal justice system in large numbers, if they were recorded at all. For example, a 2009 study undertaken by the Probation Service indicated that only 3.26 per cent of the Probation Service caseload was made up of what were termed foreign nationals (Probation Service, 2009). Just over half of those were from Eastern European countries that became part of the EU between 2004 (Poland, Latvia and Lithuania) and 2007 (Romania). A follow-up study in 2011 showed an increase to 4.8 per cent of probationers who were foreign nationals and four of the top five countries in terms of numbers on probation were from Poland, Lithuania, Romania and Latvia (Burke and Gormley, 2012).<sup>2</sup>

<sup>2</sup> In both studies, people from the UK were excluded from the sample. The data is discussed more fully in Fernée and Burke, 2010..

The percentages were slightly higher for committals to prison. The number of EU prisoners (including from the UK) has remained relatively constant between 12 per cent and 13 per cent in the five-year period between 2008 and 2013, the last year when this data was available (Irish Prison Service, 2014). EU nationality is not disaggregated (except for UK nationals) so it is not possible to tell which EU countries had greater representation. The number of non-EU prisoners declined during that time from 16 per cent in 2008 to 5.6 per cent in 2013 with the largest drop being African nationals.<sup>3</sup> This might suggest that encounters with non-Irish nationals on probation would not be a frequent occurrence, although the interview data given below suggests a more nuanced picture.

### **Working with ethnic minority offenders**

Working with ethnic minority offenders has been the subject of some research and practice examination, particularly in a community justice/probation context (Durrance *et al.*, 2010). An extensive review of research in the UK on probation practice with ethnic minorities in Britain (Lewis, 2009) found that it was unclear what type of offending behaviour programmes might work best with which ethnic minority offenders, but ‘that traditional casework skills and time are needed for OASys [the standard risk assessment instrument in England and Wales] to be completed well’ (p. 117).

A survey of probation managers, practitioners and academics across Europe to consider the development of a broad European approach to probation training found that the ‘Ability to work with diversity’ defined as offenders of ‘different race, gender, religion, sexual orientation, level of income, etc.’) was considered one of several essential skills or competencies for probation work (Durnescu and Stout, 2011, p. 400).

Montgomery looked at probation work in the UK with asylum seekers as offenders, highlighting specific needs and issues in respect of the offenders’ legal status in the UK (Montgomery, 2004). The skills Probation Officers need are not significantly different from those needed in work with other ethnic minority offenders. She suggested, ‘It is essential that they [Probation Officers] are aware of the range of language needs and cultural/religious support which such offenders may require’ (p. 176).

<sup>3</sup> Africans, North, Central and South Americans, as well as Asian inmates are categorised by region, not country.

The social work profession and social work education have paid specific attention to cultural diversity as part of preparation for practice as well as its being recognised in the social workers' code of ethics (Moran, 1998; Social Workers Registration Board, 2010; Kohli *et al.*, 2010). 'Culturally competent social work practice' has become a common phrase to indicate the importance of recognising that social workers frequently work with persons of different cultural backgrounds than their own (Marsiglia and Kulis, 2009; Fong, 2004; Lacroix, 2003).

Much of the European and also Irish social work research in this area has focused on work with ethnic minority children (Christie, 2010; Fanning, 2004). In a comparative study (Williams and Soydan, 2005) across several European countries, there were three levels of response by social workers asked to consider a hypothetical case involving possible neglect of a child by his immigrant family. The responses from the study reflected

*cultural sensitivity* orientations where the worker is concerned to respond to the family with culturally appropriate services and skills, those that reflect *cultural relativity* considerations where the worker reflects on cultural difference and its implications, and those that reflect *professional competence* considerations where the worker reflects on their own level of knowledge and ability to respond to the case in question. (p. 916 emphasis original)

The continuing connections between probation in Ireland and social work qualifications (Carr *et al.*, 2010) along with the interest in continuing diversity training among Irish Probation Officers (Fernée and Burke, 2010) could indicate that cultural competency has some currency with Irish Probation Officers. That said, probation practice takes place within the parameters of compliance with the sentence of the court, an emphasis on public protection, and the need to consider areas where a clash of cultural expectations brings in the force of the law. Working with the involuntary and resistant client is part of what probation practice is all about, regardless of ethnic background of either the Probation Officer or the offender. Probation Officers can find themselves trying to explain, sometimes through an interpreter, to a resistant probationer from an ethnic minority, why compliance as well as challenging offending behaviour is integral to probation supervision. Assumptions about the role of probation and/or criminal justice sanctions may not be shared, there

may be implicit concerns about discrimination, and there may be cultural differences with respect to remorse (Hudson and Bramhall, 2010).

## Research study

The research on which this article is based was conducted in the spring and summer of 2013 with Probation Officers of the Irish Probation Service.<sup>4</sup> Focus groups with Probation Officers were held in major urban centres: Galway, Limerick, Cork, Waterford and Dublin. Probation staff in these locations were contacted directly and asked if they would be willing to be a part of one of the focus groups. Participation was strictly voluntary. The study considered issues of probation practice with ethnic minority offenders, and included both non-Irish nationals and Travellers. The data on Travellers has been reported elsewhere.<sup>5</sup>

A total of thirty-seven Probation Officers participated in the groups. Questions to guide the discussions covered a range of topics related to probation practice. A number of themes emerged from the focus group discussions. These themes related to probation practice issues such as engagement, compliance and risk assessment. It was evident in the discussions that cultural and linguistic differences played a significant part in working with non-Irish nationals on probation. It was also clear that the experiences of Probation Officers with non-Irish nationals could be broadly categorised between two groups: Roma/Gypsy probationers, and other non-Irish nationals. These are discussed in greater depth below, with examples from the data.

Although the data on non-Irish nationals on probation reported above suggest small numbers on caseloads (Probation Service, 2009; Burke and Gormley, 2012), most participants in the focus groups had some experience with non-Irish nationals. Those with longer experience in the Probation Service were able to comment on the increase over the past twenty years or more, of non-Irish nationals on probation. This, however, is not to suggest that the increase was characterised as ‘dramatic’; rather that it went from virtually none to some. One participant had extensive experience prior to joining the Service in social services in an economically deprived area of Dublin, and another spoke of experiences in County Limerick:

<sup>4</sup> The Research Ethics Board of the University of Manitoba approved the research methodology.

<sup>5</sup> D.C. Bracken (2014) ‘Probation Practice with Travellers in the Republic of Ireland’, *Irish Probation Journal*, Vol. 11, pp. 44–62.

*Researcher: You said it was pre-Celtic tiger so were there many non-nationals at that point?*

*Participant: No, none I would say. It was back in the 1980's early 90's.*

*Participant: ... I suppose back in the late nineties there was very few non-Irish nationals in County Limerick, again when I was leaving [a social services position], the number of asylum seekers in Ireland which would have been a trickle up until then, they were starting to increase, but on the ground working with non-Irish nationals [there] was very little.*

For other participants who had worked in social services prior to joining the Probation Service, there was a diversity of experiences. Some had never encountered non-Irish nationals in their work, while others had experiences, but few had what might be termed extensive experiences. All participants, those with prior social service experience and those without, had at least some contact with non-Irish nationals as part of their probation work. The following is an example of how this was expressed by one worker, possibly with slightly more experience than average:

*working in the Probation Service I've had experience working with both Travellers and non Irish nationals, I think particularly in [an Irish city] because there's a big immigrant community here ... And at one stage when I was doing community service [and] most of my caseload would have been either Travellers or non-Irish nationals.*

The focus groups included significant discussion about how much emphasis should be placed on an offender's ethnic background in court reports. Much of the discussion focussed on including the possibility of highlighting cultural differences that may have an impact on the sentence a court decides to impose and the capacity for compliance and engagement with the requirements of a community sentence. There may be a possibility of showing a particular strength that the individual had, the availability of community support, or alternatively the need to provide context and background to the offence. In that way perhaps it was no different than what might be included in a PSR<sup>6</sup> for an Irish person.

The difference in the view of the research participants was the extent to which cultural/ethnic differences were to be emphasised. It was clear

<sup>6</sup> A PSR is a pre-sanction assessment report prepared for the court by a Probation Officer at the request of the judge prior to sentencing.

from the discussion that the subjects had given this much thought. There were many comments that suggested an engagement with 'reflexive practice', the process by which practitioners become 'aware of the limits of our knowledge, of how our own behaviour plays into organisational practices and why such practices might marginalize groups or exclude individuals' (Bolton 2010, p. 14). The comments below represent the range of responses to questions about identification of a client's ethnicity in court reports:

*it can be useful particularly when you're looking from an offender's perspective of the offence in terms of how we might in their view justify or explain the decision making process ... and if they're looking at the cultural background the rules which they've grown up with or the family [they] grew up with, they can explain the decision making process in their behaviour and I think that can be relevant in a number of situations. There is an expectation that we can contextualize the offence in context of the individual and the situation of that individual, so ethnic background and stuff like that is a very obvious part of it.*

*I suppose we're mindful of being prejudicial sometimes as well and whereas certainly in understanding and working with these cases it's coming up as a challenge you know how would we deal with families where we go in to meet the parents and the mother isn't present because the family system there where the mother isn't allowed to be part of the discourse ...*

*I would say it's mentioned [ethnicity and culture], it's mentioned in the pre-sanction reports and it's usually around family circumstances for both but certainly with the children I'm working with they are Romanian young men and I will always say if they're part, they're Romanian and if then they're part of the Roma, to differentiate, and then also how long they've been here ... And then with the young girls I would always mention around their socialisation because they don't do a lot of it outside the family.*

*And it might have to do with our judgment values too like if you see someone coming in what do you think when you see this person in, you have to be honest about that, be aware of it and box it and deal with them then, because if we do come in with that well we like it or we don't.*

The research participants' concern about the appropriate way to reflect cultural difference without playing into stereotypical narratives about

either specific ethnic groups, or more generally about the difference between a criminalised 'them' and a majority population of 'us' is well founded. Hudson and Bramhall's research on risk and pre-sentence reports on Asian offenders in Britain noted differences in the way certain aspects of the offenders' culture, such as strength of family ties and cultural attitudes towards expressions of remorse over the offence, were identified and recorded in PSR's when compared to white, majority offenders (Hudson and Bramhall, 2010).

As the present study was not intended to review PSRs and focused instead on subjects' perceptions, the explicit use and impact on sentencing was not at issue. However, the comments suggest it was a topic that the research subjects had given some consideration to.

### **Risk assessment**

Good risk assessment is dependent on the quality of the information obtained and used in standardised instruments. The risk factors used to identify criminogenic need ought to be relevant to the lived experience of the offender, and that experience should be in some way connected to the offending behaviour of the offender. Culture, language, gender and ethnicity are all tied to how the risk factors are interpreted both by the person completing the assessment and the person answering the questions, answers to which lead to the completion of the assessment, development of a risk score, and subsequent case management plan.

Research has identified both gender and ethnicity as possible sources of difficulty in developing a risk assessment that has some validity in terms of contributing to offender management (Marutto and Hannah-Moffat, 2007). The research by Hudson and Bramhall referred to above also identified the strong possibility of bias in terms of how information was both solicited and interpreted when developing an assessment of risk of reoffending. In what they termed the 'alchemy of race and risk' (p. 735) ethnic and cultural aspects of, for example, family and minority community activities become associated with crime by individual members of these communities. The danger then is that all offenders from this one background are assumed to share these characteristics.

In the present study, the Probation Officers in the focus groups spoke about the difficulty in applying certain aspects of the risk assessment process to ethnic minorities:

*I think there's a general acceptance that the LSIR would discriminate against both the Traveller and ethnic minorities on those areas like accommodation you know the addresses would change very regular, and the education and the employment, in those areas. So I suppose we need to be careful when we're doing those.*

*We've got what's presented to us at the assessment and how much collateral we can gather around about those who know them, but we don't have their past or you know there's a whole piece there at the beginning of the LSIR that's based on previous convictions and whether they have breached parole or whether they have been cautioned or whatever they've been into before, and we don't have access to all of that, so that piece will skew it straight away.*

*So that would be the criticism I suppose of the LSIR is that it doesn't take into account cultural risk, cultural issues, and in general people don't override much, cause there's just research to say that that's not ideal to be overwriting the system you're using all the time, there's different view points on that.*

*I suppose the point is like you need to be culturally aware and observant when you're doing that [gathering information for a risk assessment] like you need to be on your game when you're doing that.*

The general views expressed here are not so much a criticism of the risk assessment instrument per se, but rather that the quality of the information may be suspect because it is difficult to verify. Most actuarially based risk assessment instruments consider past criminal history to be an important static factor (as opposed to a dynamic factor and therefore changeable) predicting likelihood of reoffending (Bonta and Andrews, 2007). The participants in the study quoted above clearly saw the lack of credible information on prior offending as problematic in developing a reliable risk assessment score. As well, at least one person also saw the item on the risk instrument related to accommodation as perhaps not relevant with both non-Irish national offenders as well as members of the Travelling community.

## **Offender supervision**

An emphasis on getting good information for a risk assessment is only part of the dynamic in offender supervision. Literature reviews of

effective practice have identified skills long established in social work practice that contribute to a good supervisory relationship as a foundation to promoting change (McNeill *et al.*, 2005; Dowden and Andrews, 2004). Establishing a good working relationship, when there are clear differences of power and authority related to the involuntary nature of the relationship, can be highly problematic particularly with marginalized groups such as ethnic minorities (Rooney, 2009).

The discussions in the focus groups on engagement and compliance tended to centre, understandably perhaps, on issues of communication, language barriers, the use of translators and other obstacles to moving into engagement on offending behaviour. Discussion of language and translators will be considered below. There were, however, some comments related more directly to engagement and also to compliance. The first two comments are specifically about Roma offenders. It is clear that each of the Probation Officers found significant cultural issues with respect to acknowledging that what was done was wrong and that change was necessary. The second two are based on experience more generally with Eastern Europeans, and both their lack of understanding of what probation is about and the difficulty Probation Officers have engaging with offenders from different cultures:

*It's kind of harder to work with the Roma, you know, with an Irish young offender there's like a process that you can go through and bring them to a place to where they realize what they did was wrong, but with the Roma it's kind of like, why did you take that, well it was there you know.*

*It's kind of like in terms of they don't have any notion of changing the offending behaviour, it's part of life. It's very hard to work with that when there's no intention to change, no desire. Like it's kind of like there's this guy robbing a mobile goes into a shop, looks at the mobile phone decides he want it and there was no moving him on from that, he wanted it ...*

*I think culturally there is a piece there especially with the Eastern Europeans that might come in that in their countries the rules would be a lot stricter so they are quite fearful already of what would happen if they don't comply. So certainly I think already their attitudes to probation and authority are quite different.*

*... In fact where I worked with foreigners I find they tend to be more compliant than the general public, so you can get into work unless it's the*

*language barrier. I think if there's a language barrier it's very difficult to get into the real work. I think also there does need to be acknowledged in the therapeutic relationship the cultural differences as well because I don't think we can have a complete understanding of the cultural difference so I think that needs to be acknowledged and explored even before you can get into it with the foreign nationals.*

The final comment above indicates both the problem of language as an obstacle to more 'therapeutic' work, and also identifies unspecified 'cultural differences' that require preparation on the part of the worker prior to attempting engagement to promote change in offending behaviour.

Nearly all research participants identified language problems with non-Irish national offenders as an issue. When the discussion in the focus groups moved to issues of language barriers, the conversation shifted frequently to problems with translators, and the difficulty of trying first to get information and then to moving into some kind of engagement with the offender on both compliance and challenging offending behaviour:

*... sometimes we had issues with translators who weren't aware ... of the nature of the offending that we would be asking questions about. If it's a sex offender ... they weren't prepared for that and sometimes we've had translators who had to leave the room, they weren't aware that that's the kind of things that they'd be translating...you're losing out on the emotional [part] and a lot of the non verbal cues that we were missing by having an interpreter so we tried to address that as best we could ...*

*I did have an interpreter one time answer a question for me without putting it to the client, because he didn't realise the method, I was pushing him, I didn't feel the person was being honest with me and I was pushing, challenging, and the interpreter started answering my question which really annoyed me.*

*Well the Roma yeah, like any Roma families I had to deal with again the dad is the hierarchy in the family and if I bring in an interpreter and the interpreter is male he will spend his time talking to the interpreter, and the interpreter isn't the Probation Officer.*

Although these comments indicate a clear frustration both with some of the interpreters and also with the difficulty in communicating with clients through an interpreter, it was clear from the discussions that language

was not necessarily a problem in the majority of situations with non-Irish nationals. The responses appeared to suggest that there was no defined standard with respect to the qualifications and use of interpreters, or guidelines with respect to confidentiality.

Cultural aspects of gender difference, in particular with Roma offenders, often played a major role in offender supervision. Different ways of working with female as opposed to male offenders has been the subject of research (Althoff, 2013; Morash, 2010). A potentially complicating factor is the cultural ways in which gender roles are defined and enforced. The discussions in the research focus groups indicated this was an issue both for female offenders, in particular Roma women, and also for the role of the woman in ethnic minority families.

*I suppose the other thing that I've had is particularly with female clients is the dominance or the attempted dominance of the male client in that, in my experience is that they come in with the female for the interview and would nearly insist in coming into the [supervision with their] partner or whatever that there seems to be a very dominant male kind of piece that I don't understand really. I suppose it's a cultural thing. But I sometimes find it when we interview our own you know the Irish nationals we wouldn't have that same dynamic as there is with someone of particularly the Romanian females.*

*[Comparing Traveller women to Roma women] But she'll [Traveller woman] also talk to the professionals, she talk about, and she'll do the care, but in the Roma families the mother will not even talk to you, she won't, she'll sit there, she will not engage with you at all. If you say can I speak to her on her own the father will sit outside the door.*

*I remember one woman was given community service and she was going to have to be onsite for several hours a day and that meant that the husband or partner was going to have to mind the children and he asked me in the office could he do the community service for her rather than mind the children ... And I said unfortunately no he would have to mind the children because the alternative is a prison sentence.*

*And I mean of course we're aware of the fact that they [men] may have a difficulty in working with us [female Probation Officers] as women.*

Although the research did not have a specific focus on community service, this issue came up regularly in discussions on probation supervision. As the quote above indicates, culture was an issue with

supervision as it related to community service. The project described by Horgan (2007) arose in several discussions as it related to fashioning a response to offending by a particular group (Roma women) through community service. In a different vein, there were regular comments about how successful community service appeared to be, at least in terms of compliance, for Eastern European men. This comment from one focus group reflected this view: ‘what I find in community service is that especially if somebody is from Eastern Europe they show up on time [and] they have a very strong work ethic.’

## Strengths

Developing a sense of a minority culture, in particular the strengths that minority group might possess, is important to understanding how that may assist persons to stay out of crime. In particular, a desistance-focussed way of working with minority offenders relies on the strength of the offender’s cultural community as well as the offender’s connections to that community, to help an individual’s movement away from crime (Durrance *et al.*, 2010). The discussion in the focus groups gave an indication that this was an issue that had been the subject of significant thought on the part of the participants. Two specific comments stand out as representative of how seriously this had been considered:

*... if you look at the Muslim community in particular you know the impact of the older generation of religious leaders in prison and in the community, sometimes part of the supervision plan is [that] certain individuals would be to help to re-introduce them back to the religious side of their culture ... Bringing people back on board because if they leave the core base of their community the family, the culture sometimes it can be very, very difficult to get back, so going back to the heartland of their culture, it can be [important].*

*... how do you make them [non-national] feel more comfortable in an environment that’s very Irish, very white, do you know what I mean very comfortable, we’re very comfortable in this community but are they? So I suppose really it’s about rethinking what we’re doing ... and I think that could be a key, certainly it’s a help to look at strengths, because I think strengths, we do tend to think negatively, because most of the people that we’re dealing with have a strength, and we do tend to latch on to them [negatives].*

## Conclusion

While the research presented here was based on a relatively small sample of Probation Officers the issues discussed have relevance in a wider context. Addressing them would benefit engagement and effectiveness in probation work with people from minority cultures.

The continuing movement of people within the European Union and continued immigration in Ireland suggests that cultural differences and cultural understanding and appropriate practices will be important issues for the Probation Service. Migration to Ireland has continued despite the economic slowdown that began in 2008. The 2011 census showed an increase of non-Irish nationals of 30 per cent since the 2006 census with Polish migrants making up the largest group.<sup>7</sup> There continues to be a sizeable proportion (20–25 per cent) of some migrant groups (e.g. Lithuanians, Somalians, Latvians, Poles and Brazilians) who do not speak English. (Central Statistics Office, 2012).

The research indicated that all three of the approaches identified by Williams and Soydan (2005)—cultural sensitivity, cultural relativity and professional competence—were in evidence in the comments from the participants. There was a strong sense in the discussions that Probation Officers were keenly aware of cultural differences, and reflected on both what they knew and did not know about the ethno-cultural backgrounds of their supervisees.

Notwithstanding the issues of translators, the difficulties in gathering information and moving toward engagement with non-Irish national offenders were recognised and solutions considered. These findings reflected those of Ferneé and Burke's (2010) review of diversity issues in the Probation Service. Probation Officers in the present study seemed interested in being able to acquire greater knowledge for use in professional practice. As UK probation researchers found (Durrance *et al.*, 2010) in considering probation work with ethnic minorities:

... there is little sense in attempting to construct theories and develop practice models that focus on 'race' without reference to dimensions such as religion and, to a lesser extent, nationality; nor in broad terms, can we develop meaningful practice models unless they incorporate research on the diversity of experiences among people from minority ethnic groups. (p. 139)

<sup>7</sup> This data includes UK nationals.

Assuming that present immigration trends continue, particularly with rights of free movement for EU citizens, Ireland can be viewed as moving from a mono-cultural to a multi-cultural society. The majority of immigrants to Ireland becoming Irish citizens have come from non-EU countries (Fanning, 2013). Thus, the recognition of cultural differences will likely continue to be a factor in probation supervision, whether of EU nationals or others from outside the EU. Ireland it can be said has been slow in adjusting to this radical change from being historically characterised as a nation of emigrants to one to which many people wish to enter and settle.

Valuable Irish research on the experiences of probationers exists (Healy, 2010), but a weakness of the current research is that it does not address the issues and experiences of non-Irish nationals on probation. There is not a large body of research on the experiences of immigrants in Ireland generally. Studies on the experiences of children (Ní Laoire *et al.*, 2011) of migrants as well as of Polish families in Dublin (Smith, 2013) provide some important initial background and insights.

There is a need for further in-depth study and research on the experiences of non-Irish nationals in Ireland generally. The data from the present research would seem to suggest that in the complex world of criminal justice and in the probation assessment and supervision practice there is a need for greater knowledge, information and understanding on the needs and experience of non-Irish nationals to ensure relevance, effectiveness and appropriate interventions in probation practice for the benefit of the client and whole community.

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# The Management of Serious Violent or Sexual Offenders who are Mobile across the European Union: The Challenge of Mobile Offenders

**Sarah Hilder and Hazel Kemshall<sup>1</sup>**

**Summary:** This article reports on an EU funded project examining the use of existing information exchange mechanisms, and monitoring, management and tracking systems available to EU Member States for use with serious violent or sexual offenders who travel across EU borders. It focuses on transfers and information exchange, on those offenders who move for short periods, or who move at the end of sentence or sanction. It also presents up to date data for probation staff and draws on good practice to offer practical tools for practitioners to assess potential mobility, and to assist in comprehensive and speedy information exchange. Broader areas of improvement for the wider EU are also identified.

**Keywords:** serious violent or sexual offenders, mobile, travelling, information exchange.

## Introduction

SOMECE (Serious Offending by Mobile European Criminals) is a two year project funded by the European Commission Directorate-General for Home Affairs.<sup>2</sup> The project brings together a range of criminal justice organisations from across Europe to look at how Member States can cooperate in order to safeguard their citizens against travelling high risk dangerous offenders. The project responds to a number of high profile cases involving mobile EU nationals and also reflects growing concern

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<sup>2</sup> <http://www.somec-project.eu/>

that greater collaboration should exist across the EU to ensure enhanced public protection. In 2013 SOMECE commenced an investigation into the use of existing information exchange mechanisms and monitoring, management and tracking systems available to EU Member States for use with serious violent or sexual offenders.<sup>3</sup> The project mapped existing information exchange mechanisms and their relevance to this offender group (see Hilder and Kemshall, 2014). It carried out research including direct interviews and focus groups, and the authors were provided with case studies by the twenty participating EU Member States.

The full methodology and complete results of the project are presented in Kemshall, Hilder *et al.* (2015). This article presents the issues and challenges as highlighted in the field data.

Common concerns from probation staff are highlighted such as the fact that they are not always integral to the exchange of information across EU borders. Good practice examples such as the development of information-sharing protocols are discussed. Areas for improvement both nationally and EU wide are identified.

It is clear that the identification and assessment of serious violent and sexual offenders who travel across Europe are seen as particularly challenging requiring specific improvements in assessment processes and information exchange.

## **Background and context**

The pattern of travel, migration and employment within the EU has significantly changed. In a twelve month period ending in February 2012, 43.5 million UK nationals had travelled to other parts of Europe (Office for National Statistics, 2012). During 2011, 1.3 million people migrated from one EU Member State to another, and a further estimated 1.7 million immigrants came to the EU that year from non EU countries. In 2011 there were 33.3 million foreign citizens resident in the EU, 6.6 per cent of the total population. The majority, 20.5 million, were citizens of non-EU countries, while the remaining 12.8 million were citizens of other EU Member States (Vasileva 2012–Eurostat, 31/2012). The EU community is therefore managing not only the movement of EU citizens

<sup>3</sup> Serious Offending by Mobile European Criminals (SOMECE), EU Action Grant, ‘Prevention of and Fight Against Crime’, ISEC, 2011/AG/4000002521, available at: [http://www.cepprobation.org/default.asp?page\\_id=563](http://www.cepprobation.org/default.asp?page_id=563)

but also those from third party countries who have entered the EU domain. Whilst there are significant benefits to be gained from increases in international travel, European growth and freedom of movement, other less desirable consequences have also started to emerge, including increased opportunities to engage in criminal activity. It is recognised that globalisation, the internet and low cost travel have contributed to an increase in crimes which cross State borders (Messenger, 2012; Alain, 2001; Puntsher and Reikmen, 2008; Magee; 2008). Cases of sexual offenders travelling abroad in order to offend, typically to Cambodia, Vietnam and Thailand are noted, but similar issues are apparent across the EU (Messenger; 2012). There is also growing evidence of the increased ‘internationalisation’ of crime (Alain; 2001), with crime gangs pursuing trade routes across the EU and beyond. People trafficking, drug and firearms trafficking, fraud and acquisitive crime are just some of the challenges facing law enforcement agencies (see Hilder and Kemshall, 2014 for a full review).

The speed, frequency and distance of travel that an offender can achieve across the EU (particularly within the Schengen area of open borders), means there is a need for effective cross-border communications to identify and manage offenders. However, practical difficulties such as lack of resources to identify such offenders or to exchange information, coupled with varying national legal restrictions and differing ethical views of the right to make such disclosures result in there being significant gaps in the ability of Member States to effectively exchange criminality information. This is particularly apparent in relation to the single transient violent or sexual offender.

Whilst there is appetite for change, this current deficit in EU co-operation has potentially devastating consequences for the victims of such offending.

There have been a number of tragic examples in recent years which illustrate this point. In Glasgow in 2008, Moira Jones was murdered by Marek Harcar. Harcar was originally from Slovakia, where he had thirteen previous convictions, four for violence. However Scottish Police were unaware of his prior criminal history and he had entered Scotland unmonitored.

Whilst the frequency of such cases should not be overstated, the impact when they occur is far-reaching. This is illustrated in the case of Robert Mikelson. Originally from Latvia, ‘Robert M’ left to live and work

in Germany, where he served a prison sentence in 2003 for distributing child pornography. On release he moved to the Netherlands. The authorities there were not aware of his offending history and he secured employment in day care centres, child care facilities and as a private baby sitter. Child protection employment checks were not made by the manager of the main centre where he worked, but even if this had occurred, it is not known if information on his German convictions would have been available. Robert Mikelson went on to sexually assault many of the children in his care from 2007 to 2010. He was charged with sixty-seven counts of raping a minor and sentenced in April 2013 to eighteen years' imprisonment.

### **The current situation**

As the progressive abolition of European internal borders occurred, a number of EU instruments were implemented to improve cross-border police and judicial co-operation (Alain, 2001; Finjaut, 1993; Junger-Tass, 1993). Measures are also in place to assist probation services in supervising offenders across EU borders (O'Donovan, 2009). Positive strides have been made in the establishment of Europol National Units (ENU) and the provision of ENU liaison officers from all member states. Funding and support are available for Joint Investigation Teams and cross-border operations.<sup>4</sup> Efforts have also been made to simplify processes of information exchange between law enforcement personnel (Swedish Framework Decision 2006/960/JHA), and more recently the European Criminal Record Information System (ECRIS) has established the routine electronic transfer of conviction data on EU citizens. This aims to ensure that Home Member States hold comprehensive records of all of the criminal convictions that a national citizen may have acquired elsewhere in the EU (EU Council Framework Decision 2009/315/JHA; and EU Council Framework Decision 2009/316/JHA). The benefits of this to risk assessment, sentencing and offender management processes are clear.

<sup>4</sup> The concept of the Joint Investigation Teams originated from the 2000 EU Convention on Mutual Legal Assistance in Criminal Matters (2000 MLA Convention) with the aim of improving co-operation between judicial, police and customs authorities by updating existing mutual legal assistance provisions. The conditions under which JITs are to be set up are laid down in Article 13. The provisions of Article 13 of the 2000 MLA Convention were incorporated into the Framework Decision of 13 June (FD) 2002.

For prisons and probation EU provision has been made for the transfer of custodial (Framework Decision 2008/909/JHA) and community sentences (FD 2008/947/JHA (FD 947)). However there is evidence to suggest that the provision of opportunities for these various types of exchange can be very different from an effective application of such measures. To date only eighteen Member States have transposed 2008/909/JHA into their domestic legislation and only fourteen Member States have actively implemented FD 2008/947/JHA (European Commission, 2014). These and other types of inconsistencies of application were borne out in the SOMEK research data.

The serious impacts of organised crime and terrorism<sup>5</sup> and issues such as football hooliganism have been met with a co-ordinated European response. This includes an effective exchange of information on known high risk perpetrators who are travelling to sporting events with the primary purpose of engaging in violence (Frosdick and Marsh, 2005). Legislative provisions which enable a ban on international travel to be adopted in such circumstances have been proactively used.<sup>6</sup> Much of the permissible framework which enables information exchanges across EU borders to occur<sup>7</sup> can also be legitimately applied to the prevention of crimes by serious violent or sexual offenders. However this proactive interpretation of EU provisions is far less common.

## **Key findings and challenges**

The SOMEK field report comprehensively presents the data and overall findings of the project, with short, medium, and long-term

<sup>5</sup> EU Counter Terrorism Strategy 2005 14469/4/05 REV4.

<sup>6</sup> EU action to combat hooliganism is based mainly on the 1985 Council of Europe Convention on Spectator Violence and Mis-behaviour at Sports Events and in Particular at Football Matches. See also Council Recommendation of 22 April 1996 on guidelines for preventing and restraining disorder connected with football matches [Official Journal C 131 of 3.5.1996]; Council Resolution of 9 June 1997 on preventing and restraining football hooliganism through the exchange of experience, exclusion from stadiums and media policy [Official Journal C 193 of 24.6.1997]; Council Resolution of 21 June 1999 concerning a handbook for international police cooperation and measures to prevent and control violence and disturbances in connection with international football matches [Official Journal C 196 of 13.7.1999]; Council Resolution of 6 December 2001 concerning a handbook with recommendations for international police cooperation and measures to prevent and control violence and disturbances in connection with football matches with an international dimension [Official Journal C 22 of 24.1.2002].

<sup>7</sup> Such as Framework Decision 2006/960/JHA, Council decision 2008/615/JHA and as embedded in the supplementary guidance for Interpol, Europol and the Schengen Information System communication strategies.

recommendations (Kemshall, Hilder *et al.*, 2015). Ascertaining views of the necessity, legality, efficiency and effectiveness of information exchanges on serious violent or sexual offenders travelling across EU borders was the primary focus of the SOMEK project. However it was also vital to establish whether an EU wide agreement could be made in terms of a common starting point for defining such offenders and the additional assessment and identification processes this may entail.

#### *Identification and assessment – EU variations*

A select list of offences from the European Criminal Record Information System (ECRIS) was used to initiate discussions regarding the identification and assessment of serious violent and sexual offenders across Member States. This is an agreed list of offence types that have common currency across the twenty-eight EU Member States and represent those offences about which conviction information should be exchanged across EU Member States (see: [http://ec.europa.eu/justice/criminal/european-e-justice/ecris/index\\_en.htm](http://ec.europa.eu/justice/criminal/european-e-justice/ecris/index_en.htm)).

However, EU Member States varied in the extent to which they specifically identified sexual or violent offenders as a specific category of offender. Probation staff interviewed from five Member States advised that serious violent or sexual offenders were identified as a specific category in their Home Member State. In one Member State this position related to all of the Member State's constituent home countries (UK) and Probation Services took a primary role in the assessment of the level of harm posed by the individual prior to and after sentencing. In another one of these five Member States a specialist psychiatric clinic was used to assess mental competence and to provide compulsory psychiatric treatment for serious violent or sexual offenders if required. For another Member State the identification occurred in court, with the imposition of licence conditions.

In contrast, probation staff from twelve other Member States advised that offenders would not be specifically categorised as violent or sexual offenders in their Home Member States and that there was no specific policy or procedure to be considered for this particular 'type' of offender. In some instances this was said to be due to the fact that the numbers of such offenders were very small, with one Member State advising that there were unlikely to be any more than twenty such offenders in their Member State at any one time. The introduction of specific identification or management approaches was therefore seen as unwarranted.

Not all of the probation respondents were able to describe assessment procedures for serious violent or sexual offenders. Six out of the twenty Member States reported that they used some form of structured assessment and three of these Member States made direct reference to their assessment tool being derived from the Offender Assessment System (OASys) as used in England and Wales. A further Member State outlined plans to introduce the Level of Service Case Management Inventory (LSCMI), a variant of the Canadian LSIR, to be implemented by 2016, but for case management purposes only and it would not be used prior to sentence.<sup>8</sup> Two further Member States reported using structured assessment processes but without the use of a formalised assessment tool. Another two Member States described comprehensive prison based assessment systems, in one instance linked to a strong focus on treatment and a rehabilitative approach and in the other used to inform community supervision. In the majority of Member States assessment was viewed as a matter of professional judgment for the individual assessor, to inform the offender's rehabilitation and treatment, and was not framed in the context of public protection.

These potentially differing views on the use of assessment processes need to be clearly understood as they have significant implications for effective cross-border information exchange. For example, risk and protective factors may be weighted differently by assessors as a result of the underpinning focus and philosophy of the approach taken, and in some instances assessment will not focus on risk concerns at all. An expectation that a final assessment will occur, and in the case of serious violent or sexual offenders, may be shared across EU borders if the offender is travelling at the end of a period of formal contact, supervision or custodial sentence is also not universal.

Only three Member States highlighted specific legislation which applied to sexual offenders – for example sex offence registration or particular forms of sentencing; or the use of prison assessments once a sentence had commenced; or the use of multi-agency public protection arrangements. The responses received reflect the diverse role and function of probation services across the EU. For example, some

<sup>8</sup> A number of structured assessment tools have been developed in Canada, the USA, and the UK. It cannot be assumed that they will necessarily transfer to other jurisdictions or offender populations, and it is essential that any transfer of use is done based upon further evaluation and validation against the population concerned, and with full awareness of the limits of the tools adopted.

probation services are court based, with a tight focus on assessment for the purposes of sentencing, whilst others engage solely in post custodial welfare and resettlement provision. There are tendencies amongst probation services with a more Anglophone<sup>9</sup> tradition to have a greater focus on public protection and risk assessment (Kemshall, 2008), whereas other EU probation services retain a stronger rehabilitative focus (van Kalmthout and Durnescu, undated). The length of time following a Member State's accession to the EU is also relevant, with several Member States being in the early stages of developing probation systems and practice protocols, often influenced by EU partners where the probation service role is more established. In these situations newer probation services tend to adopt much of the underpinning philosophy and characteristics of their 'mentor' probation service.

Within member states the identification and assessment of serious violent and sexual offenders are also rarely carried out in partnership. Task group activities and focus groups highlighted that the value of effective joint working between law enforcement and probation personnel in the assessment and management of serious violent or sexual offenders was broadly recognised. However for the majority of EU Member States this was not a reality and many were struggling to achieve effective information between these two key agencies. Exchanging information between agencies at a national level was often impeded – for example by a lack of protocols, formal systems, sufficient levels of trust or legal frameworks, with probation staff often unaware of the sources of information available to them such as the European Criminal Record Information System (ECRIS). This could result in court assessment reports lacking appropriate conviction details and sentences being made in the absence of full conviction histories where foreign nationals appear before courts in the country they have travelled to.

Concepts of privacy are also embedded within varied historical contexts across the EU – and a number of Member States strongly prioritise the privacy and rights of the individual above disclosures for crime prevention. Therefore, tensions between risks, rights and freedom of movement have evolved differently. Actions which some probation staff viewed as preventative public protection measures (e.g. the UK), were

<sup>9</sup> Anglophone jurisdictions: these are jurisdictions within the English-speaking world (notably Australia, Canada, New Zealand, UK, USA). They derive much of their approach to criminal justice, and particularly to violent and sexual offenders, from the USA and the UK.

viewed by others as a potential violation of privacy and basic human rights. These differing views highlight the challenges that arise in ensuring a comprehensive assessment of a serious violent or sexual offender is effectively communicated to another Member State and responses are in accordance with the level of harm posed.

### **The process of exchange: challenges to probation transfer and information exchange**

One formal strategy which has been developed to facilitate the exchange of information between probation personnel in different EU Member States is Framework Decision 2008/947/JHA (FD 947). This allows for people convicted in one Member State to transfer back to their Home Member State to serve a probation measure or alternative sanction. It is a voluntary agreement and can include forms of probation supervision and conditional release, and these were considered to be the most pertinent to SOMEK issues. Whilst the rationale for such transfer provision is primarily to facilitate the social rehabilitation of offenders, the strategy also clearly has a public protection function (see ISTEP, pages 4 and 7).<sup>10</sup> However the formal adoption of FD 947 is varied across the EU, potentially underused, and in some Member States either it is not transposed or staff are unaware of the arrangement's existence. Varied resourcing levels for probation services across Member States, the size of the Member State and the transient patterns of its citizens can also result in further inconsistencies.

However, in the same way that Single Points of Contact (SPOCs) have been promoted for EU law enforcement exchanges (DAPIX<sup>11</sup>), the use of SPOCs between probation personnel in different Member States for FD 947 transfers was also highlighted during the course of the SOMEK research as an effective method of communication. By providing other Member States with a single route for both transfers in and out for individuals under FD 947 provisions, SPOCs serve to facilitate consistent standards in information exchange and ensure, for example,

<sup>10</sup> ISTEP-Implementation of Support for the Transfer of European Probation Sentences, available at: [http://www.probation-transfers.eu/uploaded\\_files/ISTEP\\_Handbook\\_EN.pdf](http://www.probation-transfers.eu/uploaded_files/ISTEP_Handbook_EN.pdf) (accessed 5 June 2014).

<sup>11</sup> Council of the European Union DAPIX 75, ENFOPOL 157, Draft Guidelines for a Single Point of Contact (SPOC) for International law enforcement exchange – International law enforcement cooperation structures in each member State. Brussels, 23 June 2014.

that any restrictions and issues of compliance with supervision are fully considered. The provision of this information aids the receiving jurisdiction to assess risks and to make appropriate case management decisions. The Member State operating a SPOC for FD 947 was dealing with approximately 20 to 25 cases per year.

The information templates provided for probation transfers under FD 947 helpfully cover social history and to a lesser extent risk, and cover risk of reoffending factors for violent or sexual offending.<sup>12</sup> However the SOMEK project concluded that in order to facilitate effective information exchange on these offenders additional information was required covering the inclusion of victim targeting information, modus operandi, protective factors, and required risk management measures. This has been developed into a standardised package of information available in the SOMEK offender management guidance.<sup>13</sup> This information exchange template can be used both for transfers and for the exchange of information outside of formal supervision.

### **Example of good practice (provided by PBNI, PSNI, the Probation Service Republic of Ireland, An Garda Síochána)<sup>14</sup>**

The exchange of information outside of a formal transfer of supervision is, however, potentially far more problematic for Member States. Respondents identified the following barriers: the lack of good information exchange between agencies *within* some Member States particularly where multi agency work is less well developed; a lack of trust in other agencies in other Member States; and finally legal constraints in some Member States that make the exchange of personal data challenging. In a number of Member States this is particularly acute at the end of the sanction and sentence where the offender is considered to be a 'free citizen' for whom all rights to data protection and privacy are restored.

In addition, FD 947 was originally intended for those persons transferring back permanently to a home country, and in the case of SOMEK offenders this may not be the case. Circumstances such as home nationals wishing to travel abroad for employment or leisure, without

<sup>12</sup> See: [http://www.probationtransfers.eu/uploaded\\_files/ISTEP\\_Handbook\\_EN.pdf](http://www.probationtransfers.eu/uploaded_files/ISTEP_Handbook_EN.pdf), pp. 64–74, especially pp. 68–74.

<sup>13</sup> See SOMEK guidance for OM and LE personnel, available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)

<sup>14</sup> Our thanks to the staff of these agencies who provided case studies, information and advice.

having established family and community links are not covered by these transfer provisions. In some instances, serious violent or sexual offenders are crossing a border for a short period of time (for work or holidays), or routinely crossing a border for employment and then returning home again – sometimes within their community sentence or licence or sometimes at end of sanction.<sup>15</sup> In these instances, the use of FD 947 would not be suitable and would be unlikely to facilitate adequate and timely information sharing.<sup>16</sup> In these situations a number of Member States facing an operational need to exchange information have tackled this through bilateral agreements and a memorandum of understanding, although this predominantly facilitates information sharing between police services and not offender management/probation services. However where multi agency arrangements are developed probation is often integral to such arrangements.<sup>17</sup> These bilateral agreements tend to:

- give permission to operational personnel to exchange information within well-defined parameters
- limit the use of information exchange and the use of information obtained
- define the limits and boundaries of confidentiality
- define clearly the subjects of such information exchange
- define the purposes of information exchange
- outline the processes, mechanisms, systems and personnel for information exchange
- clarify the status of the agreement, and relationship to other legal instruments and legal acts
- provide a system and timeline to review the agreement
- be signed and endorsed at a sufficient level of seniority.

<sup>15</sup> For example in the case of Northern Ireland and the Republic of Ireland; Gibraltar and Spain; Spain and Portugal, and the Nordic States.

<sup>16</sup> <http://www.probation-transfers.eu/> provides practical information on transfers.

<sup>17</sup> For example the Memorandum of Understanding between Northern Ireland and the Republic of Ireland allowing for cross border information exchange between police and probation services on those sex offenders who move across their shared land border. This has extended to regular information exchange on cases of concern, and has involved joint training on, and joint adoption of, risk assessment methods. For a discussion on how this agreement works see Thomas, T. (2010) European developments in sex offender registration and monitoring in *European Journal of Crime, Criminal Law and Criminal Justice* 18 Eur.j.Crime Crim l. and Crim just.403. See also Department of Justice and Equality for Republic of Ireland, Bilateral Agreement of cooperation between Ireland and Romania in combating serious crime (2013) accessed at: <http://www.justice.ie/en/JELR/Pages/PR13000011>.

Whilst these agreements are effective for Member States with shared borders and form a rational starting point where there is a pressing operational need (for example between Northern Ireland and the Republic of Ireland), they do not necessarily offer a consistent, EU wide approach to this challenging problem. These arrangements can often require a common language, and justice systems which share a strongly compatible approach to sanctions and offence definitions – and this is not always a common position across the twenty-eight Member States. There also needs to be mutual trust at both policy and practice level, which again is not always easy to replicate.

This immediacy and high trust between frontline staff was seen as important by Northern Ireland and Republic of Ireland staff, and these and other Member States gave examples of almost daily contact at policing levels between SPOCs (and to a lesser extent between probation staff). This contact facilitated increased monitoring, crime prevention, victim protection, and at times opportunities to re-arrest.

However, a variety of methods and arrangements continue to be utilised for information exchanges across the EU, as appropriate to the nature of a particular scenario. The challenge is co-ordinating these strategies across the whole EU, as well as increasing the efficiency and effectiveness of their execution.

### **Solutions and areas for improvement (both domestically and EU wide)**

It is important to understand the perspectives and constraints of other Member States when attempting either formal transfer or information exchange. It cannot be assumed that other Member States will share the same public protection concerns, or that they will have the same resources to respond as the sending Member State may have. In such circumstances providing robust assessments, comprehensive information on risk, victim targeting and modus operandi are more likely to elicit an appropriate response and enable the practitioner in the receiving Member State to act and are less likely to legitimise a lack of response. In circumstances where a Member State cannot facilitate a formal transfer under FD 947, full information exchange templates sent via SPOCs will still be useful, either to cover relocations, temporary residence, or movement post sentence/ sanction. Bilateral agreements as outlined

above can be instrumental in facilitating such exchanges and setting legal parameters for them – but present wider EU frameworks do assist broader information exchange (e.g. *Council Framework Decision 2006/960/JH*).

To facilitate a more consistent approach to such exchanges the offender management guidance provided by SOMEK provides a template for the simple and speedy exchange of information that can be used with mobile serious violent or sexual offenders. This template for information exchange can be used for the following situations:

- Where a move is planned by an individual and this is a cause for concern because of the level of risk (e.g. the Member State may wish to prevent an individual travelling and requires evidence to support that decision).
- In the event of an unapproved move during a current sanction which may in turn breach a reporting/residency requirement or sex offender register requirement (if there is one). It may also trigger enforcement proceedings. However it is important to note that courts in many Member States are currently reluctant to issue a European Arrest Warrant for enforcement proceedings regarding breaches of supervision or sex offender register requirements, where the offender has absconded across the EU (due to the latter being a civil law matter). In such instances the move is likely to be imminent and the risk of harm posed by the individual is likely to be high.
- In the event of a planned/approved move during a current sanction and whilst subject to formal supervision. Formal transfer may be sought under FD 947 using ISTEP<sup>18</sup> paperwork, or with the exchange of information template available in the SOMEK offender management guidance which offers greater risk information.<sup>19</sup> This template will also aid information exchange on offenders moving under voluntary arrangements.
- Where a move has already happened (for example there has been a breach of legal requirements, the individual has absconded or disappeared) or there are concerns about likely movement across the EU upon/after the completion of a formal sanction.

<sup>18</sup> In ISTEP European Handbook accessed at [http://www.probation-transfers.eu/uploaded\\_files/ISTEP\\_Handbook\\_EN.pdf](http://www.probation-transfers.eu/uploaded_files/ISTEP_Handbook_EN.pdf)

<sup>19</sup> See SOMEK Offender Management guidance, available at: [http://www.ccp-probation.org/default.asp?page\\_id=563](http://www.ccp-probation.org/default.asp?page_id=563)

- Where the offender is deported back to their home Member State at the end of their custodial sentence.

(See: Kemshall and Kelly *et al.* (2015) pp. 56–57; and see template provided at Appendix 7, p. 111)<sup>20</sup>

In addition, identifying those who will travel can be challenging. Travel plans may not be disclosed, and a small proportion of offenders will travel in order to avoid control, regulation or detection (Hilder and Kemshall, 2014; Messenger, 2012). Staff working with serious violent or sexual offenders should consider:

- The evidence that the individual has in the past been mobile, both within his or her own Member States and outside its borders.
- How strong are his or her social ties with his/her family or local community? Are these likely to provide any ongoing support and reduce the likelihood of future harm?
- To what extent the individual has complied with interventions designed to reduce the risk, and if there is a history of failure to comply with risk management plans.
- What has the individual's response been to previous supervision or other measures (e.g. programmes in custody)?
- What has been the level of his or her compliance with the requirements of their current supervision?
- Have they made any significant changes in their behaviour or lifestyle which suggest a positive investment in the supervision process?
- Does the individual have social links with people in other Member States and how far are these / or could these links be associated with their offending?
- The likelihood that they will move out of their area to commit potentially harmful acts.
- Whether there is evidence that the individual has (and is still) arranging their life to support offending.
- To what extent does the person have the capability and motivation to change and to manage their own risk?
- What is the individual's current attitude towards offending and towards potential victims? Are they committed to self-risk management?

<sup>20</sup> See SOMECE Offender Management Guidance, available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)

- Are there protective factors that would reduce the impact and is the individual motivated to comply with risk management plans?
- How soon are they likely to move?

(See: Kemshall, Kelly *et al.*, (2015) p. 139, Checklist 6)<sup>21</sup>

Probation staff also need to be fully apprised of information exchange mechanisms which can be accessed by their law enforcement counterparts, and the use of police colleagues to circulate key information EU wide or to a specific Member State should the risk justify it. The effective management of serious violent or sexual offenders travelling across EU borders therefore necessitates joint working between agencies at a national level. This is an area of development for many Member States. National SPOCs which encompass international exchange, law enforcement, judicial and probation/offender management expertise have the potential to realise further improvements.

## **Conclusion**

Undertaking cross-border communications in relation to a serious violent or sexual offender, who may or may not be subject to current formal sanction, clearly raises concerns relating to proportionality, privacy and data protection for all Member States, but is a more acute issue for some. However there are arguable instances where the level of harm posed to others is so great that a lack of preventative action is also not defensible. In such circumstances a lack of information exchange, or the transfer of incomplete, inaccurate or misleading information may limit the ability of the receiving Member State to respond effectively, thus compromising public safety.

However the ‘common interest’ of protecting EU citizens from the single transient high risk violent or sexual offender has not developed at the same rate of interest as other issues of public security across the EU community (e.g. trafficking, organised crime, terrorism, football hooliganism). Sharing information with probation personnel is also very rarely an integral part of the cross-border information exchanges which do occur and the appropriate dissemination of received information at a national level is limited. The concept of continuing to monitor an offender who has completed their sentence is also met with some

<sup>21</sup> See SOMEK Offender Management Guidance, available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)

resistance in some Member States and indeed is illegal in some. This makes the management and tracking of serious offenders released without parole licence particularly challenging.

However there is a broad recognition across the EU that development is needed in this area. The EU principle of freedom of movement also raises the requirement to accept joint EU wide responsibility for the management of the small number of high risk violent or sexual offenders who do/will take advantage of such movement. The appropriate governance of any information exchanges is of course vital, and existing systems such as ECRIS demonstrate that a balance between rights, privacy and public protection can be realised (and EU data information and exchange provisions to safeguard personal information are significant with a high threshold of governance and regulation). Indeed the EU framework which permits such actions sets specific criteria for use, governance and regulation systems in order to provide appropriate safeguards for citizens.<sup>22</sup> A further move to strengthen its use for crime prevention is now required. The rights of privacy and protection are a matter of balance. The rights of all EU citizens to life and to remain free from torture, inhumane and degrading treatment<sup>23</sup> also need to be protected. Where assessments of risk are systematic, comprehensive and defensible and the risk of harm to others is clear an exchange of information with another Member State can be legitimised. One person's rights should not become another person's risk.

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<sup>22</sup> Such as Framework Decision 2006/960/JHA, Council decision 2008/615/JHA and as embedded in the supplementary guidance for Interpol, Europol and the Schengen Information System communication strategies.

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# The Sector for Probation in the Republic of Croatia

Jana Špero<sup>1</sup>

**Summary:** The Probation Service (commonly known as the Sector for Probation) in Croatia was established in 2009 with new legislation, and a structure and role in the criminal justice system that are still in development. This paper provides a brief introduction to the Sector for Probation in Croatia, its development, work and challenges.

**Keywords:** Croatia, probation, courts, Sector for Probation, prosecution, community sanctions, prison, offenders, reoffending.

## Introduction

The Republic of Croatia is a European country, located at the seam of Middle and Southeast Europe. On the north it borders with Slovenia and Hungary, on the east with Serbia, on the south with Bosnia and Herzegovina and Montenegro, while a long maritime border separates it from Italy. It is about the same size as Ireland and has a population of 4.3 million. Previously part of the Socialist Federal Republic of Yugoslavia, Croatia declared independence in 1991 and was embroiled in an independence war for almost four years. The war in the former Yugoslavia ended twenty years ago and since then Croatia has been recognised as a successful and developing economy and State. Many people now know Croatia again as a welcoming holiday destination with its lowlands, fairy-tale mountainous regions and coastline with 1,200 islands.

On global and European scales Croatia is a very safe country. In November 2014 it reported 3,853 people (including remand detainees)

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in penal institutions, a rate of ninety-one per 100,000 of population.<sup>2</sup> Over the last three years the number of prisoners has fallen while the capacity and standards of the prison system have improved, reducing the problem of overcrowding. Justice Minister Orsat Miljenic said, in March 2015, that the reduction of the number of prisoners was partly due to the amendment of the Criminal Code and also to the introduction of the probation system.<sup>3</sup>

### **The development of probation**

The Probation Service (known as the Sector for Probation) in the Republic of Croatia is a very young service. It was established in 2009, during Croatia's accession negotiations for EU membership, and benefited from the related judicial reforms.<sup>4</sup> The Croatian national probation system, as a result, is aligned with the EU and Council of Europe's recommendations. The Republic of Croatia became the twenty-eighth Member State of the EU on 1 July 2013.

The concept of probation already existed in the Croatian legal system, though not in its present form. For many years measures had been available for juvenile offenders in Croatia which were very similar to probation measures. For adult offenders a suspended sentence with protective supervision as a sanction, though different in form to probation, was regulated in 1976 by the provisions of the Criminal Code of the Socialist Federal Republic of Yugoslavia. After declaring its independence the Republic of Croatia took over this Act and the sanction was kept and developed.

Croatia's Criminal Code of 1997 introduced the possibility of replacing prison sentences with community work orders. Following further legislative changes, the 1999 Act on the enforcement of protective supervision and community work was enacted, pursuant to which, until the establishment of the Sector for Probation, the enforcement of these two

<sup>2</sup> <http://www.prisonstudies.org/country/croatia>

<sup>3</sup> <http://dalje.com/en-croatia/situation-regarding-prison-capacity-much-better-minister-says/536253>

<sup>4</sup> The Instrument for Pre-Accession Assistance (IPA) provided assistance to countries engaged in the accession process to the European Union (EU) for the period 2007–2013 to enhance the efficiency and coherence of aid by means of a single framework in order to strengthen institutional capacity, cross-border cooperation, economic and social development and rural development. The IPA 2008 project 'Development of Probation System in the Republic of Croatia' started in June 2011.

sanctions was supervised by so-called ‘commissioners’. Commissioners were persons who, after their regular working hours, performed the supervision based on contracts with the Ministry of Justice (commissioners were mostly employees of the Social Welfare Centre, prison system etc.).

This existing system demonstrated that Croatia was open to the concept of alternative sanctions. As probation has proved to be an effective alternative to imprisonment, existing practices in countries across Europe were studied, and work towards the development of a professional probation service commenced.

The first Probation Act in Croatia was enacted in 2009, though the first probation offices only opened in 2011. Since the beginning of 2013 the professional probation service, the Sector for Probation, has been available to all citizens, and is today recognised as a valued and important part of the Croatian criminal justice system.

### **Governance of probation**

Responsibility for the Sector for Probation and its work is under the direction of the Ministry of Justice. The Sector for Probation is an administrative body, separate from the prison system. Probation Officers are civil servants, employees of the Ministry of Justice. The Sector for Probation is part of the Criminal Law and Probation Directorate of the Ministry and consists of the Central Office and twelve local probation offices across the country. Every probation office has a Chief of the Office, Probation Officers and administrative staff.

The Central Office manages co-ordination and service development. It includes the Department for Probation Tasks, Department for Probation Tasks During and After Enforcement of Prison Sentence and Conditional Release, Department for Legal Support to the Probation System, and the Department for Strategic Planning, Development and Analytics. Probation supervision and direct services are delivered through local probation offices in Bjelovar, Dubrovnik, Osijek, Požega, Pula, Rijeka, Sisak, Split, Varaždin, Zadar and Zagreb. Some offices cover larger and some smaller territorial areas depending on population size and distribution.

Probation Officers hold a degree in law, psychology, social pedagogy, social work or pedagogy, and are authorised to perform probation tasks in accordance with the Probation Act. At present, 113 posts are

envisaged for the Sector for Probation, twenty-two at the Central Office and ninety-one at the local probation offices. To date, eighty-four posts have been filled: thirteen at the Central Office and seventy-one at probation offices. All cases are managed through the Sector for Probation Information System (PSIS), an electronic database accessible by all employees via a web interface. PSIS is used as a registry of all persons supervised and also as a management programme supporting administrative processes.

With its growing workload (1,040 cases in 2011 and 3,072 cases related to all stages of criminal procedures in 2014), the Sector for Probation has become an important partner in the criminal justice system, acknowledged and valued by judges, state attorneys, police and the prison system.

### **Probation in practice**

The Law on Probation 2009 defines the purpose of probation work as protection of the community from an offender's offending; re-socialisation and re-integration of offenders in the community; and provision of support to victims of crime, their families and families of offenders. Probation Officers, when implementing probation sanctions, are expected to work closely with the family members and the various institutions and bodies in the community that can contribute to an offender's social integration.

The Sector for Probation in Croatia supervises adult offenders only, and probation tasks are performed through the entire criminal process from pre-trial to post-release supervision. Child offenders (from fourteen to eighteen years of age) are the responsibility of the social welfare system. A new Law on Probation (OG 143/12) was adopted by the Croatian Parliament in December 2012 and entered into force on 1 January 2013 along with the new Criminal Code (OG 125/2011 and 11/12). The Probation Act prescribes the probation tasks that are to be performed, and states that the clear goal of probation is to protect the community. It regulates probation tasks during all phases of the criminal process.

Probation Officers supervise the enforcement of obligations ordered by the public prosecutor and deliver reports to the public prosecutor and courts even before criminal proceedings are initiated. During criminal proceedings and upon request of the court, the Sector for Probation

delivers reports relevant for the determination of the type and measure of sanctions. Most probation cases relate to the enforcement of 'alternative sanctions' as part of final court judgments, namely community work and suspended sentences with protective supervision and/or special obligations.

The Sector for Probation has a role in prison sentence management through the enforcement of protective supervision during conditional release from prison. During this phase Probation Officers provide reports to the prison/penitentiary and to court in relation to conditional release and the change of prison sentence. The Act also envisages the possibility of supervision of offenders by the Sector for Probation even after the completion of the prison sentence in its entirety.

In the phase prior to a criminal trial, the Probation Act provides for two specific probation tasks in relation to the public prosecutor's office: supervision of obligations during the decision-making process in the prosecution and providing a report on the offender at the request of the public prosecutor. For the court, a Probation Officer can provide a report to assist in determining measures to ensure the presence of the accused.

Although provided for by the Probation Act, in this phase, prior to trial, reports by the Sector for Probation are seldom requested. There is, however, a constant increase of supervision and enforcement of obligations based on the decision of the public prosecutor during the decision-making process.

A prosecutor may, having obtained approval of the victim or aggrieved party, conditionally postpone or withdraw a criminal prosecution if the accused accepts responsibility and completes an obligation to perform, for example, community work, psychosocial therapy, drug/addiction treatment, or pays compensation. In such cases, the prosecutor sets a deadline by which the accused must complete the designated obligations. Upon completion the prosecutor has the authority to discontinue the prosecution. Public prosecutors mostly assign cases to the Sector for Probation local offices when community work, drug treatment and psychosocial therapies for dealing with violent behaviour are ordered.

When a criminal trial is ongoing, a court may request reports from the Sector for Probation for the purpose of determining the types and measures of criminal sanctions. Though this type of report is not often requested yet, experience in practice show that the probation report can significantly help the court in finalising decisions on sanctions and

measures. In the longer term it is expected that there will be an increase in requests for such assessment reports.

Croatia is part of the legal system of Continental Europe in which judges decide on guilt and sentence at the same time. Allowing for findings of innocence, judges are not inclined to request assessment reports before the conclusion of the trial and finding of guilt.

### **Community work orders**

In court, on a finding of guilt, the most frequently imposed sanctions supervised by Probation Officers are community work orders. A community work order can be a stand-alone sanction (as a substitute for imprisonment), or combined with a protective supervision order.

A court may replace a fine of up to 360 days' income or a prison sentence of up to one year with community work. In doing so, one day's income is replaced with two hours of community work or one day of imprisonment with two hours of community work. Offenders in Croatia may be ordered to complete a maximum of 730 community work hours.

Probation Officers, in assessing offenders for community work, are responsible for confirming the offender's consent in replacing a prison sentence with community work and for organising and supervising the enforcement of community work orders. Offenders are placed with community and not-for-profit beneficiaries to perform their community work hours. Agreements are concluded with the beneficiaries outlining rights and obligations. The unpaid humanitarian, ecological and communal work is for the benefit of general national and local community interests.

There has been a continuous increase in judgments ordering community work, particularly since the new Criminal Code entered into force which expanded the possibilities of replacing prison sentences with community work orders. Under the new Criminal Procedure Act (OG 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13 and 145/13) all prison sentences of up to six months are replaced with community work orders, except in cases where the purpose of punishment through community work cannot be achieved. Prison sentences up to one year may also be replaced with community work orders at the discretion of the judge.

This new practice has contributed to an increased caseload for the Probation Officers and, at the same time, to a decrease of the prison population. Of no less importance are the significant budget savings on

offender time in prisons (considerably more expensive than community sanctions), in addition to the benefits of community work for the local community. During 2014 offenders in Croatia performed a total of 490,710 community work hours under the supervision of the Sector for Probation.

The most challenging issues in managing community work include finding appropriate placements for offenders with health problems, those who have been repeatedly sanctioned and those addicted to drugs. On the other hand there have been many positive experiences. Some offenders have proven to be very good workers and have been hired by the beneficiaries where they performed their community work. Others have taken up volunteering positions after completing their community work orders.

During the serious flooding in Croatia in 2014, the Sector for Probation responded by organising assistance in the affected areas by offenders performing their community work orders directly in the affected areas or by working with services where humanitarian aid was collected and delivered. A group of thirty offenders who provided direct assistance in the flooded areas were housed in a volunteer camp and were involved in flood damage recovery (carcass removal, cleaning streets, pumping water out of buildings etc.) until the closing of the volunteer camp. During these activities offenders performed a total of 11,000 community work hours in flood relief work.

### **Protective supervision and special obligation orders**

Apart from community work orders, Probation Officers also enforce protective supervision and special obligation orders which can be ordered with community work and a suspended sentence. For the enforcement of protective supervision orders, Probation Officers draft for each offender a special individualised treatment programme and are in constant contact with the offender. For the enforcement of special obligations orders, Probation Officers co-operate closely with police authorities. A signed co-operation protocol is in place between the Sector for Probation and the police. During the supervision, probation clients are obliged to co-operate with the Probation Officer through visiting the probation office, providing information to the Probation Officer, and consenting to home visits by the Probation Officer.

## **Release assessment and post custody supervision**

In prison sentence enforcement, a Probation Officer may prepare reports at the request of the sentence enforcement judge, prison or penitentiary during the decision-making process on an inmate's leave application, suspension of imprisonment or conditional release. The Probation Officer completes an assessment of the conditions for and risks to the inmate's acceptance in the community, evaluates the possibilities for the continued enforcement of obligations and gathers information on possible accommodation and employment for the offender. The report of the Probation Officer addresses the specific circumstances of the release request without proposing approval or rejection of the request.

After the inmate has been approved for supervised conditional release, additional obligations may be ordered as well as protective probation supervision for the duration of the conditional release. The task of the Probation Officer is to supervise the offender's compliance with the obligations and to provide assistance and support to the conditionally released offender during the process of his or her readjustment to life in the community.

The Act on Judicial Co-operation in Criminal Matters with the EU Member States (OG 91/10, 81/13 and 124/13) entered into force on 1 July 2013. It provides for judicial co-operation between Member States on the mutual recognition and enforcement of judgments and decisions on which probation and alternative measures sanctions are imposed (EU Council Framework Decision 2008/947/PUP of 27 November 2008). This legislation enables Croatian offenders subject to community sanctions imposed in other EU jurisdictions to complete their sanction obligations in Croatia. It also enables EU nationals sentenced in Croatia to complete their sanctions in their home jurisdiction if their home State has transposed the Framework Decision.

In recent years, the Sector for Probation in Croatia has established itself as a professional and effective provider of probation services and has achieved exceptional results. The caseload is constantly increasing. In 2013 the Service received 3,304 new cases, and 3,618 new cases in 2014. About 90 per cent of all cases have been successfully completed. Currently the Sector for Probation supervises over 3,000 cases. Most are community work orders (2061) and conditional release orders (633).

In 2014, the majority of offenders supervised had committed property crimes (33.1 per cent). 90.6 per cent of offenders were male and 9.4 per

cent female. According to Sector for Probation data, 42.9 per cent of probation clients were previously sanctioned and had previous court convictions.

### **Development of probation work**

The financial and expert assistance of the EU has been important in the development of the Sector for Probation in the Republic of Croatia. Within the framework of the EU IPA 2008,<sup>5</sup> through the twinning project 'Development of the Probation Services in Croatia', Probation Officers have completed educational programmes in skills development and in individual work with criminal offenders (e.g. motivational interviews, pro-social modelling, case management, etc.).

There are particular challenges facing the Sector for Probation in its work. Whilst the war in the former Yugoslavia ended 20 years ago a significant number of Croatian men in combat in the period 1991 to 1995 developed post traumatic stress disorder (PTSD).<sup>6</sup> Violent behaviour, intolerance, a rejection of the social code of conduct and problems or violence within the family can be related, in some cases, to PTSD. The disorder increases the chance that sufferers may commit crimes, although, of course, not all military veterans with PTSD have offended. People with PTSD often have other disorders as well, such as depression or anxiety. In many cases one can also find alcohol and drug abuse. In their work Probation Officers have met probationers suffering from PTSD and recognise that people with PTSD need a different approach. Whilst working with offenders suffering with PTSD is not unique to Probation Officers in Croatia it is a particular challenge necessitating training, skills development, joint-working with other services and sensitivity.

At present new legislation is being drafted which may increase responsibilities for the Sector for Probation. A new project 'Support for further development and strengthening of the Sector for Probation in Croatia'<sup>7</sup> has been implemented through which official probation vehicles have been acquired and a new pilot project for the introduction of electronic monitoring in Croatia is being developed. Croatia is

<sup>5</sup> <http://mirenje.pravosudje.hr/Default.aspx?sec=466>

<sup>6</sup> <http://cep-probation.org/news/254/1210/interview-jana-špero->

<sup>7</sup> EuropeAid/ 137-103/IH/ACT/HR (Programme: Transition Facility IPA/2013/24986 (Annex of C(2013) 8057 final))

exploring the possible use of electronic monitoring in the criminal justice process to help reduce resorting to deprivation of liberty while ensuring effective supervision of suspects and offenders in the community. It could also help in preventing crime. At the same time, it is important to evaluate the use of electronic monitoring technology in a well-regulated and proportionate manner to reduce any potentially negative effects on private and family life of a person.

The Sector for Probation has developed rapidly in size and in its role and contribution to the criminal justice system in Croatia in the short time since its inception. It has a skilled and dedicated staff committed to delivering the best possible service for the people of Croatia. It is learning as well as expanding its knowledge and experience through engagement with partner services, research and participation in European and other international projects. While much has been achieved there remain many challenges ahead for probation in Croatia. We look forward with optimism and hope that probation will continue to make a valued and important contribution to reducing offending, improving the resettlement of ex-offenders in their communities and enhancing public safety in Croatia.

# Community Return: A Unique Opportunity

Gerry McNally and Andrew Brennan<sup>1</sup>

**Summary:** Community return is a novel and unique incentivised, structured and supervised release programme for prisoners combining unpaid work for the benefit of the community with early release and resettlement support. In its development, no equivalent or similar initiative was identified anywhere in the world and none had been reported in academic reviews or criminal justice literature. This paper describes the development and implementation of the Community Return Programme, the results of a descriptive evaluation of the first twenty-six months of Community Return, discusses key issues arising and looks to the future of the Community Return Programme.

**Keywords:** imprisonment, sentence management, conditional release, resettlement, re-entry, reparation, supervised release, community service, evaluation, multi-agency working, Prison Service, Probation Service, Ireland.

## Background

Following the serious economic downturn in 2008 in Ireland and during the subsequent financial crisis, government finances suffered severely. This necessitated major restructuring of expenditure and changes in previously ambitious plans. Penal policy and decision-making, as part of government policy as a whole, had to be reviewed in the context of the economic constraints facing the State and revisited as necessary. At the time there had been planning for a major restructuring of the prison estate and infrastructure of which the Thornton Hall project (a plan for a prison with operational flexibility to accommodate up to 2,200 prisoners on a site, Thornton Hall, north of Dublin City) and the building of new prisons was part.

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Ireland, with a population of 4.3 million inhabitants, has a relatively low prison population and a moderate rate of imprisonment. However, in the first decade of the 21st Century that modest prison population was increasing rapidly with commensurate pressure on prison capacity.

In December 2008, for example, the prison population was 3,695 of whom 2,944 were committed on sentence. There was an almost 25 per cent increase in committals to prison under sentence in 2008 compared to 2007. The imprisonment rate, limited by capacity, was seventy-six per 100,000 (O'Malley, 2008). Of the 2,944 prisoners on sentence 457 were serving sentences of less than twelve months. In that year there were 13,557 committals to prison, an increase of 13.7 per cent on the 2007 total (Irish Prison Service, 2008).

In June 2012 there were 4,493 prisoners in custody and prisons were operating in excess of their stated bed capacities. The average number of prisoners in custody in Ireland has risen from 3,321 during 2007 to 4,389 during 2011, an increase of over 32 per cent. The total number of committals to prison had risen sharply during the same period, from 11,934 in 2007 to 17,318 in 2011 — an increase of over 45 per cent (Dáil Éireann, 2012).

On 5 April 2011 the Minister for Justice and Equality, in the context of the ongoing economic crisis, set up a group to review the proposal to build a new prison at Thornton Hall and to consider alternatives, if any, to avoid the costs yet to be incurred by the State in building such a new prison.

In its report in July 2011 the Thornton Hall Project Review Group (Department of Justice and Equality 2011) recommended that 'the Minister for Justice and Equality should introduce an incentivised scheme for earned temporary release coupled with a requirement to do community service under supervision.'

### **Origins and development of the Community Return Programme**

The Irish Prison Service<sup>2</sup> and the Probation Service<sup>3</sup> are separate agencies within the Department of Justice and Equality<sup>4</sup> and have worked closely and co-operatively for many years. The Probation Service has had staff working in prisons since the 1960s (McNally 2009) providing interventions

<sup>2</sup> [www.irishprisons.ie](http://www.irishprisons.ie)

<sup>3</sup> [www.probation.ie](http://www.probation.ie)

<sup>4</sup> [www.justice.ie](http://www.justice.ie)

and pre-release preparation services for prisoners. The Probation Service also supervises ex-prisoners on release in the community.

During 2009–11 the Probation Service, the Department of Justice and Equality and the Irish Prison Service were researching and exploring best practice in offender release and resettlement locally and internationally. The co-operation between the Department and agencies brought different perspectives and expertise to the project, addressed the competing priorities and expectations and contributed to an open and innovative process.

### **Remission and temporary release**

All prisoners serving determinate sentences can earn remission of one-quarter of their prison sentence. Remission may be lost in a disciplinary adjudication process when a prisoner is found to be non-compliant with prison rules.

New Prison Rules,<sup>5</sup> enacted in 2007, allow for the granting of up to one-third remission of sentence for prisoners who have shown further good conduct ‘by engaging in authorised structured activity’ to such an extent as to satisfy the Minister that, as a result of this engagement, they are less likely to reoffend and will be better able to reintegrate into the community. This innovation supported the implementation of improved sentence management and also provided an additional incentive for positive behaviour, participation in rehabilitative programmes and preparation of release.

The Criminal Justice Act, 1960 as amended by the Criminal Justice (Temporary Release of Prisoners) Act, 2003 authorises the Minister for Justice and Equality to direct that a person who is serving a custodial sentence be released from prison for a specified period of time for a specific purpose or reason subject to certain conditions (which may include Probation Service supervision) specified in the direction.

Temporary release is a privilege and not a right. The granting of temporary release, in keeping with the constitutional doctrine of the separation of powers, is entirely within the discretion of the executive branch of government.<sup>6</sup> From its introduction in 1960 temporary release

<sup>5</sup> Prison Rules (Si No. 252/2007).

<sup>6</sup> *Murray v Ireland* [1991] I.L.R.M. 465 at 472, referring to *People (DPP) v Tiernan* [1988] I.R. 250, [1989] I.L.R.M. 149; *Kinahan v Minister for Justice, Equality and Law Reform* [2001] 4 I.R. 454; *Doherty v Governor of Portlaoise Prison* [2002] 2 I.R. 252.

has been a most important instrument in the resettlement of prisoners after custody, facilitating treatments and other purposes.

### **Resettlement on leaving prison**

The process of adjusting to release from a custodial sentence, predominantly referred to as 'resettlement' in the European and as 're-entry' in the American literature, has become increasingly acknowledged as a critical period and process for people leaving prison (Losel, 2012; Maruna, 2011, 2006; Moore, 2012; Munn, 2011; Nugent and Pitts, 2010; Shinkfield and Graffam, 2010; McGuire and Raynor, 2006; Burnett and Maruna, 2006).

To date, there has been very limited study on unpaid community work in prison or as a condition of supervised release of prisoners from custody. Working with prisoners in custody, Graham (2012) explored the use and impact of community service activities as a means of assisting desistance from crime prisoners in the custody of the Tasmania Prison Service.

Graham's study examined the impact and benefits to individual prisoners, the agencies and stakeholders they are assisting, and assessed the efficacy of community service activities to promote desistance and reintegration. Graham found that community service activities had a positive impact on the staff and volunteers in the relevant agencies, the recipient communities and beneficiaries of community service activities and, ultimately, the prisoners who developed their 'social capital', and accessed real opportunities and supports for reintegration.

Community Return, as it evolved in its development phase, was clearly a novel and unique initiative combining unpaid work for the benefit of the community with early release and resettlement support. A search across academic, research and other studies, reports and publications in criminal justice literature and, in particular, writings on release and resettlement of ex-prisoners, did not find a similar scheme in operation anywhere else in the world. There is no known published account or report of a supervised release and resettlement scheme or programme for prisoners leaving custody with a condition of reparation in the form of unpaid community work as a condition of the release programme.

The community service literature provided analyses of the unpaid work sanction solely as a pre-custodial diversionary measure. The

predominant themes relate to discussions about the flexible, multi-dimensional nature of community service and the qualities and features of the community service experience which can benefit participants, promote compliance and support desistance.

The initial project team expanded to include operational and implementation expertise as the framework of the innovative Community Return Programme developed. In implementation, the deployment of dedicated staff in the co-located Irish Prison Service-Probation Service programme management unit in Probation Headquarters, has been a key success factor.

### **Community Return Programme**

In October 2011, the Probation Service, in partnership with the Irish Prison Service, commenced a pilot Community Return Programme.

In the Community Return Programme, qualifying prisoners may be released early from their custodial sentences, with a period of unpaid community work as a condition of their incentivised, structured and reviewable temporary release. All participants have demonstrated their willingness and ability to co-operate with the prison regime and to engage with the therapeutic services available.

The Community Return Programme is generally applicable to assessed prisoners who are serving sentences of between one and eight years' imprisonment. In a small number of instances persons serving longer sentences have been referred to the Community Return Programme, following a recommendation from the Parole Board.

All eligible prisoners wishing to progress through the prison system and gain early release through the Community Return Programme must demonstrate their willingness and ability to co-operate with the prison regime and to engage with the therapeutic services available.

Those participating in the Community Return Programme are granted reviewable temporary release having served at least 50 per cent of their sentence and following an individual assessment process. Factors considered at the assessment process include progress during custodial sentence (behaviour while in prison and engagement with services), risk to the community (the nature of the offence and previous offending), and resettlement stability (accommodation status upon release, addiction issues and medical suitability).

The Community Return Programme provides for earned temporary release for persons from prison custody conditional on their engagement in supervised unpaid community work for a set number of weeks; usually three days per week. The number of weeks of unpaid work required in each case is calculated on the basis of number of weeks left in their sentence and will equate to half of their remaining time to serve. One week's community service is thus substituted for every two weeks left to serve in prison. So, for example, if someone has twenty weeks left to complete their sentence, they are required to engage in unpaid community work for ten weeks.

### **Community Return Programme in practice**

Community Return embodies many of the principles of community service. Community service as a sanction for criminal offending has been available to the courts in Ireland since the introduction of the Criminal Justice (Community Service) Act, 1983.

A Community Service Order (CSO) involves the performance of between forty and 240 hours' unpaid work in the community by a person who is sixteen years or over, who has been convicted of an offence for which the alternative appropriate penalty would be a custodial sentence, who consents, and where appropriate work in the community is available.

Community service is a 'front door' sanction imposed by a court as an alternative prior to imprisonment. The *Value for Money and Policy Review of the Community Service Scheme* (Department of Justice and Equality 2009) identified the strategic objectives of community service as:

- reparation to the community
- integration of offenders in the community
- alternative to imprisonment (Department of Justice, Equality and Law Reform, 2009).

Similar objectives can be identified in the Community Return Programme, with the understanding that as a 'back door' measure, it functions as an alternative to on-going imprisonment and as an aid to resettlement in the community.

The unpaid work undertaken in the Community Return Programme is intended to assist the community. It operates on a non-profit basis to provide benefit to the community and offer direct assistance to many charitable organisations and local groups.

As with community service, unpaid work on the Community Return Programme is purposeful and operates and is managed as closely as possible to a normal workplace practices. This enables Community Return to provide an introduction to regular workplace structure, discipline and social skill development as part of a 'normalisation' and resettlement process.

Community Return Programme work usually is completed in a supervised group setting on one of the many community service work sites located throughout the State. The placements operate on a non-profit basis, provide benefit to the community and offer direct assistance to many charitable organisations and local groups.

Participants in the Community Return Programme are required to complete three days' work each week. The working day is 9.30am to 4.30pm. Prisoners involved in the programme undertake the same type of work as people on court ordered community service. In many situations, the groups of offenders work side-by-side.

The work requirement may be varied depending on particular circumstances and commitments by participants to rehabilitation interventions, addiction programmes, employment etc.

Each participant is subject to additional conditions while on the scheme, such as a requirement to be of good behaviour, to be of sober habits, to report on a regular basis to the relevant prison and their local Garda Station and to reside at an agreed address. The participants are also subject to a 'two strike' rule whereby non-attendance or lateness on two separate occasions will result in their removal from the scheme and return to prison custody to serve the remainder of their sentence. Non-compliance with other conditions of their temporary release may result in an immediate return to custody.

### **Resettlement and adjustment support**

In the development and objectives of the Community Return Programme the adjustment and resettlement period immediately following release from a custodial sentence was recognised as critical for people leaving prison. It is an important time in determining whether ex-prisoners can engage with their communities, establish a law-abiding lifestyle and make a positive contribution through their work and participation in society, or relapse to anti-social behaviours or offending.

Through structured and supervised early release, engagement with dedicated support services and supported access to mainstream

community services, the Community Return Programme seeks to maximise opportunities to ensure that the adjustment to life in the community and resettlement to a new and positive lifestyle and career are facilitated.

For participants on the Community Return Programme, appropriate arrangements for necessary social and rehabilitative supports are planned as part of the programme, with support services such as IASIO,<sup>7</sup> local addiction/drug services, local accommodation support services as well as on-going support from Probation Officers.

### **Community Return Programme pilot phase**

The Community Return Programme pilot, between October 2011 and April 2012, proved to be extremely successful in assessed compliance with the conditions of release and behaviour. Initial feedback from participants was positive, with many commenting on the support and structure that it gave them on their release and how it assisted in their transition back into the community.

Following this initial pilot phase, the Community Return Programme was extended and expanded. One of the strategic actions contained in the Joint Irish Prison Service and Probation Service Strategic Plan 2013–2015 (Irish Prison Service/Probation Service, 2013) was the continued roll-out of the Community Return Programme.

The Community Return Programme was managed in the initial pilot phase by a Steering Group comprised of representatives of the Department of Justice and Equality, the Irish Prison Service and the Probation Service. Day-to-day management of the project takes place in a co-located unit, based in Probation Service Headquarters and made up of prison and probation personnel working together. The co-located unit reports to a high-level probation and prisons oversight committee, which now manages and co-ordinates implementation of the Probation Service – Irish Prison Service Joint Strategy 2015–2017 (Irish Prison Service/Probation Service, 2015).

Putting in place the co-located interagency unit has been recognised in both the Irish Prison Service and the Probation Service as being one of

<sup>7</sup> IASIO (Irish Association for the Social Integration of Offenders) is a not-for-profit community based organisation providing services and support for the social inclusion of people with criminal convictions. IASIO is funded and supported by the Department of Justice and Equality, the Probation Service and the Irish Prison Service. [www.iasio.ie](http://www.iasio.ie)

the keys to the smooth running and general success of Community Return. The co-location of staff in this way has also been widely perceived as contributing significantly to improved interagency communication, including other work streams, as well as Community Return itself.

## Evaluation

In developing and piloting of the Community Return Programme an evaluation study was part of the commitment by the Department of Justice and Equality, the Probation Service and the Irish Prison Service to build data analysis, evaluation and an evidence base into the project, to inform decisions and future policy and practice development. Research and evaluation in practice are also part of the Government commitment to an evidence-led approach to policy development and service delivery.

The study of the first twenty-six months of the Community Return Programme was managed by a cross-agency steering group. The study titled *Community Return: A Unique Opportunity* (Irish Prison Service/ Probation Service 2014), through descriptive and evaluative research, sought to evaluate and report on the operation, impact and effectiveness of the Community Return Programme. To do this a mixed methods approach was adopted consisting of primary research conducted through quantitative surveys and qualitative semi-structured interviews, as well secondary research involving the analysis of pre-existing data on programme participants collected by the Irish Prison Service.

The study cohort comprised all 761 Community Return Programme participants between October 2011 and 31 December 2013.

Key findings in the Community Return Programme study included:

Of the 761 participants who had commenced the Community Return Programme between October 2011 and 31 December 2013, 548 had completed it and 108 were still in progress. Eighty-eight participants, approximately 11 per cent, breached conditions of the Community Return Programme and were returned to custody.

Almost 89 per cent had either successfully completed their Community Return Programme or were still working on the Programme. Of those participants (n =233) released during the first year of the programme, 91 per cent had not been committed to prison on a new custodial sentence in the period up to the end of 2013.

Of the 761 offenders who commenced the Community Return Programme, 90 per cent were serving custodial sentences of less than six years. 45 per cent were serving sentences of between two and four years imprisonment. The average sentence length was 3.2 years.

40 per cent of Community Return Programme participants had been convicted on drug offences. 16 per cent had been convicted in respect of offences including assaults and related offending. 9 per cent were convicted of offences including robbery and related offences.

Community Return Programme participants were predominantly male, with females comprising approximately 6 per cent of the population on the programme. 77 per cent of the population were aged between twenty-one and forty, with the greatest concentration in both genders (43 per cent) in the ten year age group between twenty-one and thirty years.

62 per cent of Community Return Programme participants were from Leinster. 43 per cent of all participants were from Dublin. Of the total population who commenced the Community Return Programme, approximately 53 per cent were located in three major urban areas (Dublin, Cork and Limerick). This is generally consistent with the prison population distribution.

38 per cent of participants were released from open prisons, Shelton Abbey and Loughan House, while Mountjoy Prison was the closed prison with the highest release rate at 11 per cent. The high percentage of prisoners released onto the Community Return Programme from open prisons reflects the Irish Prison Service Incentivised Regime policy in practice and the pre-release role of open prisons.

9,580 weeks of Community Return Programme work, comprising 201,056 hours' unpaid work, was completed by participants. Based on the national minimum wage in 2014 for an adult worker of €8.65 per hour, this represents €1,739,135 worth of unpaid work completed for the community by Community Return participants.

The most common types of work undertaken by Community Return Programme participants were landscaping/gardening, painting/decorating and renovation, with participants preferring work which allowed them to see 'a job through from beginning to end rather than constant switching between jobs'. Supervisors reported that Community Return Programme participants performed positively in their work and displayed a positive attitude towards the work.

Over 80 per cent of community based Probation Officers attributed Community Return Programme participant compliance primarily to a desire to avoid returning to prison. In some cases this was complemented by secondary motivational factors such as participant enjoyment of the work experience, appreciation of their early release or a sense of commitment to the Community Return contract.

Access to social protection entitlements ('social welfare') was the single biggest difficulty faced by Community Return participants involved in this study following their release, affecting one third of participants. According to participant feedback, difficulties appear to have stemmed from an apparent lack of a shared understanding regarding access to income maintenance payments by Community Return participants.

The Community Return Programme participants identified particular benefits of the Programme, including the structure and routine which aided re-integration, the work ethic and self-esteem developed, their positive profile in working in the community and the learning of work skills transferable to employment. Challenges included coping with the strictness and frequency of the signing-on conditions, difficulties accessing entitlements and payments, and time and costs in travelling to worksites.

The Community Return Programme helped participants stay out of trouble according to some of them, by keeping them occupied, providing positive supports and a starting point to build on, particularly in the early stages after release, when, according to research here and abroad, newly released prisoners are particularly vulnerable to relapse to anti-social behaviour, companions and offending.

High percentages of prison-based Probation Officers (85 per cent) and community-based Probation Officers (80 per cent) said participants had suitable accommodation upon their release. However, maintaining this stable accommodation during the initial resettlement period was identified as one of the biggest challenges participants faced according to prison-based Probation Officers, community based Probation Officers and IPS staff.

Of thirty participants interviewed, seven faced accommodation difficulties following their release. These difficulties included accessing affordable private rented sector accommodation, finding landlords who would accept rent allowance payments, being unable to change address due to the temporary release conditions being linked to a current

address, having to leave an address due to relationship breakdown, the temporary nature of accommodation after the assessment stage and not having secure accommodation at the time of release.

While only a small number of participants experienced difficulty with accommodation at the time of release, the issues outlined above suggest that, in some cases, the accommodation cited by participants as their post release address was not always suitable to their longer term resettlement needs.

Drug use was identified as the main challenge faced by participants during their resettlement by 40 per cent of the prison based Probation Officers, and 28 per cent of community based Probation Officers. 21 per cent of Community Service Supervisors said that, in their experience, participants did not have difficulty with substance misuse. 65 per cent reported that when it did arise among participants, it was not a frequent occurrence.

While relapse to drug and/or alcohol misuse is recognised as a serious risk factor for prisoners with a misuse history prior to custody or in custody, timely engagement with services and treatment can mitigate the risks and minimise harm. Where possible, participants with drug or alcohol misuse issues are engaged with treatment services. Where risks are significant, or engagement with services breaks down, participants are returned to custody.

## **Benefits and potential**

The re-integrative benefits and resettlement potential of community service have been identified by Gill McIvor in her work in Scotland (McIvor, 2010). Community service in Scotland was intended to fulfil a number of sentencing aims including *rehabilitation* (through the positive effects of helping others) and *reparation* (by undertaking work of benefit to usually disadvantaged sections of the community). The *re-integrative* potential of community service was to be achieved through the offender being enabled to remain in the community (McIvor, 2010, p. 42). Many of the benefits can similarly be attributed to Community Return as a ‘back door’ measure.

Most participants in this study identified value in the supervised Community Return Programme, as opposed to general release from prison, in aiding their resettlement. Community Return provided a structure and routine, helped build a work ethic and develop the self-

esteem of participants and taught new work skills transferable to paid employment. Some believed that aspects of the Community Return Programme helped them to stay out of trouble. Participation contributed to the participants' enhanced 'social capital' and engagement with their communities.

## **Reparation and victims**

It can be argued that unpaid community work by the offender is a contribution to making good the loss suffered by the victim, even where the benefit is indirect. It is a valid question whether the community in general is a victim, and if so, whether the unpaid work can actually make good community losses or harm. It can possibly be said the community suffers psychological injury from the fear of crime, and more tangible injuries, such as rising insurance costs.

It can also be argued that the harms suffered by the community as a result of crime are too intangible to calculate, and consequently the benefit of unpaid community work is arbitrary. Community Return does not seek to be direct restitution to identified victims; nevertheless, the unpaid work completed by participants on Community Return is visible, does make a positive difference and can be viewed as a reparative opportunity. It can facilitate a symbolic demonstration of reintegration or restoration to citizenship.

Probation Officers identified direct and indirect benefits to the community and Programme participants. The work done by participants benefited worthy causes within the community, was visible and represented reparation for the harm of offending in the community in general. There may be opportunities for direct reparation in communities in the future. The hosting communities acknowledged prisoners making a positive contribution and participants were made more aware, in many work tasks, of the impact of criminal and anti-social behaviour on a local community.

In the supervision of prisoners on temporary release or other supervision the Probation Service and partner services strongly encourage offenders in taking responsibility for the hurt, damage and suffering caused in their offending. Supervision seeks to ensure that offenders address any lifestyle issue or attitude that has played a part in their offending.

Participation by prisoners in pre-and post-release programmes and interventions focused on rehabilitation and changed behaviour,

co-operation with supervision, engagement with services in the community, positive engagement in purposeful work in communities and the low level of recidivism among Community Return Programme participants are indicators of considerable benefit for victims through changed behaviour and attitudes, the reduction of further victimisation through repeat offending and safer communities.

### **Pro-social modelling**

One of the key tasks of Community Service Supervisors is to 'lead by example' in their management and working on Community Service and Community Return work projects. Supervisors model good behaviour in their work ethic, respectful manner, problem solving and general behaviour. Community Return participants responded particularly well at work where their performance was acknowledged by Supervisors and host organisations.

The Oireachtas Sub-Committee on Penal Reform in 2012 found that 'having people coming out of prison working side-by-side with court ordered community service offenders has had a positive impact. The prisoners have been good role models for the people sent by the courts to do community service' (Oireachtas Sub-Committee on Penal Reform, 2012).

### **Multi-agency working and co-operation**

There is evidence in research on resettlement and in this study, that to succeed in reconnecting offenders back to their communities, it is best that state, community and voluntary agencies work in partnership to bring about real change in the individual lives of offenders. Joined-up services and co-operation should not mean duplication of actions, doing each other's job or blurring roles and responsibilities. It does mean greater co-ordination, mutual support and communication among providers, to ensure that appropriate service provision, interventions, monitoring and communication are co-ordinated, efficient, effective and timely.

### **Mainstream services**

There has long been an identified risk that ex-prisoners can be marginalised and excluded, either as a result of their behaviours or fears

or concerns about them. This has led, in some instances, to exclusion from mainstream services such as accommodation, employment support and health services and the growth of specialised and separate provision, which may in fact contribute to increased marginalisation.

Some Scandinavian countries have recognised this potential for further exclusion and the risks attached in relapse to offending, personal breakdown and risk to the community. 'Community guarantee' is a term used to describe statutory provisions in Denmark and Norway, which stipulate responsibilities of state and municipal authorities to arrange services to released prisoners in the community, according to their needs. Through this provision, released prisoners access mainstream services as other citizens can, enhancing their local and social engagement.

### **Recidivism and prison numbers**

The level and nature of recidivism reported in this study was much lower than anticipated. The period of follow-up was short given the intention that the study reported on the first twenty-six months of the programme in action. 91 per cent had not been committed to prison on a new custodial sentence in the period up to the end of 2013. Of the twenty committed to custody six were for non-payment of a court imposed fine. Other offences appear to have been relatively minor. The issue of longer term desistance from offending by Community Return participants requires more detailed follow-up research.

Projections for the study period and since anticipate between up to 450 participants annually in the Community Return Programme (Irish Prison Service/Probation Service 2015). That number represents 10 per cent or more of the population in prison at any given time in recent years.

On 28 November 2014 there were 3,204 prisoners in custody under sentence (Irish Prison Service 2014). In comparison on 30 November 2011 there were 3,697 prisoners in custody under sentence (Irish Prison Service 2011). While this fall in prison number can be attributed, at least in significant part to the Community Return Programme, other factors such as offending patterns, policing and sentencing practice may have made some contribution. It is clear, however, that there is now an established pattern continuing reduction in prison population which should, in the longer term, mitigate operating expenditure on prisons and reduce the need for additional capital investment.

By 7 July 2015 a total of 1,409 had participated or are currently participating in the Community Return Programme since its inception. 163 persons have been returned to custody for non-compliance with the conditions of the Programme, representing 11.5 per cent of the cohort released (Irish Prison Service data, unpublished). Almost 89 per cent of prisoners released on the Community Return Programme since its commencement have completed or are completing their supervision successfully. This current figure is consistent with the findings of the research study on the first twenty-six months of the Community Return Programme (Irish Prison Service/Probation Service 2014).

### **Research and evaluation**

As described earlier and in the literature review in the evaluation study, there are studies that support elements of the initiative, but none that encompass the full breadth of Community Return. There was, in such circumstances, a need for calculated risk-taking to develop a new initiative or project.

Considerable review and oversight processes have been built into the Community Return Programme to monitor its development, evaluate actions and respond to any unforeseen issues.

Evaluation, of which *Community Return: A Unique Opportunity* is an example, is critical to the development and successful implementation of any new initiative, and to Community Return in particular, in view of potential risks to public safety and the community.

*Community Return: A Unique Opportunity* highlights the positive impact on reoffending and resettlement of the Community Return Programme as a structured post custody resettlement, reparation and supervised release initiative.

The Community Return Programme is, so far, a unique, innovative and progressive initiative combining supervised release with a condition of unpaid community work as part of the resettlement process after custody. As outlined, there is considerable supporting evidence for the benefits of planned and structured approaches in the successful integration of ex-prisoners after release from custody.

Unpaid community work as part of supervised release has not previously been considered or implemented in the form described in *Community Return: A Unique Opportunity*. The Community Return Programme has provided structure, purposeful work, supported entry to

working in the community and valuable benefits to communities as well as to the participants.

### Next steps

The Community Return Programme is now established as a key action in the Irish Prison Service/Probation Service joint strategy 2015–17 (Irish Prison Service/Probation Service 2015) and is being actively developed with an annual target of 450 participants. The Services and partner agencies in the community continue to extend co-operation and integrated support processes.

As a successful, innovative and progressive initiative in post-release resettlement of prisoners leaving custody, Community Return has attracted attention and interest in many jurisdictions. Their critical reviews, decisions and commentary will continue to inform practice development in prisoner re-entry and resettlement here and elsewhere.

It is essential in the development of the Community Return Programme that there should be continued evaluation and independent research on the programme and its practice components as well as its effectiveness and outcomes. Research and evaluation will not only strengthen the Community Return Programme evidence base but also strengthen and develop its benefits for participants, the criminal justice system and the wider community.

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# The Representation of Offending Women in the Irish Press: A Content Analysis

Lynsey Black<sup>1</sup>

**Summary:** Reductive definitions characterise many of the representations of women in the media. These depictions are frequently built around commonly understood and uncritically accepted gender norms which restrict the range of roles women can inhabit. ‘Offending’ women are particularly vulnerable to such limitations of representation due to their relative invisibility; such women are substantially constructed and understood through media reporting. The operation of this process in Ireland has not been the subject of extensive study; this article presents research on the representation of offending women in Irish newspapers within the context of the existing literature. Through a content analysis of the output of four newspapers over a one-month period, the representation of offending women in Irish newspapers was found to rely on familiar narratives of maternity, sexuality and pathology. In addition to these tropes, issues of ethnicity and nationality were also present, demonstrating the need for an understanding based on intersectionality.

**Keywords:** crime, punishment, criminal justice, women, Ireland, courts, media, newspapers, reporting.

## Introduction

The question of how women are represented has been a recurring theme in feminist writings since the emergence of an invigorated women’s movement in the middle decades of the last century. Taken-for-granted assumptions of what it was to be a woman, and what we understood as appropriately feminine, were subjected to a process of re-examination, creating a rich vein of scholarship on the question of how the concept of ‘woman’ had been constituted (see works such as de Beauvoir, 1949/1997; Greer, 1970).

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Within the discipline of criminology, this new consciousness concerning 'woman' and her role within the criminal justice system led, from the 1970s onwards, to a mould-breaking period of academic feminism. For the first time, women were forming the subjects of a new body of literature. In a welcome and, perhaps, inevitable development, the proponents of these new currents of thought were almost invariably women themselves. This new movement of women academics within criminology and criminal law numbered among their ranks some of the most influential thinkers on the question of women's place within the criminal justice system, writers such as Carol Smart (1977), Pat Carlen (1983), and Susan Edwards (1984).

The question of how women are represented within the criminal justice system therefore presented itself as a natural area of study. The research presented in this article explores the question of how offending women are culturally constructed through media representations. In Ireland, however, there has been little attempt to study the representations of such women. It is argued that a failure to understand how offending women are packaged for public consumption carries with it a fundamental failure to understand how prevailing cultural norms shape the lived experience of offending women, and may obscure larger questions of how social constructions of women are reflected within the criminal justice system.

### **The interplay of media and the criminal justice system**

The media is a ubiquitous feature of contemporary life, providing knowledge of events otherwise unseen by much of the public; from depictions of foreign conflicts, to high-stakes political wrangling to the vagaries of a celebrity culture. Crucially, the media also act as a conduit for stories about crime. Crime remains, for many persons, a phenomenon much spoken about but little experienced. Crime therefore constitutes a dependable ratio of media output by satisfying the 'news values' of immediacy, human interest and atypicality; for example, within the hierarchical ranking imposed by 'news values', violent crime generates more column inches than shoplifting, due to the rarity of one over the other (Galtung and Ruge, 1973; Jewkes, 2011). The preponderance of depictions of crime and the criminal justice system has facilitated scholarship on the nature and possible consequences of this

representation, and has raised questions of the nature of the relationship between the representation and that which is represented.

There is little Irish research on the reporting of criminal justice issues in the media. To date, the most exhaustive analysis of media and crime in Ireland was conducted by Michael O'Connell (1999); O'Connell sampled four Irish newspapers over a two-month period, and presented four key findings drawn from over 2,000 articles which dealt with crime. His findings adhere to the existing research on 'news values' and the media's preference for more serious crimes. He found that atypical crimes were more newsworthy, with a disproportionate number of stories about crimes of violence; further, he found that these extreme crimes generated greater 'wordage'. In addition to skewing by *type* of crime, O'Connell also noted a tendency for the victim/offender profile to become relevant, invulnerable offenders and vulnerable victims providing the most popular pairing. Finally, general articles, written at a 'meta' level from the criminal event, tended to present a pessimistic view of crime and the criminal justice system.

The presence of so much crime content in the media has generated much scholarship on the possible consequences of this on public and official understandings of crime, for example in the work of Hall *et al.* (1977) which demonstrated the very real and tangible effects that representation could exert on criminal justice policy. Through their analysis of the 'mugging' phenomenon which occurred in England in the early 1970s, Hall *et al.* pinpointed the media response as pivotal to the transference of the meaning of 'mugging' from the United States and the resultant mobilisation of a government response which was in disproportion to the threat. In Ireland, the interplay of criminal justice policy-making and media portrayals of crime has also been the subject of scrutiny, particularly in the wake of the 1996 murders of Garda Jerry McCabe and investigative journalist Veronica Guerin which sparked crises-led policy innovation and a media rush to diagnose a country overrun with gangland crime (Meade, 2000; Hamilton, 2005).

These works have demonstrated that representations of criminal justice issues have concrete impacts on perception, policy and people. Demonstrating such effects, Paul Mason (2006) has argued that the punitiveness which led to changing imprisonment rates in England and Wales was underpinned and reinforced by a punitive turn in the media. Similarly, feminist criminologists have cautioned that atypical and

sensationalist depictions of offending women can foment and rationalise harsher responses to such women. Dawn Cecil (2007) has argued that ‘get tough’ policies are often successful because of the habit of presenting skewed and sensationalised accounts of crimes committed by women. The converse of this, often branded as ‘chivalry’,<sup>2</sup> is that women are treated more leniently if they conform to normative expectations (Worrall, 1990; Quinlan, 2011).

The cohort of offending women is small in comparison to that of offending men; their population is little seen and, for many in society, little interacted with. This renders offending women particularly vulnerable to misleading representation in the media and such representation can harm an already vulnerable group (Carlen, 1983; Quinlan, 2011). The offences for which women are typically convicted bear little resemblance to those depicted in media accounts (Heidensohn, 1996; Chesney-Lind and Pasko, 2004). Women’s violence in the media provides a point of fascination, creating ‘compelling images of crime and deviance’ (Heidensohn, 1996, p. 86).

### **Understanding offending women**

Stereotypes transmit complex ideas in simple forms; stereotypes are therefore a crucial mechanism through which the media convey messages (Barrat, 1986). The shared understanding within a culture allows these ideas to pass back and forth. Stereotypes about women carry assumptions about women’s expected roles and behaviours, which are in turn reflected in the media treatment of offending women.

For example, Anne Worrall (1990) identified the use of concepts of domesticity, pathology and sexuality to categorise the conceptualisation of women used by criminal justice personnel in courtrooms. Bronwyn Naylor (1995) also offered a typology of short-hand terminologies deployed in understanding violent women: Madonna/whore; sexual passion as a motivation; reproduction and madness; figure of evil; criminal woman as ‘non-woman’; female manipulation. Underlying these stereotypes are fundamental assumptions of appropriate femininity, or ‘the eternal feminine’ (de Beauvoir, 1949/1997); deviation from appropriate femininity is punished under the ‘gender contract’ which only awards

<sup>2</sup> The concept of ‘chivalry’ is most associated with Otto Pollak (1961) *The Criminality of Women*, New York: AS Barnes.

leniency where the requisite threshold of 'womanhood' is met (Worrall, 1990). Offending women are therefore portrayed as 'doubly deviant', contravening both the law and gender expectations (Heidensohn, 1996).

In her research on the representation of women who killed abusive partners, Maggie Wykes (2001) noted how the demonisation of women resolved the tension between assumptions of appropriate feminine behaviour and violence perpetrated by women; Wykes' research explored the media response to killings committed by women in abusive relationships and the intense media interest in these cases in the early-1990s in England. However, as Seal (2010, pp. 1–2) has argued, female-perpetrated violence within the context of intimate partner abuse is 'not a culturally unthinkable use of violence by women'.

In Ireland, Nicola Carr and Stephanie Holt (2010) provided a qualitative analysis of one of O'Connell's (1999) key findings, namely, that the media exhibit a preference for vulnerable victims and invulnerable offenders. Their research presented findings on the representation of victims of femicide in Ireland, as depicted in newspapers. Even in the context of women as victims of crime, however, they found that those women without appropriate femininity were judged harshly for their perceived 'deviation'. They cite particularly the case of Jean Gilbert, killed by her husband, David Bourke, in 2007. The individual-level features of this case were emphasised at the expense of a discussion which could have encompassed a more critical conversation about male violence against women. Drawing on the output of four Irish newspapers, they highlighted Bourke's defence of 'outrageous provocation', understood as Gilbert's extra-marital relationship and decision to leave her husband following twelve years of marriage. The brutality of the injuries inflicted on Jean Gilbert by David Bourke was eclipsed by the print media search for an answer as to why a seemingly happy woman would leave her husband. The judge, in his charge to the jury, felt compelled to caution that they must judge according to the law, and not Gilbert's perceived 'moral failings' (quoted at p. 280). Even within O'Connell's (1999) findings that vulnerable victims are more newsworthy therefore, the research from Carr and Holt suggests that these 'high-status' victims are also subject to *degrees* of sympathy. Women seemingly remove themselves from patriarchal protection when they express autonomy, sexuality or defiance.

In Ireland there have been few attempts to comprehend the portrayal of offending women in the media. O'Connell (2002) has claimed that

despite some high-profile examples, murder cases with female offenders and male victims were less newsworthy. Within his sample, there were 156 stories in which the sex of the victim and the offender was known and a calculation of the mean wordage of the articles suggested that the vulnerable victim/invulnerable offender combination attracted most journalistic interest. O'Connell wrote that the high levels of interest in a selection of female-perpetrated murder was not the norm, and could have been sparked by the sexualisation of the woman. However, the low number of murders committed by women renders this measure an ineffective means of analysing newspaper reporting. Instead, the use of in-depth qualitative analysis of case studies could present more meaningful findings. Further, O'Connell's nod to the sexualisation of the women in these cases itself provides a glimpse at the differential representation of offending behaviour by women.

Catherine O'Sullivan's (2008) analysis of the print media response to the case of Nora Wall is instructive and provides an incisive exploration of the case.<sup>3</sup> O'Sullivan critiqued the stereotypical assumptions about women which pervaded reporting of the Wall case:

These assumptions are that real women are not violent, that real women are by nature maternal and nurturing, and that real women are heterosexual and sexually unadventurous. The sum of such discourse is that criminal women are aberrations. (O'Sullivan, 2008, p. 306)

O'Sullivan contended that the sexual nature of the crimes of which Nora Wall was accused allowed her to be portrayed as masculine and possessed of a dangerous sexuality. Christina Quinlan (2011), in her work on women's imprisonment in Ireland, has argued that women in prison are substantially understood through media discourses. Quinlan writes that prison:

served to render the women visible and vulnerable to the press. Women prisoners have no defence against the scrutiny of the press. In addition, women prisoners have no other public representation. (Quinlan, 2011, p. 165)

In April 2010, Kathleen McMahon retired from her post as Governor of the Dóchas Centre in Dublin; in a subsequent interview with the *Irish*

<sup>3</sup> Nora Wall was convicted of rape and sexual assault in 1999. That same year her conviction was quashed and in 2005 she was given a certificate of leave to sue the state for miscarriage of justice.

*Times* she criticised the inaccurate and harmful reporting of women prisoners within the facility. McMahon reiterated the weight media reporting carried, especially when such reports targeted vulnerable women: 'If people have no connection with the prison system, they believe what is written in those papers' (Sheridan, 2010). McMahon highlighted the strain evident in many articles, particularly those from the popular press, which flagged as frivolous the use of 'pampering' facilities to train women prisoners in beauty skills. She was also particularly critical of the sexualisation of the women prisoners.

Kathleen McMahon's criticisms of the Irish press support Heidensohn's (1996) assertions about the appeal of stories of offending women. Within the Irish market, for example, the popularity of true crime titles has demonstrated the appeal of the macabre, and within this genre, a fascination with the figure of the violent woman is evident in the range of titles devoted to this sub-genre.<sup>4</sup>

In 2014, an alternative portrayal of women in prison was shown on RTÉ in the two-part documentary 'Women on the Inside' (Midas Productions, 2014). The documentary provoked critical reflection on both the conditions of women's imprisonment and its purpose. However, such depictions remain anomalous.

## Research

In order to more fully explore the question of how offending women were portrayed in the Irish media, an analysis was conducted of the output of four newspapers over a one-month period in June 2009. Newspapers, rather than television or radio, provide a greater depth of understanding due to the proportionately larger range and detail in stories reported in the print media (Wykes, 2001). Irish newspaper readership is also one of the highest in Europe (Elvestad and Blekesaune, 2008). In order to capture a representative sample the newspapers selected covered both tabloid, popular and broadsheet titles: the *Irish Times*, *Irish Independent*, *Evening Herald* and the *Irish Daily Star*. Within these four newspapers, all stories which made reference to women's

<sup>4</sup> See for example: David M Kiely, *Bloody Women: Ireland's Female Killers* (Gill and Macmillan, 1999); Niamh O'Connor, *The Black Widow: The Catherine Nevin Story* (O'Brien, 2000); Liz Walsh, *The People Vs Catherine Nevin* (Gill and Macmillan, 2000); David M Kiely, *Deadlier than the Male: Ireland's Female Killers* (Gill & Macmillan, 2005); Anthony Galvin, *The Cruellest Cut: Irish Women who Kill* (Gill and Macmillan, 2009); Mick McCaffrey, *The Irish Scissor Sisters* (Y Books, 2011).

participation in crime were included: encompassing items dealing with the arrest, charging, conviction or imprisonment of a woman in an Irish or international context. Each of the four newspapers from Monday to Saturday was included within the sample. From Monday to Friday each provided a daily edition, on Saturdays there was an *Irish Daily Star*, an *Irish Times*, an *Irish Independent* and a *Weekend Herald*. This provided an equal number of titles. Twenty-six days were therefore covered, which totalled 104 newspapers.

In total, 234 articles were found to come within the terms outlined above. Of these articles, only two provided what could be termed analysis or extended commentary, and the vast majority of references to offending women were either fleeting or were characterised as 'straight' reporting which did not engage in further discussion. This manner of crime-reporting is standard, as Reiner (2007) has elaborated, the format for crime items in newspapers emphasises a concentration on the discrete criminal event, and is packaged without further discussion.

## Findings

An analysis of the breakdown of stories according to newspaper showed that the highest concentration of articles relating to offending women was in the *Irish Daily Star* which accounted for 35 per cent of all articles. The *Evening Herald* and *Irish Independent* had a similar proportion (24.4 per cent and 26.6 per cent respectively), while the *Irish Times* had the fewest with 17.9 per cent. Once again, this finding is in line with existing research which has underlined the particular interest in crime shown by the tabloid press. The popular press, most particularly tabloids, report on crime at a higher rate than does the quality or broadsheet press (Dahlgren, 1992). The *Irish Times* featured the fewest articles relating to offending women.

In the complete sample of newspapers, the number of *general* crime-related articles was also noted. Of these 1,604 articles, 369 related to female victims of crime. Naylor (2001) found during her research into four British national dailies a marked preference for female victims with almost half of all crime stories featuring a female victim; women become crime news more often as victims than offenders. This can be related to O'Connell's (1999) findings which demonstrated a preference for vulnerable victims. The difference between newspaper titles was again evident in relation to a breakdown of the general crime-related articles. The tabloid *Irish Daily Star* featured the highest concentration with

34.7 per cent of all crime-related articles, the *Irish Times* had 20.7 per cent of the articles, while the *Irish Independent* and the *Evening Herald* contained 19.3 per cent and 25.3 per cent respectively.

Beyond what could be gleaned from the fall-out of articles between newspapers, a more in-depth analysis was conducted of articles relating to offending women. The language used in the headlines was analysed, which provided a key means of ascertaining how each newspaper approached the issue of packaging their articles. Referential headlines, those which went beyond the purely informative and contained some element of further descriptor such as references to a woman as a mother, were much more prevalent in the tabloid press. Of all headlines in the sample of 234 articles relating to women offenders, 38.1 per cent of the referential headlines were found in the *Irish Daily Star*. In the *Irish Independent* and the *Evening Herald*, the numbers were 27.8 per cent and 25.8 per cent respectively, while the *Irish Times* had 8.2 per cent.

Martin Conboy (2006), in his writing on tabloid culture in Britain, noted that headlines are an important element of tabloid reporting, crafted to entice the reader. A thematic reading of these referential headlines demonstrated further the marked prevalence of reference to a woman's maternal status. If a woman was a mother this was very rarely omitted from the tabloid headlines. In a similar vein, maternal roles, such as nurse, were also included where relevant in tabloid reporting.

There was a notable use of informal language in certain newspapers, most pronounced in the *Irish Daily Star*. There was frequent use of terms such as 'rap', to mean charge, 'cops' and 'mum'. However, there was a certain amount of this informal language in the *Evening Herald* and *Irish Independent* as well. It was noticed that while headlines may exhibit informal terms, the body of the article was more likely to adhere to formal terms such as 'mother'. Headlines typically, within the *Irish Daily Star* especially, contained sensationalist elements, but were frequently followed by more sedate writing in the article, further underlining the importance of sensationalist headlines within the Irish tabloid market.

The *Irish Daily Star* typically used references to indicate a female offender, such as 'Death Angel',<sup>5</sup> 'Syringe teen'<sup>6</sup> or 'Psycho mum'.<sup>7</sup> The *Irish Daily Star* was also the newspaper which used the most emotive

<sup>5</sup> 'Nurse "killed hundreds of patients"', *Irish Daily Star*, 3 June 2009.

<sup>6</sup> 'Syringe teen to be arrested', *Irish Daily Star*, 4 June 2009.

<sup>7</sup> 'Womb slasher on murder charge', *Irish Daily Star*, 10 June 2009.

adjectives within articles: ‘stomach-churning abuse’ and ‘sickening abuse charges’.<sup>8</sup> This seems to disabuse the notion of dispassionate reporting; the language was highly charged and intended to echo the views of the reader.

The category of crime which was most often reported in the sample corresponded with expectations derived from an understanding of ‘news values’. The crime of murder was by a considerable margin the most prevalent among the sample and 83 of 234 articles dealt with this offence. The incidence of articles relating to murder in the 2009 newspaper sample was compared with the prison committals for women in 2008. These figures showed that there were no women committed to prison for murder in 2008 (Irish Prison Service, 2009). From these same figures, we can see that those crimes which women were being sent to prison for, such as road traffic offences and theft, were vastly under-represented within newspaper reporting. For example, in 2008 there were 148 committals for theft, representing 21 per cent of all prison committals for women, however theft offences accounted for only 8.1 per cent of the newspaper sample. Road-traffic offences constituted 29.1 per cent of 2008 prison committals for women but constituted less than 2 per cent of the newspaper sample. These findings accord with earlier research which found a preference for those crimes which were more extreme and less common to form the bulk of media reporting (O’Connell, 1999).

### **Thematic analysis**

A thematic analysis of articles was also undertaken which demonstrated the prevalence of representation which reflected aspects of appropriate femininity and deviation from same. Themes of motherhood, ideal womanhood, sexuality and pathology were evident. The differential reporting of women according to ethnicity and nationality was also evident, incorporating the concept of intersectionality. Intersectionality (Crenshaw, 1989) has emerged as a means of explaining the forces at play when multiple elements of identity are incorporated into understandings of discrimination.

#### *Maternity and ideal womanhood*

The most prominent theme to emerge from a thematic analysis was that of maternity. Where possible, articles tended to view offending women

<sup>8</sup> ‘Crèche woman on paedo raps’, *Irish Daily Star*, 12 June 2009.

through the prism of motherhood, referring to the women as ‘mum’ or ‘mother’. Headlines such as ‘Mum accused of murdering lover’<sup>9</sup> were common; in this case it was also noted that the killing took place the day following the christening of the couple’s child. The juxtaposition of this detail of the christening with the violence perpetrated by the woman towards her ‘lover’ (another example of a meaningful term suggestive of deviant sexuality) hints at a rupturing in the accepted ways of being a woman and of being a mother. Normative assumptions of maternity were evident throughout the sample. There is a socially constructed and ideal way of being a ‘mother’; in accordance with this idealised standard of motherhood there was greater censure shown to those women who directly harmed children. The reference ‘Psycho mum’ was typical of the demonisation of such offenders; in the headline, ‘Psycho mum “cut baby boy” from tragic young friend’<sup>10</sup> predatory ‘false’ motherhood is contrasted with the tragic motherhood of the victim. Another headline read ‘Knife attack mother caged’, alluding to the woman as a dangerous animal.

However, motherhood was not used solely to stigmatise; it could also mitigate culpability in cases where the woman could be shown to be acting in the best interests of her child. There were a number of articles covering the case of a woman convicted of stealing clothes for her children; these articles consistently represented the woman in a sympathetic fashion. One article opened with the line:

A mum-of-four raising her children alone after her husband left her for another woman has been ordered to do 240 hours community service for stealing children’s clothes valued at €16 ....<sup>11</sup>

The trivial monetary value of the clothes is contrasted with the sentence severity to suggest absurdity. Throughout the sample it was noted that a woman’s status as a mother could be included to inspire sympathy, such as in the headline: ‘Mother imprisoned despite selling home to reduce debt’.<sup>12</sup>

<sup>9</sup> ‘Mum accused of murdering lover’, *Irish Independent*, 2 June 2009.

<sup>10</sup> ‘Womb slasher on murder charge: Psycho mum “cut baby boy” from tragic young friend’, *Irish Daily Star*, 10 June 2009.

<sup>11</sup> ‘Mum stole €16 of clothes for her kids’, *Evening Herald*, 20 June 2009.

<sup>12</sup> ‘Woman who stole €98,000 from GAA club jailed: Mother imprisoned despite selling home to reduce debt’, *Irish Times*, 10 June 2009.

The theme of motherhood was inextricably linked with the theme of ideal womanhood. Analysis of the articles suggested that those women who conformed to expectations of femininity were more likely to be viewed with compassion. There were many references to these women's good nature, typically made by defence counsel, for example, one woman was reported to be 'involved with her church'.<sup>13</sup> However, the converse was also true and there were many examples of women being demonised because of behaviour deemed inappropriate.

The trial of Amanda Knox and Raffaele Sollecito for the murder of Meredith Kercher in Italy was on-going during the period the sample was drawn from. The reporting of Amanda Knox demonstrated that adverse judgements could be made about women who deviated from appropriate behaviour. One article reported how Knox 'giggled in the witness box',<sup>14</sup> which was in stark contrast to those articles which reported female offenders who 'broke down in tears'<sup>15</sup> or 'wept outside the courtroom'.<sup>16</sup> One headline read 'Witness box: confident American accused of murder coolly tells her side of the story – in rapid-fire Italian';<sup>17</sup> Knox's composure was cited as an indicator of her guilt and her confidence was represented as callousness.

### *Sexuality*

The sexualisation of offending women within the press reporting was also evident. For example, descriptions of what female offenders wore were common and a focus on the physical appearance of the women seemed to characterise many of the articles.

Sexuality was also portrayed as potentially dangerous; the reference to one woman as 'Lesbian ex-nun'<sup>18</sup> appeared to demonise the woman and was laden with negative connotations. The woman's sexuality was offered as an indicator of her moral guilt.

A prurient interest in the sex lives of female offenders was a prevalent and insidious feature of the articles. It was common for violent and other

<sup>13</sup> 'Mum of four went off rails after health scare', *Evening Herald*, 8 June 2009.

<sup>14</sup> 'Foxy Knoxy: sex, drugs & my 7 lovers', *Irish Daily Star*, 13 June 2009.

<sup>15</sup> 'Mum jailed for year after she stole €98,000 from GAA club', *Irish Independent*, 10 June 2009; 'Mother admits killing son', *Evening Herald*, 8 June 2009; 'Fire families feel for lying garda', *Evening Herald*, 17 June 2009.

<sup>16</sup> '€100k fraud woman jailed', *Irish Daily Star*, 4 June 2009.

<sup>17</sup> 'I took a shower and slipped on Meredith's blood – Foxy Knoxy', *Evening Herald*, 13 June 2009.

<sup>18</sup> 'Lesbian ex-nun's anger at Ryan Report accusations', *Irish Daily Star*, 1 June 2009.

serious crimes to be reported from an angle which most exploited the sexual element. One story, reported in numerous articles, detailed the trial of a woman charged with murdering her partner. The woman was variously referred to as ‘S&M mistress’, ‘dominatix’ and ‘modern-day courtesan’.<sup>19</sup> The case was viewed primarily through the sexuality of the woman.

In the case of Samantha O, media attention focused on her when it emerged she had become pregnant while in prison. Articles fixated on the logistics of how she had become pregnant and the tone of reporting became increasingly prurient as articles providing details of the ‘sperm donor’ and ‘sperm-filled syringe’ escalated.<sup>20</sup>

The case of Amanda Knox again illustrated the highly salacious reporting of women’s sexuality. The sexual elements of the story were emphasised in headlines. Both the *Evening Herald* and the *Irish Daily Star* refer to her as ‘Foxy Knoxy’. The most extreme headline among the articles appeared in the *Irish Daily Star*, ‘Foxy Knoxy: sex, drugs & my 7 lovers’.<sup>21</sup> An *Evening Herald* article reports, ‘Knox grinned sheepishly when describing a mark on her neck as ‘a hickey, from Raffaele’;<sup>22</sup> this reporting was typical, illustrated further by the use of sub-headings within articles such as ‘kissed’ and ‘lovers’ which could be employed as a guide for how to ‘read’ the article.<sup>23</sup>

### *Pathology*

Within the sample, 11.1 per cent of articles included pathological explanations for the woman’s offending incorporating issues such as depression, manic-depression, and schizophrenia, as well as mental health issues related to the female reproductive system, for example in the case of one woman accused of murder who had ‘a contraceptive device fitted into her arm a month before the murder which ... can cause heightened levels of aggression through the release of hormones.’<sup>24</sup>

<sup>19</sup> ‘Crime of passion: Tycoon blasted four times in whipping session’, *Evening Herald*, 11 June 2009; ‘Billionaire banker’s lover found guilty of murder’, *Irish Times*, 18 June 2009.

<sup>20</sup> ‘Drug suspect’s “DIY pregnancy”’, *Irish Daily Star*, 3 June 2009; ‘Jail liaison saved drug girl from firing squad’, *Irish Independent*, 8 June 2009.

<sup>21</sup> ‘Foxy Knoxy: sex, drugs & my 7 lovers’, *Irish Daily Star*, 13 June 2009.

<sup>22</sup> ‘I took a shower and slipped on Meredith’s blood – Foxy Knoxy’, *Evening Herald*, 13 June 2009.

<sup>23</sup> ‘I took a shower and slipped on Meredith’s blood – Foxy Knoxy’, *Evening Herald*, 13 June 2009.

<sup>24</sup> ‘Woman accused of killing lover gets bail’, *Irish Times*, 2 June 2009.

However, pathological explanations were not universally accepted within reporting. To illustrate this are two contrasting articles reporting the case of a woman charged with killing her new-born infants which demonstrated a spectrum of legitimacy for pathological explanations. In the first article, in the *Irish Daily Star*, the woman is referred to as ‘the killer mum’.<sup>25</sup> However, in the *Irish Times* article, the nature of the psychological issue was outlined and the woman was described as having a face ‘streaked with tears’.<sup>26</sup>

Again the difference in tone according to newspaper is evident. In the *Irish Daily Star*, the article was condemnatory and punitive, which can be contrasted with the sympathetic approach taken by the *Irish Times*.

The pathologisation of offending women can diminish the censure they experience, however it can also lead to the diminution of their agency and the imposition of victimhood. Through the application of psychological explanations, an offending woman can herself become the victim. For example, in the case of Cecile B who was convicted for the manslaughter of her partner, widespread sympathy was evident in many articles reporting the case, which was evident in lines such as ‘the uneducated woman who was described by expert witnesses as mentally fragile’.<sup>27</sup> A number of distinctive strands of reporting were noted throughout articles on the case: the narrative proposed by the prosecution was reported, that of a coldly calculating woman, another narrative told of a woman driven to commit a crime of passion, and finally the depiction of Cecile B as a victim. Each of these narratives can be related to tropes common to the reporting of offending women, for example within Naylor’s (1995) typologies which included woman as devious manipulator, sexual passion/love as motivation, and the mad-woman. A pathological explanation was most evident in the *Irish Times* reporting, which emphasised both the victimisation experienced by Cecile B in her early life as well as the allegations of cruelty within the relationship. In this manner, the ‘blurred boundaries’ between victimisation and offending behaviour in women can be illustrated. Victimisation is a contentious issue when considered in reference to agency, or the degree of ownership which is attributed to one’s actions. Hilary Allen (1998) argued that pathologising offending women could ‘render them harmless’ and her work demonstrated the pathologised lens

<sup>25</sup> ‘Freezer baby mum gets eight years’, *Irish Daily Star*, 19 June 2009.

<sup>26</sup> ‘Macabre secret of a shy wife’, *Irish Times*, 20 June 2009.

<sup>27</sup> ‘Tycoon’s lover faces 20 years for murder’, *Irish Independent*, 18 June 2009.

through which criminal justice and medical professionals *and* feminist criminologists tended to view such women. Pathology neutralised the moral culpability of offending women because they could no longer be said to have ownership of their actions. However, Anne Worrall (1990) has noted that exculpation grounded in pathology is not offered to all women equally; rather women are afforded differential use of pathology depending on factors such as class. The application of a pathological explanation can resolve the tension noted by Worrall (1990) in relation to ‘criminal women’, who must either be re-categorised as either ‘not criminal’ or ‘not women’ – pathological explanations can rebrand a woman as ‘not criminal’.

### *Ethnicity and ‘othering’*

Evident in the research also was a disproportionate focus on offences committed by young women from the Roma community, particularly in the *Irish Daily Star* and *Evening Herald*. Further, the offences for which these young women had been convicted were all minor offences, such as theft, trespass and administrative infractions regarding documentation. This suggests that offences committed by women from the Roma community are much more likely to become news, and that these offences are therefore more newsworthy. The fact of over-reporting of such offences within the *Irish Daily Star* and *Evening Herald* is indicative of an ‘othering’ of women from this community; the ethnicity of the women was of greater importance than the offence, ensuring newsworthiness regardless of other features.<sup>28</sup>

The issue of ethnicity rose again in another story concerning a young woman, Samantha O, which was covered in seven articles within the sample. Samantha O was a young black British woman, imprisoned in Laos following conviction on drug charges. Irish interest in this story derived from the fact that Samantha O’s mother was Irish; in each article her mother was linked to Trinity College Dublin. However, the manner in which this link was made differed across newspapers. The articles in the *Irish Times*, *Irish Independent* and *Evening Herald* referred to Samantha O’s mother as a student of Trinity College Dublin, while one article in

<sup>28</sup> See for example ‘Judge’s child sex warning’, *Irish Daily Star*, 13 June 2009; ‘Girl “failed to produce ID”’, *Irish Daily Star*, 17 June 2009; ‘City centre ban for teen mum’, *Evening Herald*, 18 June 2009; ‘Pregnant girl at risk, says judge’, *Evening Herald*, 18 June 2009; ‘Teen remanded on bail’, *Irish Daily Star*, 25 June 2009; ‘Girl trespassed at OAP’s home’, *Evening Herald*, 26 June 2009.

the *Irish Daily Star* reported that she ‘works at Trinity College’.<sup>29</sup> This carried a qualitatively different meaning. Further, Samantha O was referred to in the *Irish Daily Star* as ‘Nigerian-born’ while her mother was referenced as an ‘Irish citizen’ both of which created a nuance of description not evident across articles in the other three newspapers.<sup>30</sup> These differences suggest a pre-occupation with nationality suggestive of the fact that while Samantha O and her mother may *now* be British and Irish respectively, they were not always so. The language used in the reporting of this particular news event again emphasised difference and ‘otherness’.

In contrast to the depiction of Samantha O as ‘other’ in the *Irish Daily Star*, another article also in the *Irish Daily Star*, demonstrated a signally different tone. Sarah E was a young white Irish woman, convicted of drug offences in Spain and sentenced to imprisonment. The article on this woman throughout stressed that the imprisonment of Sarah E was unwarranted: ‘young Irish woman has been locked up in a Spanish prison for three years – for possessing cocaine worth just €50’. The sympathies of the article are with Sarah E, who is described as ‘pretty’, while quotes from those who know her state that she ‘is not a drug user’.<sup>31</sup>

Categories such as gender, race, sexuality and class are all key means of defining identity. At the interstices of these categories, differential responses and stereotypes operate and within the current research, findings on ethnicity and nationality emerged which demonstrated this. As Crenshaw (1989, p. 139) noted, race and gender are not ‘mutually exclusive categories of experience and analysis’, and discrimination rarely occurs along a single-category axis.

## Conclusion

Christina Quinlan has characterised the Irish press reporting of offending women as yet another ‘instrument of social control’ (2011, p. 196). The research presented herein provides further support for the thesis that newspaper depictions of offending women use well-worn tropes to categorise and judge the women according to their adherence to normative gender roles. The findings from the present study have demonstrated the reductive stereotypes applied to offending women in

<sup>29</sup> ‘Pregnant Laos lifer names dad of child as Brit inmate’, *Irish Daily Star*, 8 June 2009.

<sup>30</sup> ‘Pregnant Laos lifer names dad of child as Brit inmate’, *Irish Daily Star*, 8 June 2009.

<sup>31</sup> ‘Irish girl jailed for 3 years over €50 of cocaine’, *Irish Daily Star*, 23 June 2009.

the Irish press which cluster around maternity, sexuality and pathology; in addition to this, the issue of the 'othering' of women of colour and according to ethnicity was also noted. Many of the stereotypical representations found within the sample are derived from gendered notions of appropriateness and 'natural' femininity. Offending women were constructed around a binary of 'good' and 'bad', a framework underpinned by the organising principle of appropriate femininity. The default was the 'good' woman, epitomised by the good mother, the good wife, and the caring woman. Deviation from this standard created a 'bad' woman. As Kathleen McMahon noted on her departure from the Dóchas Centre, one-dimensional and sexualised reporting of women in prison can have detrimental effects on the lives of these women; it is argued that these detrimental effects also extend beyond the prison, reinforcing societal stereotypes which diminish all women.

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# Literacy in the Irish Reformatory School

**Maighread Tobin<sup>1</sup>**

**Summary:** Literacy and education have long been acknowledged as key factors underpinning essential competencies and influencing lifestyle, social achievement and career choices in Ireland. The impact and effect of institutions and institutionalisation over the last century in Ireland on the children and young adult residents has, over recent years, raised serious concerns as a result of allegations of institutionalised abuse and neglect over many years involving many thousands of children in the care of the State and its agents. The author considers the history of literacy assessment and education in the Reformatory and Industrial Schools. The lack of detailed oversight in institutions formally designated as schools is explored. The author describes the educational opportunities provided by the schools and discusses their links with employment on discharge and the consequences of limited education and poor literacy for the former residents.

**Keywords:** Ireland, nineteenth century, twentieth century, reformatory schools, industrial schools, children, crime, juvenile justice, courts, literacy, education, Residential Institutions Redress Board, Magdalen Asylums, Department of Education, employment.

## Introduction

The term ‘literacy’ encompasses the ability to read and write, skills that humans have used for over five thousand years (Scribner and Cole, 1981, p. 3). During most of that time, until relatively recently, it was possible to negotiate everyday life with little or no literacy. The introduction of compulsory State schooling in the nineteenth century generated an expectation that all adults should be able to read and write. This expectation, accompanied by the wider use of printed documents to organise daily life, stigmatised those who were illiterate (Howard, 2012, p. 5). The twentieth century became increasingly print-mediated, where

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documents such as instruction manuals and application forms required increased levels of reading and writing ability. Literacy skills are a vital prerequisite in the technology-rich environment of the twenty-first century. They underpin competencies such as computer literacy, financial literacy, health literacy and information literacy. In our digitally-mediated social world, those with insufficient literacy to meet the basic requirements of daily life risk being marginalised and excluded.

Literacy levels generally increase in relation to years spent in schooling (e.g. Denny, Harmon, McMahon and Redmond, 1999, p. 223), but this was not the case in the Irish Reformatory and Industrial Schools. The Residential Institutions Redress Board acknowledge that many former residents emerged with low levels of literacy (2005, Section 12). Although very little information about the Reformatory and Industrial Schools entered the public domain, the Annual Reports of the Department of Education included a general overview and some statistical information about them every year. They particularly noted the literacy level of children on admission, and the presence of annual literacy statistics provided the initial impetus for this article. Why were these literacy assessments made, and what were the consequences?

This article considers the historical antecedents of the literacy assessments in the Reformatory and Industrial Schools, discusses their links with employment on discharge, and describes the educational opportunities provided by the schools. Historical documents from the Department of Education are used to extrapolate from the literacy statistics provided in the Annual Reports. The literacy assessments ultimately provide a lens through which to view the educational provisions within the Schools, focusing particular attention on the Reformatory Schools.

## **Historical background**

Reformatories were originally established in Britain by charitable societies such as the London-based Reformatory and Refuge Union. They accommodated children convicted of crimes who would otherwise have been sent to prison, the age of criminal responsibility at that time being seven years. Juvenile offenders formed up to one-third of the Irish prison population in the years prior to the introduction of the Reformatory Schools Act in 1858 (Reformatory and Refuge Journal

XXVII, 1865, p. 38). The Act provided State funding, certification and inspection for schools that accepted convicted children. The first Irish Reformatory School to be certified was for girls at High Park, Drumcondra in December 1858, run by the Sisters of Our Lady of Charity of Refuge. By 1862, there were nine certified schools in Ireland, with separate Reformatories for Protestant and Catholic children (HMSO, 1862, p. 3).

Reformatory Schools accepted children convicted of crimes, while Industrial Schools catered for neglected, orphaned and abandoned children. Suitable provisions for education and training were to be provided in both types of school.

Reformatory Schools were for children aged between twelve and sixteen years, convicted of an offence that would have resulted in imprisonment or penal servitude in an adult. They could be detained up to the age of nineteen years. Following release, they remained under the supervision of the Reformatory School manager until their nineteenth birthday. Table 1 below shows the admission rates to the Irish Reformatory Schools for selected years in the nineteenth and twentieth centuries. Committal to Reformatory School was often imposed on first conviction throughout both centuries, with no consistency in sentencing. The most common offences were Larceny and Housebreaking. Other convictions recorded for these years include Unlawful Possession (thirty admissions), Wilful Damage (twenty-four admissions), Receiving (thirteen admissions), and Vagrancy (thirteen admissions). The Commission of Investigation into Child Abuse remarks that these were generally offences of poverty rather than of criminality (Volume 1, 2009, p. 620). Children originally admitted to Industrial Schools could be committed to a Reformatory School for absconding (eleven admissions), and for 'Refusing to Conform to Rules of Industrial School' (four admissions). In 1959, two girls were committed to Reformatory School for 'Having a Parent who does not Exercise Proper Guardianship'.

A variety of residential provisions for poor children existed in Ireland by the mid-nineteenth century, funded by charitable organisations such as the London-based Reformatory and Refuge Union. This organisation funded Industrial Ragged Schools in Cork and Limerick, accommodating destitute children (Reformatory and Refuge Journal XXXIV, 1867). Industrial Schools were given a legal basis in Ireland from 1869, and by 1899, there were seventy-one Industrial Schools with

8,422 residents (Coolahan, 1981, p. 191). Industrial Schools were used to accommodate neglected children under fourteen years found wandering or begging. They also accommodated children with a criminal conviction if they were younger than twelve years, and sometimes up to fourteen years. The children could be detained until sixteen years old, and remained under the supervision of the school manager until their eighteenth birthday (Department of Education, 1926, p. 84). The Children Act 1941 allowed the periods of post-release supervision for both types of school to be extended up to twenty-one years of age.

**Table 1:** Admissions to Reformatory Schools for Selected Years

<i>Year</i>	<i>Total</i>	<i>Boys</i>	<i>Girls</i>	<i>Larceny</i>	<i>Boys</i>	<i>Girls</i>	<i>House Breaking</i>	<i>Boys</i>	<i>Girls</i>
<b>1863</b>	<b>153</b>	113	40	<b>118</b>	90	28	<b>4</b>	3	1
<b>1864</b>	<b>184</b>	148	36	<b>116</b>	88	28	<b>2</b>	2	0
<b>1865</b>	<b>160</b>	118	42	<b>115</b>	80	35	<b>4</b>	4	0
<b>1926</b>	<b>26</b>	22	4	<b>17</b>	14	3	<b>7</b>	7	0
<b>1929</b>	<b>39</b>	32	7	<b>16</b>	12	4	<b>12</b>	12	0
<b>1932</b>	<b>32</b>	25	7	<b>14</b>	9	5	<b>8</b>	8	0
<b>1935</b>	<b>44</b>			<b>23</b>	19	4	<b>16</b>	16	0
<b>1938</b>	<b>71</b>	61	10	<b>35</b>	28	7	<b>23</b>	23	0
<b>1941</b>	<b>100</b>	91	9	<b>66</b>	59	7	<b>20</b>	19	1
<b>1944</b>	<b>121</b>	101	20	<b>54</b>	39	15	<b>48</b>	47	1
<b>1947</b>	<b>88</b>	78	10	<b>38</b>	30	8	<b>38</b>	37	1
<b>1950</b>	<b>97</b>	86	11	<b>48</b>	40	8	<b>40</b>	40	0
<b>1953</b>	<b>82</b>	70	12	<b>37</b>	27	10	<b>38</b>	36	2
<b>1956</b>	<b>93</b>	87	6	<b>34</b>	28	6	<b>49</b>	49	0
<b>1959</b>	<b>125</b>	112	13	<b>41</b>	32	9	<b>61</b>	61	0

Sources: Third, Fourth and Fifth Reports of Inspector of Irish Reformatory Schools, HMSO 1863–1865; Department of Education Annual Reports 1928–1960

Following the Ministers and Secretaries Act 1924, the Irish Department of Education took over formal responsibility for the remaining four Reformatory Schools and fifty-two Industrial Schools. The Department of Education's function was to inspect and certify that the schools were fit for receiving the children committed to them. On certification, the

State contributed Capitation Grants. Local Authorities paid towards the maintenance of children from their areas, and judges could make orders compelling parents to pay a contribution towards their children's upkeep on committal (Department of Education, 1926, p. 84).

From 1927 until 1944, there were two Reformatory Schools, one for boys managed by the Oblates of Mary Immaculate (the Oblates) and one for girls managed by the Good Shepherd Sisters in Limerick. The Oblates established St Kevin's Reformatory for Boys in Glencree, Co Wicklow in 1857 and St Conleth's Reformatory School in Daingean, Co Offaly in 1870. Both were housed in former army barracks. Glencree closed in 1927 and the only remaining Reformatory School for Boys was at Daingean, with 250 places. Due to the poor state of repair in Daingean, the boys from Daingean were transferred to Glencree in 1934, but they were transferred back to Daingean again in 1940 when Glencree was deemed unfit by the Department of Education (Commission to Inquire into Child Abuse Volume 1, 2009, pp. 609–614). Despite the poor state of conditions in Daingean, this remained the sole Reformatory School for Boys until it closed in 1973, as recommended in the Kennedy Report. The Oblates continued to manage Scoil Árd Mhuire in Oberstown, Lusk, Co. Dublin from 1972 until 1984.

St Joseph's Reformatory School for Girls in Limerick, managed by the Good Shepherd Sisters, was certified in 1859. By 1927, it was the sole Reformatory School for girls. A second Reformatory School for girls was opened in 1944 by the Sisters of Our Lady of Charity of Refuge, who had opened the first Reformatory in High Park and also ran several Magdalen Laundries (also known as Magdalen asylums). St Ann's Reformatory School Kilmacud provided eighty places for girls convicted of sexual offences until it closed in 1984. In 1989, the two female religious orders became trustees of the Ruhama organisation (McGarry, 2011).

The Department of Education Annual Report in 1926 states that the Reformatory and Industrial Schools are conducted by voluntary managers, responsible for the upkeep of buildings, appointment of staff, expenditure of funds and all details of the school management (1926, p. 85). In practice, the existing schools were all managed by Catholic religious orders and the staff were generally members of those orders. While many were described as teachers, not all were trained. By agreement with the Department of Education, young men and women entering religious orders were sent to teach and supervise children in the

Reformatory and Industrial Schools, with limited teacher training and negligible childcare training (Commission to Inquire into Child Abuse Volume 1, 2009, p. 78). As the religious orders demanded vows of obedience, personal preferences regarding work placements were not considered. Thus, many of the staff allocated to work with children in Reformatory and Industrial Schools were untrained, unskilled and likely to be unsuited to the role. The limited training provisions are evident in the description of a childcare course provided for the managers and sisters in charge of 'Children's Homes' in 1953. The Sisters of Mercy provided the course at Carysfort Training College from 19th to 28th August 1953, arranged with the advice and approval of Archbishop McQuaid of Dublin:

At least one Sister and, in some cases, two or three, from each Girls' and Junior Boys' Industrial School attended the Course. The Course was very successful and the many aspects of Child Care dealt with by the lecturers were listened to with the greatest enthusiasm and interest. There is every reason to believe that among the benefits of this Course will be further improvements in school standards, the increased welfare and happiness of the children in the schools and a better preparation of them for life. (Department of Education, 1954, p. 37)

### **Annual reports**

The First Report of the Inspector of Irish Reformatory Schools was published in 1862. Subsequently, an annual Report on the Reformatory and Industrial Schools was presented to the British Parliament. In 1922, the Report was addressed to the Irish Minister of Local Government. The 1923 and 1924 Reports were presented to the Minister for Education. From then on, the Department of Education incorporated a short review of the Reformatories and Industrial Schools into their Annual Reports.

In the 1928 Annual Report and in succeeding years, the first chapter discusses Primary Schools and the second chapter deals with Secondary Schools. Chapters dealing with the National Library, the National Museum and other responsibilities of the Department of Education come before the chapter on the Industrial and Reformatory Schools. The reports physically reflect a distinction between Reformatory and Industrial Schools and the other schools, regarding the systems as

separate entities, just as the children in the Reformatory and Industrial Schools were regarded as a separate and distinct group.

The 1928 Annual Report provides a fuller account of the Reformatory and Industrial Schools, reflecting a closer familiarity with the schools due to the new regulatory role undertaken since 1924. The Report outlines the provisions for children in both types of school, and it displays the underlying belief that such schools were of a high standard in terms of personnel and intention.

In addition to receiving instruction in the usual subjects of the Primary Schools' Programme, the pupils of these schools are trained in certain trades. The training for boys includes carpentry, tailoring, shoemaking and farm and garden work – and where numbers and other facilities exist there is some additional choice of occupation. For girls, training in practical domestic economy subjects is the invariable rule. Besides the ordinary physical requirements of feeding, clothing, housing etc., each school has to provide medical attention necessary in individual cases. Last, but certainly not least, is the moral training and character formation, by instruction, conduct and the personal influence of responsible members of the staffs. In no other schools do the personal qualities of the teachers and assistants have such vital or far-reaching effect. The upbringing of children in good homes is not always a simple problem. When children have to depend entirely on a school for what their homes should give them, much more than efficient instruction and material comfort is of importance, and it will be obvious that, apart from arrangements for education and physical wants, there is good reason to avoid any exaction of a hard and fast uniformity in other phases of school activity and to encourage whatever may relieve the institutional features of such schools. (Department of Education, 1928, p. 83)

Daily Religious Instruction was made obligatory when the schools were established, and the high place given to Industrial Schools in the Annual Reports of the Diocesan Inspectors [Religious] shows that the intelligence of the pupils compares favourably with that of the other schools when there is opportunity for comparison. (Department of Education, 1928, p. 89)

Despite the commitment to education and religious instruction outlined in these introductory remarks, the educational provisions are a cause for

concern to the Department of Education. The reports discuss particular reservations in relation to what is termed 'literary attainment'. The 1928 Report, referring to previous decades, asserts that '... there is evidence that education in most of the Irish schools was better than it was in general elsewhere' (p. 87), but goes on to state that, despite these past achievements, the situation has changed in recent years. It refers to a Department of Education Circular sent to all Industrial School managers in 1922 that had required them to adopt the entire National School Curriculum. The 1928 Report found:

For many years, however, the literary side of the work was very backward. The fourth class of the National School programme was considered sufficient for the needs of Industrial School pupils, and Irish history and language were not considered suitable for them. In addition to this, there was no definite literary instruction exacted for pupils who had completed their 13th year and entered industrial schools at 10, 11 or 12 years of age, and had little or no education when committed. (Department of Education, 1928, p. 88)

The Report states that '... a successful attempt is being made now in all the schools to combine a full Primary Education with sound practical training' (p. 88). However, the outcome of this attempt is less successful than anticipated. The Reports for 1930 and 1931 identify a continuing imbalance between industrial training and literary instruction in both the Industrial and Reformatory Schools:

The industrial training of the boys in the majority of the [Industrial] schools may be said to have yielded good results, but the literary standard attained in some cases might be higher. In this connection it is just possible that the balance between the two classes of instruction needs to be adjusted, and attention is being given to this matter. (Department of Education, 1930, p. 126)

In some of the schools perhaps, these claims [industrial training] receive too generous recognition, which might be curtailed in the interests of other phases of the school life, including the literary instruction. (Department of Education, 1931, p. 105)

Reports in succeeding years contain similar statements indicating criticism of the educational provisions. Forty years later, the Committee on Reformatory and Industrial Schools (the Kennedy Report) found that educational facilities in the schools did not take the educational needs of the children into account (1970, Section 7.2).

The Annual Reports demonstrate a tension between the Department of Education's concern with poor educational standards and the lack of a mechanism to address this concern. The Reformatory and Industrial Schools pre-existed the foundation of the Irish State, and their practices were already long established by the time the Department of Education came into being in 1924. The Annual Reports indicate that the School managers implemented the Department's instructions and official circulars as they saw fit, acting with a large degree of autonomy. The 1922 Circular instituting a full National School Curriculum was not implemented in some schools, and the Department seemed unable to compel compliance or to impose any sanctions.

This tension between funding and control can be seen in other interactions between the Catholic teaching orders and the State. The negotiations between the Christian Brothers and the Department of Education in 1924–25 is one example. The Christian Brothers chose to operate their network of primary and secondary schools independently of British State funding, but in 1924 they sought funding from the new Irish Department of Education. The Department voiced concern regarding the number of untrained teachers within the Christian Brothers' schools, among other things, but the Catholic hierarchy disregarded these concerns. The eventual agreement saw the Christian Brothers schools taken under nominal State control, which provided funding but allowed all other control to reside with the religious order (Hyland 1980). The Catholic hierarchy retained final authority, casting the Department as a source of funding rather than governance. The Christian Brothers deducted stipends from the Department's capitation grants for all Brothers resident in the monasteries attached to the Industrial Schools run by the order, whether they held a post within the school or not (Commission to Inquire into Child Abuse Volume 1, 2009, p. 74). In a similar fashion, the Oblates in Daingean Reformatory School supported all their priests and brothers resident there from the Department's capitation grant, although few of them worked in the school (Commission to Inquire into Child Abuse Volume 1, 2009, p. 684).

### **Literacy assessment on admission – historical antecedents**

From 1863 to 1959, the British Inspectorate and later the Irish Department of Education published annual statistical tables relating to literacy levels on admission to Reformatory and Industrial Schools. The rationale for assessing literacy on admission is not explained anywhere in the reports. However, literacy assessments were a particular feature of earlier reports on Reformatory Schools. In 1862, the Third Annual Report for St Kevin's Reformatory School in Glencree lists the literacy of the thirty-nine boys admitted during 1861:

The educational condition of these boys on admission was as follows:–

8 could read moderately well

11 very imperfectly

20 not at all

3 could write moderately well

10 very imperfectly

26 not at all

(Third Report of St Kevin's Reformatory School Glencree 1862, p. 9)

A similar list of the literacy abilities of the 236 boys already resident there in 1861 is given on page 10 of the Report, with a matching list regarding their improvement in literacy during the year.

The First Report of the Inspector of Reformatory Schools in Ireland in 1862 contains narrative accounts of the nine certified schools visited and an overall assessment of the conditions in the schools. Inspector Walter Crofton finds that:

The educational and industrial progress in the different schools appears to me to be good, and that considerable attention is directed by the Managers and Committees to this very important point. (HMSO, 1862, p. 4)

In 1863, the Third Report by Inspector Patrick Murray presents detailed tables of the age, gender, social conditions and previous committals of the children resident in all the Reformatory Schools in 1863 and 1864 (HMSO, 1865). The tables include a section headed 'State of Instruction on Admission', and the categories are: Neither Read nor Write, Read or Read and Write Imperfectly, Read and Write Well, Superior Instruction,

and Instruction not Ascertained. These terms are not defined. The Inspector's Reports in subsequent years continue this format. The Industrial Schools also use this format, reproduced in Barnes (1989, p. 144). The Irish Department of Education publish tables on literacy in the Annual Reports from 1926 until 1959. As in previous years, these tables are entitled 'State of Instruction on Admission', presenting literacy level as an indicator of educational attainment.

The 1862 report on St Kevin's Reformatory School provides information about literacy at both admission and on discharge, demonstrating the overall improvement achieved. The Inspector's Reports record literacy level on admission only, without any corresponding indication of change over time. The Department of Education similarly provides details of literacy on admission. There is no indication of improvement during the time spent in the Schools, which was usually a committal period of two years in Reformatory Schools. Children committed to the Industrial Schools could spend many years there.

There are no statistical tables on the literacy of children attending National, Secondary or Vocational Schools in that era. This suggests that the practice of assessing literacy on admission was an integral part of the management of the Reformatory and Industrial Schools rather than a requirement of the Department of Education.

Table 2 shows the relevant figures for literacy on admission to the Reformatory Schools for every third year from 1926 until 1959. Table 3 shows figures in relation to selected years for the Industrial Schools, although note that the age range is different, reflecting the younger age groups admitted to these schools.

The figures, although incomplete, indicate that many of the children admitted to the Reformatory and Industrial Schools were deemed 'illiterate'. In both tables, only 18 per cent of the overall assessments indicated an ability to read and write well, with the majority assessed as having only imperfect or moderate literacy.

The literacy assessments in the Reformatory and Industrial Schools were probably much more arbitrary than is suggested by these tables. The Reports do not define the terms used, making it difficult to understand the differences between categories such as 'Imperfect literacy' and 'Moderate Literacy'. There is no information on the literacy test used or how it was applied. The Reports make no reference to literacy tests in use by National Schools in those years. Research studies of Irish pupils' literacy undertaken in the 1960s and early 1970s used British assessment tests (e.g.

Macnamara, 1966; Swan, 1978). The UCD Department of Psychology used their own tests to assess the literacy of children in the Reformatory and Industrial Schools in 1970 (Committee on Reformatory and Industrial Schools 1970, p. 113). The first Irish standardised literacy tests were not developed until the mid-1970s (Greaney, 1977). In 1926, there were two Reformatories and fifty-two Industrial Schools in the State, with three and forty-eight respectively by 1959 when the last table was published, so variation in assessment and categorisation has to be taken into account. Successive educational enquiries such as the Investment in Education survey (Department of Education, 1965), and the more recent McAleese Committee (Department of Justice, Equality and Law Reform, 2013, p. 333) experienced difficulties in matching officially published statistics with physical documentation. It is entirely possible that these literacy assessments have no extant supporting documentary evidence. However they were collated, returns on literacy assessments were forwarded to the Department of Education every year and duly published in the Annual Reports. This confers on them the appearance of being objective, reliable and relevant statistical information.

**Table 2:** Level of Literacy on Admission to Reformatory School for Selected Years  
Age Range: 12–16 years

<i>Year</i>	<i>Number</i>	<i>Illiterate</i>	<i>Imperfect Literacy</i>	<i>Moderate Literacy</i>	<i>Read &amp; Write Well</i>	<i>Superior Literacy</i>
<b>1926</b>	13	10	0	3	0	0
<b>1929</b>	39	15	13	11	0	0
<b>1932</b>	27	1	11	7	8	0
<b>1935</b>	44	1	10	33	0	0
<b>1938</b>	71	0	59	7	5	0
<b>1941</b>	100	2	28	43	27	0
<b>1944</b>	121	9	44	47	21	0
<b>1947</b>	88	15	28	28	17	0
<b>1950</b>	97	10	37	30	20	0
<b>1953</b>	82	13	*28	26	15	0
<b>1956</b>	93	8	28	31	26	0
<b>1959</b>	125	8	49	41	27	0
<b>Totals</b>	<b>900</b>	<b>92</b>	<b>335</b>	<b>307</b>	<b>166</b>	<b>0</b>

\* Includes one girl aged under 12 years. Source: Department of Education Annual Reports 1928–1960

**Table 3:** Level of Literacy on Admission to Industrial School for Selected Years

Age Range: 10–14 Years

<i>Year</i>	<i>Number</i>	<i>Illiterate</i>	<i>Imperfect Literacy</i>	<i>Moderate Literacy</i>	<i>Read &amp; Write Well</i>	<i>Superior Literacy</i>
<b>1926</b>	384	97	128	129	30	0
<b>1932</b>	314	38	113	119	43	1
<b>1938</b>	377	59	109	132	76	1
<b>1944</b>	412	62	109	143	92	6
<b>1950</b>	277	18	95	103	58	3
<b>1956</b>	226	18	61	76	71	0
<b>1959</b>	267	35	68	127	37	0
<b>Totals</b>	<b>2,257</b>	<b>327</b>	<b>683</b>	<b>829</b>	<b>407</b>	<b>11</b>

Source: Department of Education Annual Reports 1928–1960

**Literacy levels in the wider society**

In the absence of any comparative data on the literacy levels of National School pupils in this era, data on attendance rates, early school leaving rates and failure rates in the Primary Certificate examinations from the Department of the Education Annual Reports are used to indicate literacy rates.

Akenson remarks that the Irish school attendance rate in the period 1920–1951 never reached the 85 per cent level seen as the minimum acceptable even in remote areas in Britain (1975, p. 68). In 1926, there was an average attendance rate of 77.6 per cent, indicating that 118,000 of those registered on the school rolls were not attending school (Department of Education, 1929). A gradual improvement over the intervening years saw a school attendance rate of 86.2 per cent by 1959, with 67,721 non-attenders in that year (Department of Education, 1960).

In 1929, 9,328 children sat the first Primary Certificate examinations, with a failure rate of 20 per cent. Increasingly larger numbers of children sat the examination and obtained the Primary Certificate. By 1959, there were 38,914 candidates, and while 16 per cent failed, the numbers passing indicated an improvement in overall educational attainment.

Despite depicting the gradual improvement, these statistics also suggest that literacy difficulties existed among those absent from school and those failing basic primary-level examinations.

Education journals and education conference reports during the 1930s and 1940s contained regular complaints of poor reading and writing among second-level pupils. One teacher newsletter in 1939 remarked that it was 'dishonest' and 'damaging educationally' to ignore the poor standard of English reading and writing of many fourteen year olds arriving to the Day Vocational Schools (Vocational Education Bulletin, November 1939, p. 327). Similar remarks appeared in other issues of the newsletter. In 1940, the President of the Irish Technical Education Association referred to young men attending committee meetings of the GAA, the Gaelic League, Fianna Fáil and Fine Gael who were unable to write resolutions or simple letters (Irish Technical Education Association 1940, p. 30).

Difficulties with literacy were evident among National School pupils, among pupils whose families supported them in second-level schools and among young men who were sufficiently integrated into their communities to be involved in cultural and political organisations. The sole group whose literacy was measured were the children in the Reformatory and Industrial Schools. This provided a way to set them apart from the other children in Irish society, who were deemed to be fully literate despite the rates of non-school attendance, early school leaving, and Primary Certificate failure.

### **Employment on discharge**

Literacy was of little consequence for the future employment for those leaving the Reformatory and Industrial Schools. In the nineteenth century, progression to farm work and domestic service was actively encouraged (Barnes, 1989, p. 131). The first reports describe boys clearing and tilling the land around recently established reformatory schools.

The laborious work of clearing and reclaiming the waste land has been continued whenever the weather permitted us to engage in out-door employment.

Fifteen acres are this year sown with potatoes, turnips, oats, &c. The kitchen garden has been much improved, and the immediate neighbourhood of the Institution is beginning to attest, by its verdant and cultivated appearance, the amount of toil expended upon it. (Third Report of St Kevin's Reformatory School Glencree, 1862, p. 11)

In the nineteenth century, some of the girls' schools developed good reputations as sources of well-trained domestic staff. These practices continued into the twentieth century. While many boys and girls were discharged to 'family and friends', others were placed in employment by the schools. A third of the boys discharged from Industrial Schools in 1926 were employed as 'Farm Boys', while two thirds of the girls were employed as 'General Servants' and 'Maids'.

A decade later, the report for 1938 remarks that constant enquiries are made to the schools for farm workers and domestic servants (Department of Education, 1939, p. 114). Tables 4 and 5 show details for those discharged to employment from the Industrial Schools in selected years between 1926 and 1959. Farm work accounted for up to 40 per cent of the boys annually, while between 60 per cent and 80 per cent of the girls were placed as domestic servants, maids and cooks every year.

A similar pattern is evident in the discharges to employment from Reformatory Schools depicted in Table 6 for selected years. The Annual Reports provide more detail regarding the smaller numbers leaving the Reformatory Schools. Discharge to farm work, manual labour and domestic service remained at a constant level for those years. Two relevant factors that had a bearing on these employment pathways were, first, the need to secure board and lodgings for young people who had no families to provide for them and, second, the impact of trade union restrictions in relation to apprenticeships (Department of Education, 1929, p. 88). Farm work, manual work and domestic service continued to be the main employment categories until the 1950s, when categories of 'Hotel Worker' and 'Factory Worker' began to appear, reflecting changes in the wider society.

**Table 4:** Boys – Employment Following Discharge from Industrial School: Percentages in Selected Years

<i>YEAR</i>	<i>Number</i>	<i>% Defence Forces</i>	<i>% Farm Work</i>	<i>% Tailors</i>	<i>% Shoe-makers</i>	<i>% Other</i>
<b>1926</b>	<b>308</b>	<b>1</b>	<b>36</b>	<b>11</b>	<b>8</b>	<b>44</b>
<b>1932</b>	<b>382</b>	<b>0</b>	<b>40</b>	<b>12</b>	<b>9</b>	<b>39</b>
<b>1938</b>	<b>350</b>	<b>0.3</b>	<b>35</b>	<b>13</b>	<b>10</b>	<b>41.7</b>
<b>1944</b>	<b>425</b>	<b>2</b>	<b>34</b>	<b>15</b>	<b>11</b>	<b>38</b>
<b>1950</b>	<b>365</b>	<b>0</b>	<b>30</b>	<b>13</b>	<b>10</b>	<b>47</b>
<b>1956</b>	<b>189</b>	<b>2</b>	<b>24</b>	<b>7</b>	<b>7</b>	<b>60</b>
<b>1959</b>	<b>136</b>	<b>2</b>	<b>38</b>	<b>9</b>	<b>7</b>	<b>44</b>

Source: Department of Education Annual Reports 1928–1960

**Table 5:** Girls – Employment Following Discharge from Industrial School: Percentages in Selected Years

<i>Year</i>	<i>Number</i>	<i>% Domestic Service</i>	<i>% Maids</i>	<i>% Cooks</i>	<i>% Laundry Maids</i>	<i>% Other</i>
<b>1926</b>	<b>247</b>	<b>50</b>	<b>16</b>	<b>7</b>	<b>9</b>	<b>18</b>
<b>1932</b>	<b>263</b>	<b>40</b>	<b>30</b>	<b>6</b>	<b>10</b>	<b>14</b>
<b>1938</b>	<b>271</b>	<b>48</b>	<b>31</b>	<b>3</b>	<b>9</b>	<b>9</b>
<b>1944</b>	<b>237</b>	<b>47</b>	<b>21</b>	<b>0.5</b>	<b>12</b>	<b>19.5</b>
<b>1950</b>	<b>266</b>	<b>41</b>	<b>19</b>	<b>2</b>	<b>7</b>	<b>31</b>
<b>1956</b>	<b>225</b>	<b>50</b>	<b>27</b>	<b>2</b>	<b>7</b>	<b>14</b>
<b>1959</b>	<b>113</b>	<b>75</b>	<b>5</b>	<b>0</b>	<b>8</b>	<b>12</b>

Source: Department of Education Annual Reports 1928–1960

**Table 6: Boys – Employment Following Discharge from Reformatory School: Numbers in Selected Years**

Year	No	Defence Forces	Farm Work	Gardener	General Labourer	Baker	Carpentry	Carter	Messenger	House Boy	Shop Assistant	Shoe Maker	Hotel Work	Factory	Other
1926	20	0	4		2		1		8	1	2				2
1929	*17														
1932	25	2	10	1	4			4	1						3
1935	19	0	5			2	2		1		4	4			1
1938	25	2	5			2	3	1	3		2	5			2
1941	29	10	3		4				3		4	4			1
1944	59	7	13	6	5	5	2	3	4		6	7			1
1947	52	7	10	5	5	2	1	2	6	2	1	4	3		4
1950	66	4	8	4	9	3	6	4	9	7	5	3	2		2
1953	47	6	9	2	8		2		4	5	6	1		3	1
1956	40	4	4		7		4	2	2	3	8	2		3	1
1959	30	8	4		6								5	6	1

\*No further details given. **Other:** Includes Van Boy, Printer, Blacksmith, Tailor, Clerk, Motor Engineer, Fishing, British Navy, Turf Worker, Marine. Source: Department of Education Annual Reports 1928–1960

**Table 7:** Girls – Employment Following Discharge from Reformatory School: Numbers in Selected Years

<i>Year</i>	<i>Girls</i>	<i>General Servant</i>	<i>Machinist/ Factory Work</i>	<i>Religious Community</i>
1926	2	1		1
1929	4	No Details		
1932	3	3		
1935	2	1	1	
1938	0			
1941	0			
1944	3	3		
1947	14	14		
1950	5	3	2	
1953	8	*7	1	
1956	5	5		
1959	5	5		

\* Including 1 Laundry Maid. Source: Department of Education Annual Reports 1928–1960

The category of Laundry Maid appears in both of the tables relating to girls. Chapter Ten of the McAleese Report (Department of Justice Equality and Law Reform, 2013, pp. 325–433) describes the legal provisions allowing transfer between the Reformatory and Industrial Schools and the Magdalen Laundries. The report acknowledges that the Schools generally placed girls in more conventional convent laundries, school laundries and ‘other laundries’ (p. 334). However, the Limerick Girls’ Reformatory School and five of the Industrial Schools were co-located with Magdalen Laundries, and many admissions to the Laundries came from these as well as from other Industrial Schools. At least 622 documented instances of girls being placed in the Magdalen Laundries from the Reformatory and Industrial Schools were identified by the Commission. Some girls were released on licence at sixteen years and placed directly in the Laundries, and some were placed there on discharge aged sixteen or seventeen years. The provisions for post-release supervision up to the age of twenty-one allowed school managers to recall girls formerly resident in the schools and place them in Magdalen Laundries.

Placements from the Industrial and Reformatory Schools accounted for 7.8 per cent of known residents in the laundries. This group of entrants had the lowest mean age (17.8 years) and median age (seventeen years) of all the entry categories (Department of Justice Equality and Law Reform, 2013, p. 328). The youngest known resident in a Magdalen Laundry was placed there from an Industrial School at nine years old in the late 1930s. In the 1960s, a thirteen year old girl was discharged from an Industrial School to a Magdalen Laundry, where she remained for two years (Department of Justice Equality and Law Reform, 2013, pp. 325–433). The Magdalen Laundries were work-orientated institutions, and any girl placed there was unlikely to improve her educational attainment.

### **Educational opportunities**

The Reformatory and Industrial Schools provided a service for children deemed to be criminally deviant, destitute or neglected. Once legal provision was made for admission to the Schools, the quality and standard of the care and education provided was not questioned to any extent. In the absence of any explicit explanation for the literacy assessments, it is useful to look at statements in the Annual Reports, which suggest that poor literacy offered a justification for providing limited educational resources:

The educational possibilities of these [Reformatory] schools have hitherto been much restricted because a large percentage of their pupils were almost entirely illiterate when committed. Of those (26) admitted during the year 1925–26, 8 boys and 2 girls were illiterate, and only 1 boy and 2 girls could be said to have reached even a moderate proficiency in reading and writing. In addition to this, many of these pupils have a peculiar instability frequently associated with delinquents. These conditions control to some extent the occupational training of the pupils. The trades of shoemaking and tailoring with farm work are the chief employments at present in the boys' school, and domestic training in the girls' school. (Department of Education 1928, p. 86)

The statistics in the Report show that of the 71 young persons admitted to the Reformatory Schools, 59, of whom 51 were over 14

years of age, could read and write, but imperfectly. This condition which is not peculiar to the year under review has been noted on previous occasions; in view of the age of the pupils and the generally low standard of their education it is necessary to concentrate on a course of instruction that would be helpful to them when they take up employment. (Department of Education, 1939, p. 114)

In the nineteenth century reports, great attention was paid to the food provided for the children, to ensure that the nutrition would sustain health without supplying any excess energy for troublemaking. In the First Report on Reformatory Schools, the Inspector remarked that it was important to ensure that the food provided was the minimum quantity required to preserve health and perform the work required. He stressed the importance of guarding against anything which could operate 'as a premium to the commission of crime' (HMSO, 1862, p. 7). Severe malnutrition was recognised as grounds for redress under the Residential Institutions Redress Scheme, identifying it as an acknowledged feature of the Irish Reformatory and Industrial Schools. A research study conducted by Feeley (2014) among former residents of Industrial Schools presents first-hand accounts of the limited resources provided for them. Many of the research respondents, as well as recalling a constant lack of food, recall a similar dearth of reading material in the residential environment.

Many respondents cited little or no access to literacy resources, toys, games or other material stimulus to develop either written or spoken language. (Feeley, 2014, p. 95)

One woman recalled that the library books in her classroom were only available twice a year when the state inspector was present and then many of those who were given momentary possession of them were unable to read them. (Feeley, 2014, p. 96)

Former residents also remark upon the presence of untrained teachers.

Even pupils who were literate before moving into care regressed in the uncaring environment of the 'inside' school and classroom. Those pupils with any form of learning difficulty were given no specialised

support and individual learning needs were ignored. (Feeley, 2014, p. 101)

The capacity of parents or family members to provide material resources for their children had an impact on literacy skills, for example in the provision of books and the exchange of letters (Feeley, 2014, p. 104). Some schools had a benign approach to literacy, allowing books and comics and encouraging learning, but others focused on physical work rather than on education. Many children in these latter schools did not learn even the basics of literacy (Feeley, 2014, p. 107). Although these statements refer to Industrial Schools, they are equally relevant to the Reformatory Schools. The Residential Institutions Redress Scheme recognised that the failure to provide minimum levels of schooling and literacy constituted serious neglect, psychological injury and loss of opportunity eligible for redress payments (Residential Institutions Redress Board 2005, Section 12).

The Oblates informed the Commission to Inquire into Child Abuse that the boys in Daingean Reformatory School were taught Primary programme subjects and given vocational training (Commission to Inquire into Child Abuse Volume 1, 2009, p. 683). However, the Commission found that generally only one or two lay teachers were employed to teach a population of up to 200 boys, despite a recognition that all residents would benefit from primary level education. The teachers came directly from training college, and often took some time to adjust to a difficult environment. The lack of experienced teaching staff meant that the level of education provided was very low. A 1966 report cited by the Commission documented that up to half of the boys in Daingean were not receiving any formal education. Of 112 boys then in the school, twenty-five attended educational classes, thirty attended metalwork or woodwork instruction, and the remainder were working on the attached farm and bog. The Oblates did not provide any vocational or occupational training. Many former residents claimed to have received no education there (Commission to Inquire into Child Abuse Volume 1, p. 683). This mirrored similar provisions in Glencree Reformatory School, run by the Oblates from 1857 to 1940.

In 1967, a Department of Education report promises improvements in Daingean:

... the educational aspects of this reformatory school for boys in Daingean, Co Offaly has [sic] been shamefully neglected over many years. The boys were illiterate on entering the school and were given very little education during their two years of normal time in the institute. As a result of financial restrictions, the directors had to make use of them as labourers. It is proposed now to put an end this neglect. (Department of Education 1967, quoted in Commission to Inquire into Child Abuse Volume 1, 2009, p. 683)

Although funding was provided for improved schooling in 1970, Daingean was closed in 1973 following the recommendations of the Kennedy Report.

Little information is available in relation to the Girls' Reformatory Schools, but the progression to domestic service suggests that there was similarly little attention paid to educational attainment for the girls.

### **Diversification from education**

The limited educational provisions and employment options after discharge for those sent to the Reformatory and Industrial Schools have already been outlined. Daily activities within the school were similarly limited. From their establishment in the nineteenth century, the residents provided the labour for the cleaning, cooking and laundry needs of these large institutions. Barnes describes a never-ending cycle of work for the residents. They kept the premises clean and tidy, attended school classes and performed the demanding work of industrial training (Barnes, 1989, p. 134). Several of Feeley's research respondents described how children in the late twentieth century were diverted from schooling to provide the manual labour needed within the institutions (Feeley, 2014, p. 143). They also worked on attached farms, and other labour-intensive commercial contract work designed to supplement the incomes of the institutions (Commission to Inquire into Child Abuse Volume 3, 2009, p. 45).

The extract from the 1928 Report already given above outlines how educational instruction in the Schools was limited to younger children. It was not routinely provided for new committals aged over ten years old with poor previous education. It was acceptable to allocate a nine year old girl to a Magdalen Laundry, and to allocate ten year olds to full-time 'training'. The legal requirement to provide schooling up to the age of fourteen years was of little concern in a system that operated according to its own mandate.

In an era that linked literacy with intelligence, literacy ability was commonly used as evidence of intelligence. Thus, the literacy assessments could demonstrate not only the educational attainment of the children on admission, but also their educational potential. Literacy assessments provided one way to ensure that those who were regarded as unlikely to benefit from schooling could be identified at an early stage and allocated accordingly. The constant demands within these institutions required a steady supply of labour. It is clear from the official reports that those who struggled with schooling were allocated to work rather than accommodated in the schoolroom. Seen in this light, the Schools did not measure literacy in order to gauge the amount of educational instruction needed for improvement. Instead, the assessments justified the withholding of such instruction.

## **Conclusion**

The presence of literacy assessments in the annual reports of the Department of Education provided an opportunity to explore the provision of literacy within the Reformatory and Industrial Schools. The religious orders who managed these Schools provided highly regarded social services to Irish society. It was generally assumed that the children committed to their care would benefit from the orders' cumulative educational expertise. A literacy assessment underpinned by such expertise would have been accepted as objective, valid and credible. The publication of these assessments by the Department of Education further strengthened their position as reliable reports of attainment. However, any impression that the assessments reflected a high degree of attention to literacy within the institutions was dispelled on examining the reports in more detail.

The literacy assessments published by the Department of Education from 1926 to 1959 match similar assessments dating from the 1860s, a series of statistical tabulations spanning almost a full century. The nineteenth century reports on the Reformatory and Industrial Schools describe a work-orientated system that prepared children to become farm workers and domestic servants. Within the prevailing utilitarian approach, the educational provision for such children was related to their future employment needs. This practice of educating poor children to the bare minimum continued into the following century, where the main employment options continued to be farm work, manual labour and domestic service. The Reformatory and Industrial School system in the twentieth

century retained many other features from the previous century. These included a shorter training course for teachers in the Schools, the employment of many untrained teachers, and an emphasis on industry rather than on education.

In 1862, the literacy assessments in St Kevin's Reformatory acted as a baseline to measure improvement between admission and discharge. The poor standard of education recorded by the Kennedy Report in 1970 suggests that later literacy assessments no longer served as baselines for measuring improvement, but instead served other functions. As well as offering a mechanism to justify diversion from schooling, these assessments also justified the provision of lower standards of teaching for the children allocated to the schoolroom. Children destined for employment as manual workers and domestic servants were not expected to have a high standard of literacy, and therefore did not need highly trained teachers.

There was no evidence of literacy assessments in any other type of school. This reinforced the distinction made between children in the general population and children committed to the Reformatory and Industrial Schools. The literacy assessments seem to have been used as measures of educational achievement on admission. It was accepted by the Department of Education that children as young as ten years could be diverted from schooling to 'training' if their educational attainment was poor. These children, already differentiated from literate Irish children, were further differentiated by being no longer subject to the School Attendance Act that required schooling until age fourteen years.

There are still significant numbers of Irish adults with first-hand experience of the Industrial and Reformatory Schools. The schools were not an aberration in Irish society. They were part of the institutional childcare provisions, and provided a resource to the courts and local authorities. They offered placements for children deemed to need residential intervention. Although hidden from the scrutiny of the general public, their activities were regulated by legislation and inspection. State inspectors and other professionals visited them, and in some cases, the residents attended local national schools. A lack of detailed oversight contributed to a regime of secrecy and silence in the Reformatory and Industrial Schools, allowing institutionalised abuse and neglect to flourish.

The present-day acknowledgement of appalling levels of physical and sexual abuse within them tends to overshadow the neglect of literacy

within institutions formally designated as schools. The Department of Education remarked upon their poor literacy standards in successive reports from 1928, without effecting improvement. While rates of educational attainment increased within the general population throughout the twentieth century, the children sent to Reformatory and Industrial Schools emerged with a very limited level of education. Longer schooling is generally associated with higher literacy levels, but the long committals to these schools did not result in improved literacy. Instead of providing educational support to disadvantaged children, the Reformatory and Industrial schools produced poorly literate adults, destined to remain educationally disadvantaged into the future.

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# The Greentown Crime Network: Introducing its Cast of Principal Actors

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**Summary:** This article, based on the author's doctoral study completed in 2015, offers new insight into the operation of criminal networks in Ireland and in particular their influence on children who become engaged in network activities. The research aimed to explore the role of 'network' as an aggravating factor in influencing the trajectories of children involved in criminal behaviour. The research, based on a case study design focuses on 'Greentown', a real (but anonymised) Garda Sub-District located outside Dublin.

The study argues that a relatively small number of principal actors directed and controlled network activity while also actively cultivating the social conditions to sustain the network's incumbent hierarchy. The most powerful of these principal actors belonged to a dominant family and kinship group. This group entered into 'contracts' with a range of often very vulnerable 'associates' involved in the network. The paper argues that understanding the nature of such networks and their relational influence on children's propensity for serious and multiple offences is a first step in seeking solutions for policy makers and practitioners in this often hidden and complex area of youth justice.

**Keywords:** criminal network, youth crime, serious crime, risk science, wicked problem, geography of crime, crime dynamics, social dynamics of crime, situational dynamics of crime, criminal enterprise, desistance.

## Introduction

This article is based on a doctoral study completed in 2015,<sup>2</sup> *'The role of criminal networks in causing children to develop longer and more serious crime trajectories – Greentown a case study'*. The article aims to demonstrate how

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and why criminal network influence is so strong on its subordinate actors, in particular children. The relevance of this phenomenon for policy is that the controls and influences effected by such networks present very potent challenges to state actors (such as Probation Officers) intent on bringing about ‘pro-social’ behaviour change for children under their supervision.

The article begins with a review of the extant literature, initially outlining the strengths and limitations of existing mainstream scientific knowledge on youth crime and introducing more tailored commentary on the effects of criminal networks on local communities. I then outline the methodological approach taken by the study, specifying the selection process for Greentown, describing how the Greentown network illustration was constructed and the means by which it was subject to detailed examination using semi-structured interviews with sixteen Garda members based in Greentown. Individual profiles, relationships and activities of its key *principal* actors are then presented providing evidence of both a network effect but also a clear family-based hierarchical structure which governed the behaviour of *associate* network actors. Finally I use this evidence combined with other findings from the study to highlight the policy issues arising from the study.

## **Youth crime and risk science**

It is difficult to discuss what we know about youth crime without reference to the dominant discourse; what has been referred to as ‘risk science’ or ‘risk and protection science’. Here I briefly set out the significant contribution that risk science has made in underpinning our knowledge about youth crime before discussing its limitations in accounting for contexts such as Greentown and turning to more fine-grained literature describing the nature and role of criminal networks in local communities.

Increasingly scientific evidence relating to youth crime, derived from longitudinal and other outcome studies, ‘encourages a more optimistic view about the prediction, explanation and prevention of offending’ (Farrington, 2008, p. 18). The theoretical framework which has been developed on foot of this scientific endeavour has been referred to (perhaps pointedly), as the risk and protection factor *paradigm* (O ‘Mahoney, 2010; Case, 2007) which at its simplest level identifies *risks* relating to children and offers advice on ‘protections’ to offset these risks including, importantly,

evidence-based programmes designed to effectively prevent and intervene. Public health analogies often accompany descriptions of risk and protection science. For example in the same way that bodyweight, alcohol and tobacco intake have associations with heart disease, stroke and cancer, impulsiveness, ineffective parenting and school drop-out have been shown to have associations with the onset of youth crime. This body of knowledge is largely optimistic, in particular there is a significant consensus that criminal behaviour for youth peaks in the mid to late teens and begins to drop off in the early twenties. Children effectively *grow out of crime*.

However despite the evidence largesse there is significant criticism of risk science. Of interest to 'Greentown' is criticism which focuses on its *universality* claims. Some commentary highlights the importance of place and context, meaning that evidence underpinning scientific knowledge is always 'provisional and conditional' (Pawson, 2002, p. 214). Other criticism relates to the inability of risk science to adequately account for the smaller numbers of children who (unlike the large majority who appear to desist over time), continue in their offending behaviour. A reasonable inference here, if only due to the smaller numbers which inevitably limit the efficacy of actuarial tools, is that *prediction* becomes less sure and more speculative. It has been argued that this minority population of offenders may share more similarities with each other than they do a general youth population. In the case of juvenile *repeat* or *persistent* offenders in Ireland for example, data indicate a higher saturation of certain types of *acquisitive* crime (e.g. burglary and robbery) as opposed to more *hedonistic* crime (e.g. public order, criminal damage) found in the general youth offending population (Redmond, 2011).

In sum I argue that the analysis of youth crime offered by mainstream risk science is too simplistic and insufficiently nuanced to capture the contexts of the small number of children involved in serious crime and who appear not to desist in line with population norms.

### **Criminal networks and their effects on communities**

The effect of adult criminal networks on children in local communities and neighbourhoods has not attracted widespread attention. Studies which have been undertaken in this area consider the geometric composition and properties of criminal networks (McGloin, 2011; McGloin, 2010), how networks underpin specific organised crime phenomena (Malm, 2011), motivations and modes of entry, retention and exit from

gangs (Pyrooz, 2013; Pyrooz, 2011; O'Brien, 2013), ethnographic accounts of communities and neighbourhoods where organised criminal activity takes place (Pitts, 2008; Hourigan, 2011; Stephenson, 2011), or points of network vulnerability (Malm, 2011) susceptible to sabotage and co-ordinated suppression (Braga, 2012) by law enforcement agencies. With specific reference to children (or youth) a limited body of literature identifies particular effects associated with criminal networks. One such effect is *criminal network as local enterprise*, offering opportunities for local youth to secure employment, a sense of meaning, identity and self-worth. As Pitts (2008, p. 70) observes,

... the drugs business is a business, requiring a relatively elaborate division of labour within a large workforce, which must maintain and protect the supply chain: markets, package and distribute the product, protect the key players, silence the would-be whistle-blowers, collect debts and ensure contract compliance ...

The notion of criminal network as *enterprise* may appear crass; however what the literature in this area has usefully highlighted is that criminal networks have *needs* (to sustain and to succeed) and corresponding vulnerabilities (or 'situational contingencies') (Van Koppen, 2010, p. 157), which can be targeted using reverse engineering tactics, to suppress criminal activity.

Network vulnerabilities can also relate to less obvious, deeper-set *cognitive* factors. The Boston 'Operation Ceasefire' project focussed on a key presumption made by members of criminal gangs, *that they would not be apprehended*. Braga reports how 'Operation Ceasefire' sought to generate dissonance around this sense of complacency by relevant authorities *pulling every lever* to suppress certain specified behaviours and communicating this intent directly to gang members, 'making explicit cause-and-effect connections between the behaviour of the target population and the behaviour of the authorities' (Braga, 2012, p. 5).

This treatment, certainly at face value presents dichotomous caricatures for criminal networks as de facto governing authorities preying upon 'poorer functioning' neighbourhoods (Loeber, 2012, p. 109), bereft of capable guardianship and with 'poor collective efficacy' (Braga, 2012, p. 351). Additionally, the *enterprise* conception of criminal network infers, certainly for children considering a career in the business, that engagement, participation and succession are essentially rational acts offending

much desired kudos, 'inclusion, success and protection otherwise denied to them' (Pitts, 2008, p. 84).

Nevertheless concepts such as 'network redundancy' which describe contexts of significant social insularity 'constraining an individual's exposure to information and opportunities' (McGloin, 2010, p. 66), promote 'distinctive beliefs and attitudes' (Pitts, 2008, p. 37) and increase the chances of anti-social 'group think' (McGloin, 2010, p. 70). This analytical approach suggests that any such rational acts are at least bounded by significant information deficits for those living in marginalised estates isolated and far from the influence of levers of legitimate authorities. The *reluctant* in Pitts 'Reluctant Gangsters' (Pitts, 2008) indicates a further ratcheting up of the role of *compulsion* over *attraction* in influencing the behaviour of youth engaged in local criminal networks. Here 'the individual immersion within an enduring deviant network' (Pyrooz, 2013, p. 241) and seclusion from external influence are seen as significant in predicting on-going retention. Reference is made to the costs associated of not 'engaging in collective local deviance' (McGloin, 2011, p. 10), appearing indifferent or neutral and the significant but paradoxical risks of being singled out for engaging in *pro-social* behaviour.

This body of work also identifies more complex relationships between marginalised neighbourhoods and criminal networks, requiring more detailed teasing out: 'complicated knots to be studied and untied' (Sparrow, 2008, pp. 66–67). This literature suggests greater cross-flow between neighbourhoods, residents and criminal networks; a '*fair is foul and foul is fair*'<sup>3</sup> opacity. Such suggestions of institutionalized client-patron relationships or compromised 'docile bodies' also exist in the Irish literature (Hourigan, 2011, p. 84).

Whatever the consequences of a child choosing the good guys from the bad guys in such contexts, Hourigan's suggestion that criminal families occupy a position of 'curious ambiguity' (master and benefactor) adds further confusion. Many extended families themselves 'may be deeply enmeshed in feuds and drug related activity' (Hourigan, 2011, p. 144) suggesting a *fuzzing* effect to what at face value to the average citizen, may seem clear oil-and-water separations.

This it is argued may be a child's complex 'cognitive map' (Kaplan, 1984, p. 30) of their immediate neighbourhood; their options significantly bounded by a redundant network of friends and associates, copper-fastened by a climate of fear and in some cases bewildered by an

<sup>3</sup> William Shakespeare. *Macbeth*, Act 1 Scene 1.

ambiguous (albeit reluctant) affiliation between community and criminal.

## Methodology

In this section I outline the methodological strategy for the study. First I describe the systematic selection process which identified Greentown as an appropriate location. Second I introduce the Greentown network, an illustrative map commissioned specifically for the study and produced by the Analysis Service of An Garda Síochána. This map shows key linkages between individuals in Greentown involved in burglary and drugs for sale and supply offences 2010–2011. I then briefly describe how the network was examined in semi-structured interviews with local Garda members before finally outlining the key methodological limitations.

The Greentown research uses a case study design influenced significantly by the work of Robert Yin (2008). The Greentown location<sup>4</sup> was selected following a rigorous sampling procedure. Burglary and drugs for sale and supply (considered reasonable proxies for both *persistent offending* and *adult/child co-offending* collaboration (Redmond, 2011)), provided a signpost function in terms of identifying a geographical location likely to disclose criminal network activity. Garda analysts supplied a list of all 320+ Garda Sub-Districts across Ireland ranking the frequency of burglary, drugs for sale and supply and robbery being committed by children.

Greentown featured twelfth on this list. Importantly it was the highest ranking Garda Sub-District outside Dublin. Greentown was judged to be a potentially productive location (in terms of yielding rich data) due to its location and obviously its ranking. The choice of a provincial location increased the probability of offending occurring within the home Sub-District meaning that Garda respondents in the study had better knowledge of both the individuals involved in offending and the actual offending events. Recognition was further improved by local Garda management in Greentown carefully selecting respondents across Garda units who had had significant dealings over the years with individuals positioned in the Greentown network.

In the study, the Greentown network is depicted by a two dimensional illustration (Figure 1). The Greentown network was constructed off-site

<sup>4</sup> The study provides only general descriptors for Greentown, observing assurances regarding anonymity at individual and locality level. As with all confidential and sensitive data relating to the study, such material was passed on to the Analysis Service of An Garda Síochána. Access to any of this data for future study will require prior authorisation by An Garda Síochána.



at Garda Headquarters in Dublin based solely on PULSE<sup>5</sup> data without researcher input or the input of local Garda members based in Greentown. The network map was provided in PDF format for use in subsequent interviews with Greentown Garda members. The exclusion of the researcher from the construction of the network and restricting any means for the researcher to modify or manipulate the network artefact was intended as an important element in protecting confidentiality, maintaining evidence integrity and reducing opportunities for researcher bias.

The network was based on offending relationships involving co-offenders in Greentown. PULSE was used to identify *all* offenders suspected of involvement in burglary and/or drugs for sale or supply in the Greentown Sub-District for the period 2010–2011. The network was constructed by linking individuals through common incidents (involving both children and adults). ***All individuals had an address in the Greentown Sub-District during 2010–2011 and all offences occurred within the Greentown Sub-District.***

In Figure 1 a ..... link indicates that one or more Burglary offences link the respective individuals. A ——— link indicates one or more Drugs Sale/Supply offences link the respective individuals. A - - - - link indicates other crime types which link individuals. Garda analysts used judgment with - - - - links where they believed that an offending link other than burglary or drugs for sale and supply would add to the understanding the illustration. The thickness of the line linking respective nodes reflects the numbers of incidents connecting individuals (i.e. the thicker the line the greater the number of suspected incidents).

A technique which I designed, *Battleships*, permitted me in semi-structured interviews with sixteen individual Garda, to discuss the detailed contexts relating to individuals presented in the network map without disclosing their personal identities. The technique, similar to the game *Battleships* involved researcher and respondent examining separate network maps at far enough physical distance for the researcher not to see the detail on the Garda respondent's network map. This distance was critical because while illustrations used by researcher and respondent were identical with an anonymous but unique identifier providing a co-

<sup>5</sup> PULSE is an acronym for Police Using Leading Systems Effectively. Pulse is an I.T. enabled Service Delivery Project. PULSE comprises of seventeen operational and integrated system areas e.g. Crime Recording, Processing of Prisoners and Traffic Management (Garda Website downloaded 16:30 29/05/15) <http://www.garda.ie/Controller.aspx?Page=136&Lang=1>

ordinate to locate each individual in the network (for example D1) the version examined by the Garda respondent also included confidential case related information to ensure that they were certain about the identity of each actor. By referring only to the unique identifier this protocol permitted authentic narrative while observing ethical requirements to protect the identities of individuals discussed.

The network illustration possessed inherent strengths. In particular (and different to many studies of youth involvement in gangs which asks individual gang members about their relationship(s) with other gang members), PULSE served as an evidence-based honest broker, forcing the Greentown network to surface *finite* group actors and prescribing relationships based on *detections*. This meant that interviews with Garda members were in the main bounded by those connections only disclosed by PULSE.

Consequently this meant that inclusion was delimited only by offence type (burglary and drugs for sale and supply) and time period (2010–2011) meaning other data was excluded. As pointed out by Garda members the PULSE generated network missed vital links, particularly those relating to friendship, client, patron, family and kinship relationships. These relationships were critical to understanding Greentown and were only disclosed by closer examination of the network with Garda members in interview that had intimate knowledge of the principal actors.

Focus on the individual as the basic unit of enquiry was a key feature of how the study was configured. This approach discouraged broad sweep thematic opinions by respondents, ‘*youth crime is caused by x or y*’ unless they could be evidenced by example to a specific individual or a specific incident or groups of individuals or incidents. This inclusion rule (i.e. tying themes and issues to real incidents and people) demonstrates the study’s preference for grounding issues and themes that arose in interviews with Garda members in the real life narratives of network actors.

Obviously caution is required in using solely police incident data (PULSE) and police interview testimony as primary data points. While accurate qualitative input from on-the-ground officers who have detailed historical knowledge of members of a criminal network in a given locality has significant merit it could be criticised for effectively using only one (organisational) perspective. Nevertheless (accepting the inevitable concerns regarding bias), it has been argued that police officers are in a privileged capacity to help fill in the holes ‘identifying robust network

descriptions ... despite the likelihood of missing data' (Malm, 2011, p. 291). I was also sufficiently satisfied, given that any opinions about 'how and why' were evidenced in the narratives of network actors, that this reduced the potential for *party-line* responses.

The data yielded approximately 400 pages of transcription. A nine stage protocol based on the *constant comparative* method, significantly informed by the work of Maykut and Morehouse (Maykut, 1994) and adapted for use with the computer assisted analytical tool 'NVivo' was used to process, code and analyse the data. These analytical tools ensured transparency in the reduction process from raw statistical data to representative and supportable findings, which is critical in the presentation of qualitative data (Bazeley, 2009).

### **Greentown's cast of principal actors**

(Reference numbers relate to the unique identifiers in the Greentown network in Figure 1.)

In the following section I present the key actors in the network.

I start by introducing Greentown network's principal actors A2, B2, D2, Z1, D1, E1, A1, F2 and 'The Little Fella' (see p. 220 below). These specific actors were selected following a simple counting exercise to track which individuals featured most often across all Garda interviews.<sup>6</sup> This additional *within-network* sampling exercise was (again) intended to reduce interviewer discretion and opportunities for bias. Individual case vignettes were composed based on accounts of network actors provided by Garda in interview. The case profiles are used to support the contention that a network existed in Greentown in 2010–2011 and that it was marshalled by a small number of key individuals.

A2, B2, and D2, are presented as *family members*, belonging to the same dominant family and kinship group in Greentown. Z1, D1, E1, A1, are presented as *adult associates* who are not members of the dominant family and kinship group, F2 and 'The Little Fella' are presented as *child associates*. 'Associates' occupy subordinate roles to family members and have varying status within the network. (N.B. *family members* and *associates* are very important distinctions in the study).

<sup>6</sup> Interviews were largely respondent-led, particularly in terms of which actors respondents chose to talk about.

*Family members*

**A2** (male aged twenty-nine years) is considered by all respondents, as the clear leader of the network, the *head man*. He presents as a remote, elusive but controlling individual. The following is quote in interview 009 is typical:

**Garda:** *Ere, I suppose just because ever since I came down he was the name that was always said to me and one of the first houses that was pointed out to me when I went out in the car. You know keep an eye on him, intelligence reasons, he was always a prominent figure down in Greentown as long as I've been here and that hasn't changed you know. You often hear of a fella being prominent and then falling from grace, you know as in no one's listening to him anymore, but that has never happened with him ... I suppose people are so afraid of him. He just has that reputation. ... like he's probably just intimidating in that he's a strong character like. No one would mess with him and he gets that message across in different ways and they know if they mess with him there's going to be some kind of consequence. And he's kept that going like he hasn't left anyone go with things maybe so that's how he's keeping his name going and keeping those around him in line as such. (Interview 009, p. 19)*

A2 has presided over a regime that governs the majority of network actors both in terms of their outward compliance and own self-governance. He has sustained this regime over a significant period of time. A2 has achieved a 'Kurtz-like'<sup>7</sup> mythical status; even senior members of the network such as D1 hold him in awe.

A2 has an ambivalent relationship with An Garda Síochána, presenting as polite as opposed to confrontational or aggressive. This *creative* compliance with state actors is a behavioural characteristic expected by A2 of those most closely linked with him, including his family and kinship network and a small number of *trusted* associates as a means to avoid undue and excessive Garda attention. It is a behavioural norm for which even relatively senior network actors can be sanctioned for breach and where A2's influence has also served to shape young peoples' behaviour

<sup>7</sup> Kurtz is the central character in Joseph Conrad's *Heart of Darkness*. The relevance here is that Conrad's Kurtz ruled his outpost in the Belgian Congo by a combination of ruthless action and myth.

**Garda:** ... *If you met him he's like charming and would talk away to you ... But you just wouldn't trust him as far as you throw him, do you know that way ... I've never had any actual roaring row with him ... If I've ever dealt with him it's been 'hello Gard, how are you Gard?' This kind of thing ... But then you hear the stories afterwards you know, I suppose, but then the stories add to the myth and the myth makes you stronger ... And it probably makes you more ... more important around Greentown or more of a character I don't know ...* (Interview 013 p. 7)

In the past A2 has been involved in burglary and is suspected of involvement in drugs for sale and supply although far more likely in recent years to organise and supervise or contract this work to others. A2 oversees a money lending enterprise, which is utilised by certain vulnerable residents in Greentown, drug users and associate members of his own network. Importantly these transactions impose obligations on debtor *clients* to a small number of network *patrons*. In terms of debt retrieval A2 uses middle ranking members of the network such as A1, D1 and E1 to enforce repayment. To some children who live on the same estate A2 represents as a clear example that crime pays.

**B2** is a brother of A2 and lives close by in the same estate. During the period of examination B2 is listed as fifteen years old. He is seen as a natural heir to control the network. B2 earned a reputation from injuries sustained in past conflicts at a very young age.<sup>8</sup> In his own neighbourhood B2 presents as having little to fear and utilises his family name to confirm his significant social capital. He is both revered and feared by young people in his immediate neighbourhood. Respondent 007 captures this ambiguity well.

**Garda:** *there's a sort of dividing line between like ... certain kids will go 'he's one of that family, he's 15, I'm 15 and I can't really associate and I'll stay away'. Then you have the other side that go, 'he's 15 and I'm 15, he's cool (deleted), he's the man, you know he's 200 quid in his pocket at the weekend and is only 15, I'll align myself to him'.* (Interview 007, p. 11)

In his early adolescence B2 was considered impetuous and impulsive. However he has emerged as a player, mixing more with family members

<sup>8</sup> The specifics of the conflicts are not disclosed in the study because they risk compromising B2's anonymity. Suffice to say that these past events ensured that B2 has an on-going reputation as a hard man, supplemented by the social capital derived from being part of A2's family.

than the *associates* that he used to mix with. He is now more trusted by A2 in terms of self-governance, management of the family brand and the reprimanding of subordinates in terms of showing any ‘disrespectful’ behaviour to An Garda Síochána.

D2 is the youngest family member included on the network and is listed as 12 years of age. D2 appears to be encouraged by A2 in terms of criminality. However he is equally sheltered. This is partly because his younger age may make him more liable to open chinks in A2’s armour by disclosing something that he shouldn’t.

**Garda:** ... as I said to you D2 ... Doesn’t be involved as much ... Whether it’s a thing that ... for all the world ... A2 doesn’t want him involved because he is too young and is a kind of, a liability there ... He may leak something he shouldn’t ... (Interview 015, p. 19)

D2’s stock is considered to have risen considerably. He carries authority significantly disproportionate to his age, and is considered to be a serious network actor for the future. He appears to be able to gauge the potency of evidence against him on matters that he is suspected of and offers street advice and counsel to other children on offence-related matters and has developed engagement skills for encounters with An Garda Síochána.

**Garda:** ... they kind of over exaggerate being nice to you ... I meet D2 now all the time as well, ... chatting away ... ‘good-o’, he’d nearly be asking me ... Getting information out of me like, but, and again a front in front of his gang, but then you don’t know, like I hear rumours that he is kind of ... recruiting below him then as well like. (Interview 008, p. 8)

Like B2, D2 benefits from the family brand and many of the local children are afraid of him. Other evidence indicates relationships between D2 and younger children at the periphery of the network (not shown in Figure 1) and he is considered to be developing an acumen for distancing himself from offending incidents by organising the efforts of others.

#### *Adult associates*

Z1 (male aged twenty-eight years) is an intriguing character, originating from outside Greentown. There is some suggestion that A2 and Z1 share some historical connection due to common family links. Z1 is not a family member of A2’s but is considered his second-in-command by

most respondents. Z1 is considered to be A2's confidante, always in his company, and joint architect with A2 of serious offending events. It is a close association that has sustained over time and Z1, like A2 selects his closest associations very carefully. Z1 appears to be a network entrepreneur; he has links to individuals outside Greentown in terms of fencing stolen goods and together with another actor (who is not disclosed by the network map) provides a network crossing point for burglary and drugs for sale and supply.

D1 (male aged twenty years) is considered part of Greentown network's middle management under the influence of A2. He is seen as being involved in criminal behaviour from an early age, particularly car crime, prior to his full engagement with the network.

D1's family background was considered chaotic. D1 developed a reputation for not caring about adverse consequences of his behaviour and for being willing to do anything for money including enforcing discipline on behalf of A2. His older brothers were all involved with A2 and have spent significant periods of time in prison. His familial as well as actual geographical proximity is key to his closer connection to A2. D1 has a reputation for driving proficiency but is not considered to have the right temperament, acumen or intelligence to become leader of the network. Consequently he is not party to the core intelligence of A2's network. D1 is part of a smaller friendship group with E1 and A1 capable of operating alone, though lacking the sophistication of crimes organised by A2 and more likely to be detected. D1 is seen as mid-level controller and recruiter of new participants (of for example F2 and other juveniles). D1 has shown dissent to A2, which was punished, indicating that even senior members of the network are subject to summary justice by A2. However, D1 sees A2 as a figure to aspire to.

E1 (male aged nineteen years) is a close, long-time associate and neighbour of D1. He is also neighbour to *family members* A2, D2 and B2. E1 and D1 are often mentioned in the same breath by respondents when discussing their activities and their relationship to A2's family.

**Garda:** ... E1, he lives with his mam and let's say he is one of the ... That family ... He's one of their major like what would you say ... Drug runners or ... You know he does all the crime for them like ... And like he's working for that family ... and I'd know as well D1. They are heavily linked and they still are ... they're always committing crime together D1 and E1 ... (Interview 002, p. 6)

E1 does not appear to have experienced the same sibling pressure as D1, in terms of older brothers who had been routinely involved in crime and with A2 in particular. While E1 has in collaboration with D1 been very closely connected to A2's operations, more recently he has also developed links with other key players outside Greentown.

**A1** (male aged eighteen years) is a close associate of D1 and E1. A1 is often seen in the company of D1 and E1 although he does not live in the same part of Greentown. A1 was known to Garda as a juvenile and is remembered for his hostility to authority, an attitude that appears not to have tempered as he has grown older. A1's family background was considered chaotic; his father had chronic alcohol problems and the family had an openly confrontational relationship with An Garda Síochána. A1 has been involved in multiple offending episodes with D1, in particular burglary and intimidation/debt collection activity on behalf of A2. A1 was involved in the recruitment and mentoring of F2, a juvenile, whom he lives close to. It is believed that A1 and D1 have benefited from the proceeds of burglaries committed by F2 and a younger cohort of children. A1's role in recruitment and mentoring included developing a *paternalistic* relationship with 'The Little Fella's' mother while 'The Little Fella' was spending time outside Greentown in residential care (see 'The Little Fella' below).

#### *Child associates*

**F2** (male aged thirteen years) is considered by many to be the member of the network who has progressed (regressed) fastest over the period. F2's family background was considered chaotic. His father is considered to have been absent in F2's upbringing, living elsewhere in Greentown. An uncle of F2's involved him very early on in offending behaviour, including burglary. In addition to being considered a prolific offender in his own right, F2 has himself been instrumental in recruiting members of his own network, including 'The Little Fella'. F2 and his young offending group were responsible for a spate of burglary and robbery offences and appear to represent a chaotic fringe at the edge of the network. F2 has engaged in excessive alcohol and drugs consumption in the company of D1 and A1 and is considered to be significantly under A1 and D1's influence more generally. He lives near to A1 *but not* D1, E1 or A2. However he has family ties in A2's neighbourhood. F2 is seen as an individual with a strong character who will progress into one of the

more significant adult members, assuring the network's succession to the next generation of *associates*. Despite his lower status, his primary relationship being with A1 and D1, he is not beyond the coercive reach of A2.

**'The Little Fella'**<sup>9</sup> (male aged twelve years) is not represented on the network map. However he is included in the study because of repeated references to him by respondents, for example respondent 008

**Garda:** *he would have himself come from obviously a family where there was trouble, like his mother would have been a heroin addict, she got located in Greentown. His uncle would have also been down here for a while and would be getting in trouble and would have been taking drugs himself but and again no father figure there and 3 or 4 younger brothers and sisters so never had an interest in being at home so was always out and about on the street anyway ... And just from hanging around with the likes of F2 and these other boys they would have been then linked to the likes of A1 and started doing jobs for them ... (Interview 008, p. 013)*

'The Little Fella' was considered to be an individual of current concern (2014), for crime but also welfare reasons. His mother appears to have a significant drug problem and (as has been noted earlier) is visited by A1 in an ersatz pastoral/grooming role. 'The Little Fella's' welfare concerns precipitated his removal into residential care where his conduct and behaviour were considered very poor and disruptive. On his return back to Greentown, F2 engaged 'The Little Fella' with D1 and A1 with whom he collaborated in burglary-related activity. 'The Little Fella's' specific asset, notably his small size and slight build means that he is able to crawl into small spaces or through windows of houses to open up premises for accompanying adults committing burglary.

Many respondents shared particular concerns about this young person in terms of predicting his likely deteriorating trajectory. Garda reported that 'The Little Fella' was supplied drugs by D1 and was highly influenced by both D1 and A1. In one incident 'The Little Fella' was discovered by Garda in D1's house, in a state of severe intoxication with other boys of a similar (young) age.

<sup>9</sup> The term 'The Little Fella' is used because this and 'young fella' is how he was described by respondents. I think the term conveys (if nothing else) the respondents' perception of him relative to the physical size of other network actors.

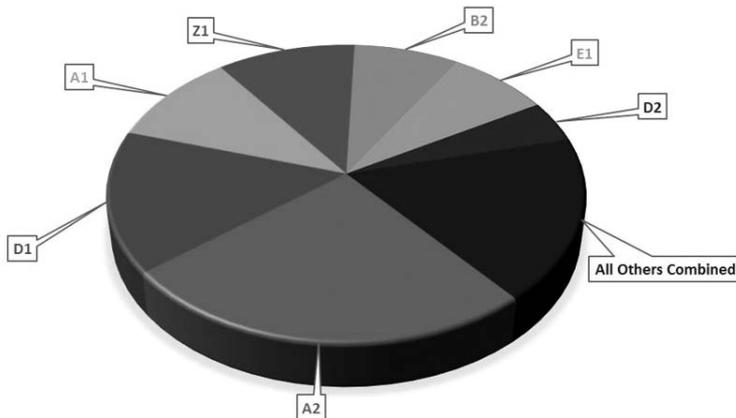
## Linking individual narratives to theme development

The *Battleships* method used for the study permitted not only individual tracking of narratives which offered case profile-building properties, but also the ability to position individual actors in the development of patterns and themes. Using NVivo software it was possible therefore to further support suggestions that a small number of individuals controlled network activity.

As Figure 2 clearly shows, references to ‘power’ which could have related to any of the thirty-one network members, instead identifies the same small number of individuals discussed in this paper. N.B. These individuals were selected for discussion *only* on the basis of the number of ‘mentions’ attributed to them across all Garda interviews.

Note in particular the dominant share of perceived power attributed to A2 and the proportion of the pie attributed to the group of seven actors, including child family members B2 and D2. Less than a quarter of the references to power related to the twenty-four remaining network actors. This means that in addition to being referenced most in Garda interviews, they were also considered to be the most powerful members of the network. Similar patterning exercises involving references to ‘leadership’ and ‘influence’ revealed almost to a person, the same individuals.

**Figure 2** References to ‘Power’ attributed to individuals in Garda interviews



In this section I have attempted to demonstrate

- That the activities of individual actors positioned on the network map off-site by Garda analysts and determined solely by PULSE data bear a relevance to the real-world experience and accounts of events of the selection of Garda members engaged in interview.
- That although the case profiles provide small granularity accounts of individuals they are equally capable of suggesting broader emerging patterns of relationships and behaviour.
- Further analysis of themes and issues indicates that suggestions of key actor dominance derived from individual narratives are substantiated when Garda interviews are systematically analysed by themes such as ‘power’.

## Findings

The evidence presented in the study permits us to draw a reasonable and plausible inference that a criminal network was operating in Greentown 2010–2011.

Further evidence relating to the clamour for status by *associates* supports other studies of criminal networks and their *pull* potential to permit individuals who are engaged to acquire social capital. The study suggests that the Greentown network was hierarchical in nature suggesting centralised authority, power and influence. Within the network, membership of A2’s family and kinship group appears to confer elevated privilege scaffolded by a self-governing model based on trust as opposed to contract, obligation or threat. Pilbeam (2012, p. 368) has identified the role of *trust* as a distinctive governance mechanism for *core* members at the centre in his more general economic treatment of networks as institutions. Conversely worries about opportunism by network ‘associates’ are mitigated by *push* forces associated with debt or obligation and underpinned by subordinates’ perception of A2’s ubiquity.

Powerful structures, processes and a compliant culture appear to envelop those who are engaged, certainly in close proximity to A2, serving to sustain the network. The findings clearly identify incidences where the expectations of principal network actors direct and influence behaviour, for example norms of behaviour in relation to exchanges with An Garda Síochána. Other mainstream economics commentary has

identified this ability of networks (more generally) to set expectations, shape behaviour or delineate opportunities for discretion. Applied to *criminal* networks research has identified how such anti-social but ‘distinctive beliefs and attitudes’ (Pitts, 2008, p. 37) are cultivated in gangs and networks. Corresponding *vulnerabilities* demonstrated by the chaotic case histories of most ‘associate’ members offer the potential for A2’s greater leveraging of network influence. While directed at community level, Horney *et al.*’s analogy of ‘preying’ (Loeber, 2012, p. 109) and notions of poor efficacy and poor guardianship are relevant here in terms of family vulnerabilities and inadequate protection from ill-intentioned adults experienced by F2 and ‘The Little Fella’.

The study suggests that the network’s influence is strongest in A2’s estate involving *clients* and *associates* where individuals such as D1, E1 and A1 are truly ‘embedded’ and involved in a closed collection of anti-social relationships. Such confinement in marginalised neighbourhoods has been seen to lead to information deficits for children (Hourigan, 2011, p. 129) and a lack of exposure to information and opportunities (McGloin, 2010, p. 66). Some commentary in this area understandably points to a general contaminative effect which cultivates ambiguity with families living close to actors such as A2. However testimonies of Garda respondents in the Greentown study (for example respondent 007’s reference to ‘the dividing line’), suggest that within what should be the highest risk location, close to A2’s home, *stoical* families go about their day-to-day business, albeit with their heads down, and do not become involved. Conversely the study indicates strong network influence for certain individuals (adults and children) who live outside of the close geographical proximity of A2’s estate. These individuals are those who for one reason or another have an obligation-bound client relationship relating for example to debts incurred from borrowing money from A2 or co-enterprise in past offending events.

Significantly the study finds a contrast between the network experiences of A2’s identified *family members*<sup>10</sup> and those described as *associates*. Less attention has been paid to the role of *family* in criminal networks in Ireland although Hourigan, observing that family is the fundamental unit of criminality in the context of Limerick (Hourigan, 2011, p. 144) is a notable exception. The Greentown study adds to this commentary, suggesting that A2’s family in Greentown has sustained a

<sup>10</sup> Accepting that definitions of family and non-family are not so clear-cut.

perverse stability in Greentown and that family members are groomed and cultivated in a process of succession rather different to the essentially contractual engagement with network *associates*. Notwithstanding the disposability of *associates* this stability has endured long-term relationships with some client families; D1 for example is the most recent in a line of brothers associated in a client-patron relationship with A2's family. Sparrow (2008, pp. 231–240) identifies these longstanding damaging phenomena as being 'harms in equilibrium' possessing sufficient dampening capability to disarm or deaden any short-term intervention by authorities designed to imbalance or otherwise subvert what is the lived norm by many engaged in the Greentown network.

Taken together the aggregate outputs generated by the network plausibly converge to produce an overall network effect for certain children. The study finds that there is insufficient evidence to indicate whether the Greentown network caused *longer* crime trajectories for children. However statistical comparisons made between children involved in the Greentown network with national norms indicate strongly that participation in the network is associated with *vastly elevated frequency of serious offending* over the period in question. Importantly the study helps to highlight one of the key shortcomings in the risk science literature which is that in its treatment of youth crime as a rational exercise balancing risk factors with sufficient protection factors it generally fails to consider that *context*, certainly for the children in the Greentown study, is not simply an inert backdrop. The Greentown network is an active variable capable of undermining the efforts of law enforcement, and presenting those such as Probation Officers involved in the practice of behaviour change with significant organic challenges or 'conscious opposition' (Sparrow, 2008, pp. 199–214), outside the clinical risk assessment and intervention environment.

### **Limitations of study**

There are limitations to a case study design which serve to bound wider practical application of the findings due to time and location specificities. This specificity is somewhat mitigated by the rigorous approach to sampling and it is argued that read together with the extant literature some *theoretical* generalisation may be possible in terms informing the policy debate in Ireland.

Other limitations derive from using An Garda Siochana sources (statistical and testimony via Garda interview) as the sole lens of study. A

richer multi-dimensional narrative could obviously have been achieved by the inclusion of information from network actors themselves, in particular children. Ethical and resource considerations precluded expanding the evidence base in this way but future studies would benefit from such multiple perspectives.

### **Practical applications**

The Greentown study, although limited by context, may help to shed new light on how certain criminal networks operate in Ireland. The individual and collective network narratives in Greentown indicate how the efforts and loyalties of children are acquired, groomed and sustained over time suggesting that the network had an organic succession process. Obviously further work, possibly including a prevalence study across Ireland, would assist in helping to demonstrate to what extent the findings in Greentown resonate elsewhere.

The *Battleships* technique used alongside other risk management controls in this study<sup>11</sup> offers a new protocol for academia to talk to law enforcement about sensitive and complex matters. The systematic scrutiny of the network using the *Battleships* technique was essential in separating out the *prolific offenders* (most obviously D1 because of his multiple links on the map, as one respondent reported ‘because he gets caught’) from the actual power base; A2 and to a lesser extent Z1. Only the additional examination via semi-structured interviews tapping into Garda soft intelligence surfaced this reality. The protocol thus provides a means for undertaking the important knowledge-building function of linking theoretical work in this area with sound empirical study.

Although the network construct is inflexible, having been pre-determined by PULSE data, it provides reasonable evidence-based bounds to *sizing a problem* which Sparrow has identified as a key and fundamental strategic issue in unpicking complex harms (Sparrow, 2008). The network tool could for example be used operationally as a strategic or clinical assessment and intervention tool for state agencies seeking to bring about change in complex crime contexts.

More generally a better sense of network anatomy (assuming concerted and co-ordinated effort by state and partner agencies), provides the opportunity to both reduce network influence and improve the

<sup>11</sup> A forthcoming paper will outline this technique alongside a fuller description of the methodology used for the study.

efficacy, in particular, of vulnerable children and families identified in the Greentown network as ‘associates’ to pursue pro-social trajectories. These two intervention elements, *network suppression* and *offering network actors a viable route out* if they so choose it is argued are key to resolving the ‘wicked problem’ that Greentown represents.

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# The Development of Restorative Practice with Adult Offenders in the Probation Board for Northern Ireland

Christine Hunter<sup>1</sup>

**Summary:** This paper charts the development of restorative practice within Northern Ireland, and more specifically within the Probation Board for Northern Ireland (PBNI) from the establishment of the PBNI Victim Information Scheme in October 2005 through to the development of the 2014 Restorative Practice Strategy and plans to develop and pilot a restorative approach to adult offenders.

Although there is no specific legislation in Northern Ireland in relation to adult offenders, the PBNI currently provides a range of restorative interventions in adult offender cases. Evidence suggests restorative interventions can help reduce reoffending and make savings across the criminal justice system in terms of reduced reoffending and victim costs. The PBNI developed a Restorative Practice Strategy 2014–2017 (PBNI, 2014) to take forward this work. To assist in the implementation of the strategy the author applied for and received a Winston Churchill scholarship in 2014 to look at international best practice on restorative practice. The paper considers the learning gained from the Winston Churchill Fellowship Project and how it will help shape restorative practices in the PBNI in the future.

**Keywords:** restorative practice, the victim/offender restorative continuum, victim, offender, community, reparation, community service, community restorative justice organisations, Winston Churchill Memorial Trust, Probation Board for Northern Ireland.

## Restorative practice

Restorative justice enables victims to meet or communicate with the offender to explain the impact a crime has had on them. This is part of a wider field called ‘restorative practice’. Restorative practice can be used anywhere to prevent conflict, build relationships and repair harm by

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enabling people to communicate effectively and positively. Within criminal justice, restorative practice is about repairing the harm caused by crime (Tudor and Wallis, 2008). It brings those harmed by crime and conflict, and those responsible for the harm, into dialogue, enabling everyone affected by a particular incident to play a part in repairing the harm as much as is possible. Therefore it is concerned with the human impact of crime on the victim, the offender and the community.

Victims can have a range of needs arising from the harm caused by a criminal offence. Yet western style adversarial justice normally focuses on the 'seriousness' of the offence and agrees a punishment. This approach often fails to resolve issues or meet all the needs of victims which may include the need for information and support at the stages of conviction, sentence and rehabilitation of the offender.

Research confirms the effectiveness of restorative interventions. Ministry of Justice research has shown that it can benefit both the victim and the offender. Evaluation of pilots found that restorative justice was associated with an estimated 14 per cent reduction in the frequency of reoffending. The evaluation also found that 85 per cent of victims that participated were satisfied with the experience (Ministry of Justice, 2012).

It is postulated that restorative interventions can result in savings across the criminal justice system in terms of reduced reoffending and victim costs. There is however no definitive research in this respect. The Smith Institute (Sherman and Strong, 2007) noted that restorative interventions appear more successful for more serious offending rather than less serious, in particular for violent / property offences. It also reduced victims' post traumatic symptoms and related costs. Ian Marder (2013) notes that 'Depending on the offender, Restorative Justice might either instigate the desistance process or provide additional motivation for those who have already chosen or begun to desist.'

### **Development of restorative practice in Northern Ireland**

In Northern Ireland the development of restorative options has been shaped by the political backdrop. The Good Friday Agreement which was published in 1998 made a number of recommendations regarding wide ranging reform of policing and criminal justice. That accord led to the Review of the Criminal Justice System in Northern Ireland Report (Criminal Justice Review, 2000) which made a series of recommen-

dations on the development of restorative justice initiatives which the authors felt might complement the conventional criminal justice approach and provide a more constructive and flexible way of dealing with certain types of low level crime through community rather than court-led disposals. The Review recommended the establishment of the Youth Justice Agency to help children address their offending behaviour and also recommended that a restorative justice approach should be developed for juvenile offenders. This was achieved with the implementation of a statutory Youth Conference Service which receives referrals from the Youth Court and the Public Prosecution Service and manages conferences between the victim, juvenile offender and the police to agree a plan which details what the offender will do to both repair the harm they have caused to the victim and to stop reoffending.

In tandem with the reforms in policing and criminal justice there were also developments being made in relation to community based restorative justice programmes. Initially there were some concerns expressed about how the schemes would operate. Recommendation 168 of the Criminal Justice Review (2000) stated:

We believe that community restorative justice schemes can have a role to play in dealing with the types of low level crime that commonly concerns local communities. However we recommend that community restorative justice schemes should: (i) receive referrals from a statutory criminal justice agency rather than from within the community, with the police being informed of all such referrals; (ii) be accredited by, and subject to standards laid down by the Government in respect of how they deal with criminal activity, covering such issues as training of staff, human rights protections, other due process and proportionality issues, and complaints mechanisms for both victims and offenders; (iii) be subject to regular inspection by the Criminal Justice Inspectorate which we recommend in chapter 15; and (iv) have no role in determining guilt or innocence of alleged offenders, and deal only with those individuals referred by a criminal justice agency who have indicated that they do not wish to deny guilt and where there is prima facie evidence of guilt.

Therefore a set of guidelines for community-based restorative justice schemes, encapsulating the safeguards identified in the Review, were developed by a steering group comprising senior representatives of the

Criminal Justice Directorate of the Northern Ireland Office, the Youth Justice Agency, the Police Service of Northern Ireland, the Public Prosecution Service and the Probation Board for Northern Ireland. The draft guidelines were subsequently revised and renamed a 'Protocol for Community-based Restorative Justice Schemes', and in line with the Criminal Justice Review's recommendations, the Criminal Justice Inspection assessed the suitability of schemes for accreditation under the protocol.

However, despite the advancements that have been made regarding young offenders and community based restorative justice, there was no legislation enacted in Northern Ireland in relation to restorative practices for adult offenders and that remains the case today.

Notwithstanding the lack of legislation in this area in relation to adult offenders the PBNI, acknowledging the benefits of restorative practice and the potential for cost saving across criminal justice, has developed policy and practice in this area.

### **Restorative practice in the PBNI**

While there were elements of restorative work in the Probation Board's practice since its inception in 1982, direct work with victims became more explicit when the PBNI Victim Information Scheme (VIS) became operational in 2005. VIS is a statutory scheme as provided by the Criminal Justice (N.I.) Order 2005 which seeks to ensure that victims receive information about what it means when someone is sentenced to an Order which requires supervision by the Probation Board. The scheme is available to any person (or agreed representative) who has been the direct victim of a criminal offence for which the offender received a Probation Supervised Sentence.

It is a voluntary 'opt in' scheme and initial contact with the victim is made via the police who inform the victim of the scheme and how to apply to the scheme, although victims can also contact PBNI directly.

As part of information provision, PBNI victim liaison officers explain the sentence, how supervision works and respond to the victim's concerns and requests.

While the provision of supportive information to victims is in itself restorative the provision of information to victims is often the first step in any direct restorative practice. Thus a discussion occurs with victims concerning if a restorative process would assist them deal with issues

resulting from the offence. That is done through a professionally trained Probation Officer explaining the process to the victims. To date the Victim Information Scheme has worked with approximately 1,240 victims, 79 per cent of whom were victims of sexual or other violence or families who have suffered a bereavement. Approximately 58 per cent of those registered already knew the offender in their case.

Since 2007 PBNI Victims Unit staff have, in response to victim requests, facilitated approximately one hundred restorative interventions including cases of death by dangerous driving, manslaughter, murder, attempted murder, rape, hijacking, robbery, intimidation and grievous bodily harm. The majority have included indirect restorative shuttle dialogue between the victim and offender. Victim offender meetings and letters of apology have also been facilitated.

In December 2011, a Criminal Justice Inspectorate inspection (CJINI, 2011) recommended the amalgamation of all post-conviction victim information schemes under the supervision of the Probation Board for Northern Ireland. The CJINI inspection report identified the need for an amalgamation as a way to avoid any confusion for victims arising from the existence of three separate information schemes and the 'victim's desire for the one stop shop seamless service' (CJINI, 2011).

In October 2012 the Prisoner Release Victim Information Scheme (PRVIS), the Probation Board for Northern Ireland Victim Information Scheme (PBNI'S VIS) and the Mentally Disordered Victim Information Scheme (MDO) operated by the Department of Justice became co-located as a first step towards amalgamation. Below is a brief synopsis of how each scheme operates:

- PRVIS is a statutory scheme which has been operational since July 2003. It is administered by the Northern Ireland Prison Service, and provides information to victims in relation to temporary and final release. It applies to adult prisoners sentenced to six months or more or permanently transferred from prisons outside Northern Ireland to serve their sentence in Northern Ireland. Participation in the scheme is voluntary on an opt-in basis. Victims can register either via an application sent to them by the PSNI, or by contacting PRVIS direct.
- PBNI's VIS is a statutory scheme and was introduced in October 2005. It is administered by the Probation Board for Northern Ireland. It provides information to victims post-conviction. It is a voluntary

‘opt in’ scheme and initial contact with the victim is made via the Police who inform the victim of the scheme and how to apply to the scheme. Victims can also contact the PBNI VIS directly.

- The Mentally Disordered Offenders Scheme (MDO) is a statutory scheme which came into operation in December 2008. It is administered by the Department of Justice and provides a service for victims of offences committed by mentally ill offenders who are held for treatment in hospital in Northern Ireland under a hospital order and a restriction order. Participation in the scheme is voluntary on an ‘opt-in’ basis. Victims receive information on how to apply to the scheme via PSNI.

Other elements of PBNI work however have developed to include restorative practices. The PBNI community service strategy published in 2010 (PBNI, 2010) has a clear reparative element. The strategy encompasses restorative practices by making provision for the views of victims registered with the Victim Information Scheme to be taken into account in deciding the type of work offenders undertake. This has had positive outcomes for both victims and offenders. For example some victims have chosen that the hours benefit cancer organisations whilst others have requested the offender works to benefit disabled people. Victim organisations and members of the public can also recommend types of community service projects for the PBNI to develop. Approximately 175,000 hours of unpaid work are completed by offenders through community service orders in Northern Ireland each year, equating to a reparative value of over £1 million to the community.

Individual and programme work has also evolved to address offender victim awareness and victim needs. In order to develop this work the PBNI has made available restorative awareness training to approximately 140 staff.

The PBNI has worked closely with community based restorative groups in Northern Ireland. It has provided community grants to both ‘Alternatives’ and ‘Community Restorative Justice Ireland’ to assist with staff training.

In addition restorative guidelines were developed in 2012 covering the range of restorative interventions available. In particular these provide direction in relation to the PBNI’s work with those offenders who have caused more serious harm. Good practice guidelines emphasise that in

sexual or domestic violence cases restorative practitioners require specialist knowledge which the PBNI has developed through client assessment, supervision, programme provision and multi-agency working.

However in the last year progress on developing restorative practices within the PBNI has gathered momentum. The PBNI's Restorative Practice Strategy (PBNI, 2014) was approved in March 2014 and the PBNI had an opportunity to research and explore international practice on restorative practices through the Winston Churchill Memorial Trust with a view to incorporating the learning into NI practice. The Scholarship has assisted in the implementation of the strategy within the PBNI.

### **PBNI Restorative Practice Strategy 2014**

The purpose of the PBNI Restorative Practice Strategy (PBNI, 2014) is to develop the restorative nature of probation work by supporting a restorative ethos in generic practice and promote innovative restorative interventions in order to lessen the adverse consequences of crime for victims, offenders and communities.

The PBNI outlines in its strategy that restorative interventions are based on the following best practice restorative principles:

1. The primary aim of a restorative intervention is the repair of harm.
2. In a restorative intervention there will be acknowledgement of the harm or loss experienced by the person harmed, respect for the feelings of participants and an opportunity for the resulting needs to be considered and, where possible, met.
3. The person(s) who has harmed and the person(s) harmed (including the community), are the primary participants in any restorative intervention. Involvement will be based on informed consent.
4. Opportunities to participate in a range of appropriate restorative interventions will be made available except where there is a significant risk of further harm or there is significant disagreement about the critical facts. The PBNI will ensure that appropriate risk assessments are completed.
5. The safety of participants before, during and after participation in a restorative intervention will be prioritised.
6. The PBNI is committed to quality restorative practice through appropriate training and support for practitioners, complying with the best practice guidance and resources available at the time.

7. The PBNI will ensure that appropriate evaluations of its practice in respect of restorative interventions are completed and inform future practice/participation in this process.

The outcomes of the strategy include the establishment of a PBNI delivery group to oversee the Restorative Practice Strategy Implementation Plan; the piloting and evaluation of restorative interventions at various stages of the criminal justice system; the delivery of restorative interventions in partnership with community and voluntary organisations and statutory partners; and securing additional funding to promote the development of restorative practice.

Restorative interventions will continue to be offered to victims through the PBNI Victims Unit and operational staff will receive victim and restorative interventions awareness or skills training appropriate to their role to complement the social work training of Probation Officers.

In the coming year the PBNI will pilot a restorative practice project with adult offenders and their victims in a rural community and explore the feasibility of a pre-sentence diversionary restorative intervention pilot in partnership with the PPS and courts for first-time adult offenders.

As well as developing the Restorative Practice Strategy, PBNI practice has been assisted through the research and experience provided through the Winston Church scholarship.

### **The Winston Churchill Memorial Trust Research**

Following the development of the strategy in 2014 the author successfully applied for and received a Winston Churchill Memorial Trust scholarship.<sup>2</sup> The purpose of the scholarship is to fund British citizens to travel overseas to study areas of topical and personal interest, to gain knowledge and bring back best practice for the benefit of others, their profession and community. Therefore the aim of the study was to explore restorative practices internationally with a view of building on and developing the PBNI's Restorative Practice Strategy.

The aims of the Winston Churchill Fellowship project on Restorative Practice with Adult Offenders (Hunter, 2015) were:

<sup>2</sup> Further information at <http://www.wcmt.org.uk/>

- To inform the development of the Probation Board for Northern Ireland (PBNI) Restorative Practices Strategy.
- To inform the development and operation of at least one new pilot restorative practice project based on what has worked well in other countries.
- To learn from the experiences of other practitioners in countries with different cultures, justice systems and approaches.
- To use the time and space provided through the Fellowship to learn more about restorative practice, to reflect on this and contribute to improvements in the justice system in Northern Ireland and the work of the PBNI.
- To provide a summary of the learning from the Fellowship to benefit a wide audience including the PBNI and other criminal justice, victim and restorative justice organisations.

Research and practice observations were conducted in the states of New York and Vermont.

In New York observation was carried out at the Red Hook Community Justice Centre, which was launched in 2000 as the United States' first multi-jurisdictional community court, as well as the Justice Centre in Harlem. The Centres seek to solve neighbourhood problems and judges have an array of sanctions and services at their disposal. Created to improve public safety, reduce the use of incarceration, and improve relations between the justice system and the local community their results have been impressive. The approach in the community justice centres is about providing a new vision of the relationship between crime and society, and between the courts and the justice system. The model is restorative, community-based, and sees crime as both an individual responsibility and the result of social conditions. Results include a reduction in the use of prison by 50 per cent, compliance rates with court orders of, on average, 75 per cent and 94 per cent of local residents support the community court.<sup>3</sup>

Similarly in Vermont there are fifteen community justice centres. The community justice centres there are charged with delivering restorative responses to conflict and crime, and a restorative response may include having the people involved, with the support of community, come up with the best and the most positive resolution to a negative situation.

<sup>3</sup> <http://www.courtinnovation.org/project/red-hook-community-justice-center>

Reparative panels are in place which are volunteer-driven and volunteered, where work is carried out to identify what happened, who was affected by what happened, how they were affected, what they need for the harm to be repaired, and whose responsibility it is to repair this harm, as well as what this person is going to do so that something like this doesn't happen again. They collectively, and in a consensus fashion, develop a reparative contract which sets out specific activities that the offender is going to go through, is going to complete, in order to fulfil their contract agreement. Those involved typically have about 90 days to complete that work, at which time they come back, meet again with the group, and talk about what they've learned from the process and what they have achieved.

In Vermont a range of other victim services were observed. One service was the 'Apology Letter Bank'. An apology letter is one tool that an offender can use to show the victim that he/she understands the harm that has been caused by the crime and is taking responsibility for it. An apology letter might be written as part of an offender's case plan, as part of a treatment exercise or at the victim's request. Every apology letter will be reviewed by the case worker or treatment provider and a member of the Victim Services Program staff before being filed in the Apology Letter Bank.

An apology letter should never be used to ask for forgiveness or a pardon, or to make excuses for the crime. Such letters will be returned to the offender and may be re-submitted and filed in the Apology Letter Bank, after changes have been made. Once a letter has been reviewed it is filed in the bank. An offender's apology letter is forwarded to the victim only if there is an Apology Letter Notification Request Form on file with the Victim Services Program or if the victim makes a verbal request.

Based on the visits a number of recommendations have been made to the PBNI. The recommendations include:

- The development of a Victim Apology Letter Bank within the PBNI whereby apology letters which offenders write to victims would be held in a 'bank' by the PBNI Victim Information Unit and made available if a victim wants to access their letter.
- That the PBNI incorporate restorative practice in a pilot resettlement and rehabilitation project for released prisoners and that an internal restorative practitioners' forum be established.

- That the PBNI evaluate the possibility of redesigning Community Service Orders (CSOs) to allow at least two hours of each order for restorative conversations with PBNI staff, community members or victims (as appropriate). In addition, CSOs should normally be a maximum of one hundred hours. In the USA such reparative hours were often a maximum of 40 hours. Victims and community members normally felt that this was most appropriate and enabled offenders to maintain other important responsibilities (e.g. employment and family). In adult offender cases, the DOJ and relevant justice organisations should examine the potential to pilot a Rapid Interventions Court as a means of speedy justice and the diversion of relevant cases.
- The establishment of reparation panels within the PBNI.
- The DOJ, PBNI and other justice / victim services should ensure that victims have the choice to be involved in safe and supportive restorative practice if this would help them deal with the aftermath of the harm they experienced.

## **Conclusion**

The PBNI has developed the capacity to facilitate a range of restorative interventions with victims, adult offenders and communities. Whilst there is no legislative onus on the PBNI to undertake restorative practices, in January 2015 the Justice Minister David Ford MLA launched the Charter for Victims of Crime (DOJNI, 2015). It advises victims of crime about their entitlements and the standards of service that they can expect to receive when they come in contact with the criminal justice system.

The Charter transposes the EU Directive on establishing minimum standards on the rights, support and protection of victims of crime, which was published on 25 October 2012. Within the Charter it spells out the process protections for those who participate in restorative justice with adult offenders thereby reinforcing the importance of restorative practices within the PBNI. The PBNI is committed to further developing restorative practice as outlined in the Restorative Practice Strategy. The learning about restorative practice gained through the Winston Churchill study has further enhanced this commitment. Additionally, sharing this knowledge with a range of criminal justice colleagues has contributed to the on-going debate about the effective application of restorative practice in the wider justice system.

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# Building Bridges: An Independent Evaluation of Le Chéile's Restorative Justice Project. Research Findings<sup>1</sup>

Martin Quigley, Agnieszka Martynowicz, Caroline Gardner<sup>2</sup>

**Summary:** The Le Chéile Justice Project in Limerick is Ireland's only non-statutory service providing formal restorative justice interventions to young offenders. Established in 2010, the project co-operates closely with Young Persons' Probation, which refers children and young people in conflict with the law to the Project. This article presents the main findings from an Evaluation and Social Return on Investment analysis of the Project, conducted over six months in 2014 by the authors, working under the auspices of Quality Matters. It describes the impact and outcomes for young people, family members, victims of crime and the wider community, as well as making a brief comment on the Project's cost effectiveness.

**Keywords:** restorative justice, youth justice, Young Persons' Probation, rehabilitation, evaluation, social return on investment, reintegration services, management of offenders.

## Introduction

A growing body of research in recent years has highlighted the effectiveness of restorative justice for victims and offenders, including in the context of working with children and young people in conflict with the law. There is evidence to suggest that both victims and offenders consider it to be fairer than traditional, retributive justice (Trimboli,

<sup>1</sup> This paper is based on the research report by Quigley, M., Martynowicz, A. and Gardner, C. (2014) 'Building Bridges: An Evaluation and Social Return on Investment Study of the Le Chéile Restorative Justice Project in Limerick', Dublin: Le Chéile and Quality Matters (available at <http://www.lecheile.ie/downloads>) Any material is used with the kind permission of Le Chéile, who commissioned the original study.

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2000; Poulson, 2003; Doak, 2011). Restorative justice has also been shown to have positive healing effects on those affected by crimes (Doak, 2011), including improvement for those suffering from post-traumatic stress resulting from the experience of being a victim of crime (Angel *et.al.*, 2014).

Broadly speaking, restorative justice is ‘an approach to problem solving that, in its various forms, involves the victim, the offender, their social networks, justice agencies and the community’ (UNOCD, 2006, p. 6). It focuses on redressing the harm done to the victim, holding the offender accountable and involving the community in seeking resolution (UNODC, 2006, p. 6). The importance of this approach, however, stretches beyond those directly affected by the individual crime as ‘Restorative justice programmes can be used to reduce the burden on the criminal justice system, to divert cases out of the system and to provide the system with a range of constructive sanctions’ (UNODC, 2006, p. 2).

The use of restorative justice approaches is particularly appropriate in the youth justice context. International children’s rights standards require that children (i.e. those under eighteen years of age) who break the law should be dealt with using diversionary measures. These can be employed without recourse to judicial proceedings (for example, by the police) or in the context of judicial proceedings (Article 40(3) UN Convention on the Rights of the Child; UN Committee on the Rights of the Child, 2007). Accordingly, States are required to adopt and develop a range of interventions which ensure that children in conflict with the law are dealt with in a way which focuses on their well-being, and are proportionate to both the child’s individual circumstances and the nature of the offence (UN Committee on the Rights of the Child, 2007, p. 8). In recognition of the fact that children are most often accused of relatively minor offences, diversionary measures should ensure that they are removed from the criminal justice process and dealt with, for example, with the assistance of social or educational services (UN Committee on the Rights of the Child, 2007). Where court proceedings are necessary, the judges in dealing with children should be able to avail of a range of community based interventions. The primary aim of any intervention should be the child’s reintegration into the community (Article 40(1) UNCRC).

The Restorative Justice Project (‘the Project’) in Limerick is one such intervention. The Project is Ireland’s first and only non-statutory youth

restorative justice service and is run by Le Chéile Mentoring and Youth Support Services. It is closely aligned with and works alongside Limerick Young Persons' Probation (YPP), having been developed and established specifically to dovetail with existing statutory service provision. The Project is also embedded within a broader range of services providing restorative practice initiatives across the city, including justice, education and community and voluntary services.

The Project's primary focus is on providing a range of restorative justice interventions (see Table 1) to young people from the Limerick area who are engaged with the Probation Service. In addition to these, the Project's staff provide accredited training in restorative practices to professionals including Gardaí, education providers and staff of community-based services.

**Table 1:** Le Chéile Interventions by McCold & Wachtel (2002) Typology

<i>Model of Intervention Type</i>	
Restorative Conference	Fully Restorative
Victim Offender Mediation	Mostly Restorative
Reparation	Mostly Restorative
Victim Impact Panel	Mostly Restorative
Victim Empathy Programme	Partly Restorative

After almost four years in operation, and following a positive internal evaluation, Le Chéile commissioned an external evaluation of the Project. The review was commissioned by Le Chéile in March of 2014 and conducted by the independent research charity Quality Matters, over a six-month period. The following article discusses the main findings of the review in the context of the growing number of evaluations of youth restorative justice interventions.

### **Restorative justice with children and young people – principles and ‘what works’**

Howard Zehr asserted in 1990 that the traditional model of criminal justice responses to crime favoured retribution over restoration. He argued that this approach ignored the role and rights of the victim in the criminal justice process and that the harm caused to both victim and the

community more generally was not adequately addressed through the procedural state versus offender relationship. Referring to reconciliation programmes dating back to the mid-1970s, which created an early template for another way of managing the victim/perpetrator relationship within a criminal justice setting, Zehr (1990) set out six guiding principles for restorative justice, posed as questions:

- a) Who has been hurt?
- b) What are their needs?
- c) Whose obligations are these?
- d) What are the causes?
- e) Who has a stake in the situation?
- f) What is the appropriate process to involve stakeholders in an effort to address causes and put things right?

The principles these questions represent remain central to the use of restorative justice, which seeks to avoid or repair harm to individuals and/or communities, caused by the commission of offences. Since the 1970s, restorative justice has

emerged ... primarily as a response to calls from victim advocates for alternative approaches that expand victims' rights in justice processes and promote outcomes that address needs of victims, offenders and communities. (Choi, Bazemore and Gilbert, 2011, p. 35)

In the context of youth justice, restorative approaches have the potential not only to focus on the victim-offender relationship and victims' and offenders' needs, but also to provide a children's rights compliant system for dealing with those under eighteen years of age. As stated in the Introduction, States which – like Ireland – are bound by international children's rights treaties, are required to adopt and develop a range of interventions which ensure that children in conflict with the law are dealt with in a way which focuses on their well-being and are proportionate to both the child's individual circumstances and the nature of the offence (UN Committee on the Rights of the Child, 2007, p. 8). Restorative justice processes, appropriately underpinned by children's rights standards, are at least in theory capable of ensuring that the process considers the best interests of the child (Article 3 of the UNCRC) and

that children are appropriately consulted on both the process and the outcomes of restorative interventions (Article 12 of the UN CRC; the right to be heard). The primary aim of any intervention should be the child's reintegration into the community (Article 40(1) UNCRC).

While the use of restorative justice with children and young people holds a lot of promise, one of the difficulties in assessing 'what works' is that many evaluations focus on particular programmes, in a particular setting, often with other programme-specific characteristics. At this level of evidence, 'there are many possible alternative, competing explanations for any observed difference in success rates between two practices' (Sherman, Strang and Newbury-Birch, 2008, p. 18) which can impact on our understanding of which of those approaches constitute 'good' or 'positive' practice. In fact, some authors go as far as to suggest that in some instances, there is no evidence of 'what works', but only evidence of 'what's promising' (Sherman, Strang and Newbury-Birch, 2008).

On the latter, Sherman, Strang and Newbury-Birch (2008) suggest that young people are more willing to engage with restorative interventions when they do not have to fully admit guilt at the start of the process. They go on to state that interventions used as diversion from prosecution attract more involvement from young offenders than those that are part of the criminal justice process. However, in individual projects, this may differ. In England and Wales for example, the completion rates for restorative interventions across forty-six projects funded by the Youth Justice Board have been found by evaluators to be high, at 83 per cent (Wilcox and Hoyle, 2004, p. 39). There was no statistically significant difference between the different interventions, age of the offender or type of offence (Wilcox and Hoyle, 2004, p. 39). An early evaluation of the Youth Conferencing Service in Northern Ireland showed that 31 per cent of referrals to the youth conference came from the Public Prosecution Service, with the remaining 69 per cent ordered by the youth court (Campbell *et al.*, 2005, p. 35). The rates of acceptance of the referral by the young person were reasonably high, with 68 per cent accepting the diversionary conference and 56 per cent accepting the court ordered one (Campbell, *et.al*, 2005 p. 35).

On victim involvement, the authors suggest that victims are more likely to engage if the process is facilitated and explained to them face-to-face by specially trained professionals and when the victims have control over things such as the time and place in which their meeting with the

offender takes place. They state that there is some evidence to suggest that personal victims are more willing to engage with children and young people than they are with adult offenders (Sherman, Strang and Newbury-Birch, 2008, p. 31). Again, individual evaluations of different projects paint a complex picture on victim engagement. Overall, the rates of victim participation for Youth Justice Board projects in England and Wales were found to be at around 67 per cent, although comparisons were made difficult due to different definitions and opportunities for 'participation' in the different settings and different types of intervention (Wilcox and Hoyle, 2004, p. 31). It has also been suggested that the overall participation rates should be seen in light of the fact that many victims opt to receive information and an apology only, rather than engage in another process, so these rates are very much affected by victim choice (Wilcox and Hoyle, 2004, p. 31). In Northern Ireland, the majority of referrals (75 per cent) resulted in a conference, with a relatively high level of victim participation (at 69 per cent), 40 per cent of those being personal victims (Campbell, *at.al.*, 2005, p. 45). Those victims who did not wish to participate in the conference most often quoted personal reasons for not doing so (Campbell *et al.*, 2005, p. 45).

Referring to possible outcomes of restorative justice, Sherman, Strong and Newbury-Birch (2008, p. 32) suggest that young people are more likely to apologise to victims in face-to-face meetings. The effects for victims may include improved health and well-being, less anger and less fear, and more inclination to forgive the offenders for the harm caused (Sherman, Strang and Newbury-Birch, 2008, pp. 33 and 35). Overall, victims involved in direct meeting with young offenders regularly report high levels of satisfaction with the restorative justice process. Offenders tend to report the feeling of having been treated more fairly than in the more conventional justice system (Sherman, Strang and Newbury-Birch, 2008, p. 34). In England and Wales, almost 90 per cent of young people stated that the process made them take responsibility for their actions, with 71 per cent declaring that they gained a greater understanding of the impact of their behaviour on the victim (Wilcox and Hoyle, 2004, p. 40). Victims tended to agree that the intervention has helped the offender to take responsibility (76 per cent), with the majority (69 per cent) being satisfied with the outcome of a restorative intervention (Wilcox and Hoyle, 2004, p. 41). In Northern Ireland, the evaluation of the Youth Conferencing Service found that 91 per cent of young people and 81 per

cent of victims preferred the youth conference over court process, with 81 per cent of young people and 43 per cent of victims reporting feeling better after the conference (Campbell *et al.*, 2005 p. 95). Eighty eight percent of victims stated that they would recommend the conference process to others in a similar situation (Campbell, *et al.* 2005 p. 95).

Looking at reconviction rates after restorative interventions, Wilcox and Hoyle (2004, p. 8) acknowledged the difficulty in calculating those without an appropriate control group. They compared the data available from the projects to the more general Home Office statistics regarding young offenders sentenced during 2000. The authors found that the unadjusted reconviction rate for those taking part in restorative justice projects was 46.6 per cent as compared to 26.4 per cent in the Home Office sample (Wilcox and Hoyle, 2004, p. 8). After weighing the restorative justice sample for the numbers of previous appearances in courts, they found the reconviction rate to be 28.6 per cent (Wilcox and Hoyle, 2004, p. 8). However, they also found that in the restorative justice sample, 37 per cent were reconvicted of less serious offences, with 23 per cent convicted on more serious charges (Wilcox and Hoyle, 2004, p. 8). Levels and severity of reconviction may have been influenced by the fact that three quarters of children and young people starting restorative interventions were in the early stages of offending (Wilcox and Hoyle, 2004, p. 19). An analysis of re-offending rates for the youth conferencing in Northern Ireland in the 2006 cohort of those referred to the Service found that these stood at 47.4 per cent for court- ordered conferences and 28.3 per cent for diversionary conferences (Jacobson and Gibbs, 2009, p. 10), although it has been acknowledged that this data is based on a small sample and not controlled for other factors, such as previous history of being in conflict with the law. Reviewing the available evidence on the impact of restorative justice programmes on re-offending rates, Campbell *et al.* (2005, p. 24) concluded that 'it is difficult to determine the overall effectiveness of restorative programs in preventing re-offending'. The differences in evaluation contexts and methodologies preclude much of the comparative analysis of the outcomes of different programmes. However, some factors such as positive experience with the restorative process, absence of 'negative shaming' and offenders' belief that the process was just, can increase the effectiveness of restorative justice in this respect (Campbell *et al.*, 2005, p. 26). Additionally, the authors state that other benefits of the

interventions may be equally important, so lower re-offending rates on their own should not necessarily be the main goal of restorative practice (Campbell *et al.*, 2005, p. 24).

### **Le Chéile's Youth Restorative Justice Project**

The Le Chéile Mentoring and Youth Justice Support Service was first established in 2005 with the specific remit of supporting young people involved with Young Persons' Probation (YPP) and supporting the provision of mentoring under the Children Act 2001. In 2010, following initial discussions between Probation and the Limerick Regeneration Agency, Le Chéile opened the doors of Ireland's first young persons' Restorative Justice Project. The Project was born out of recognition of the intensity of intervention required by certain young people engaging with YPP, namely persistent and serious young offenders. This Project was seen as an important step towards the social regeneration of Limerick, through working with the young people most marginalised by economic and social disadvantage, as well as those harmed by crime. The restorative ethos of the Project formed part of a wider regenerative approach through restorative practices aimed at strengthening the community and reducing anti-social behaviour.

The Project works hand-in-hand with numerous state and voluntary agencies and is closely aligned with the YPP in Limerick. The Project receives all of its referrals from, and works in tandem with, YPP throughout their engagement with young people. This work is delivered through five key models of intervention: restorative conferencing; victim empathy programme (VEP); victim offender mediation (VOM), reparation and victim impact panels (VIPs). The last of these, Victim Impact Panels, are an innovative method of engaging young people in a restorative process through the participation of a proxy victim. This is a volunteer who has been a victim of crime, but not the crime committed by the particular young person, who takes part to explain the victim's perspective. While this model has been used in other jurisdictions to deal with cases of road traffic offences, the authors found no other examples of its use with young offenders.

The Project is funded by the Limerick Regeneration Agency with matched funding from the Irish Youth Justice Service (the latter of which currently provide funding indirectly, through the YPP). The Project has

also received funding through the National Lottery Fund (Department of Children), the Ireland Fund and the Commission for the Support of Victims of Crime.

A particular feature of the Project is that rather than working in isolation strictly within the bounds of the criminal justice system, from its inception it has formed an integral part of multi-agency arrangements and broader restorative practice within the city. These arrangements are vital to the effective functioning of the Project and to the realisation of its aims. While the Project works in partnership with statutory services, its existence as a voluntary organisation allows for a level of adaptability and flexibility, free from the restrictions of larger organisations working within a fixed statutory framework.

Sixty-one young people have been referred to the Project between 2010 and 2014. Of those, two were assessed by Project staff as unsuitable or inappropriate referrals and fifty-nine have been accepted into the Project. Out of the fifty-nine young people who have been accepted into the Project, eleven did not engage at all. A further seven engaged in one or two sessions with staff although failed to complete a programme of work. This means that forty-one young people have engaged beyond the initial stages of the intervention. It should also be noted that a number of young people engaged in more than one model at one time or consecutively. Young people's engagement with the programme is described below:

- a) forty-one young people engaged in Victim Empathy Programme;
- b) three young people engaged in Victim Offender Mediation;
- c) five attended Victim Impact Panels;
- d) eight young people took part in a Restorative Conference; and
- e) fourteen young people undertook Reparation.

### **Evaluation methodology**

The methodology designed for the evaluation of Le Chéile's Project employed a staged approach. First, a review of literature was conducted, covering legislation and policy context, international standards, and evidence of 'what works' in restorative justice with children and young people. Additional research was also conducted to support the Social Return on Investment forecast, which is only discussed briefly in Conclusions. The main literature review provided the context for the

evaluation as well as the basis for the formulation of evaluation questions. Next, a stakeholder mapping exercise was undertaken to select interviewees who together could provide as broad as possible a view of the work of Le Chéile’s Project and its effectiveness.

Qualitative interviews and focus groups were then held with a range of stakeholders including children and young people, members of their families, the victims, representatives of criminal justice agencies and other professionals, including from ‘reparation host agencies’,<sup>3</sup> and Le Chéile volunteers. The number of interviewees from each group is included in Table 2 below. A review of quantitative and qualitative data held by Le Chéile was also conducted as part of the research.<sup>4</sup>

**Table 2:** Interview Participants

<i>Interview group</i>	<i>Number Interviewed</i>	<i>Sampling</i>	<i>Approximate Sample Percentage</i>
<b>Young people</b>	9	Total population	21%
<b>Family members</b>	4	Random	10%
<b>Victims &amp; victim proxies</b>	6	Random	16%
<b>Gardaí</b>	4	Purposive	38% (of VLOs)
<b>Probation</b>	2	Purposive	40% (of Limerick YPP staff)
<b>Host agencies</b>	1	Purposive	n/a
<b>Le Chéile staff</b>	3	Purposive	100% (of current Project staff)
<b>Other (including training attendees)</b>	13	Random	n/a
<b>Total</b>	42		

**Research findings**

*Young people*

As a core part of the evaluation, researchers sought to include the views of young people on their experiences of the Project and nine young

<sup>3</sup> These are community and voluntary groups which assist young people and Le Chéile in providing activities as part of reparation.

<sup>4</sup> Full details of the methodology can be found in Quigley, M., Martynowicz, A. and Gardner, C. (2014) ‘Building Bridges: An Evaluation and Social Return on Investment Study of the Le Chéile Restorative Justice Project in Limerick’, Dublin: Le Chéile and Quality Matters (available at <http://www.lecheile.ie/downloads>.)

people were interviewed in the course of the study.<sup>5</sup> In all instances, they were asked about their experiences of the programme, as well as the impact the Project has had on their lives.

Young people recalled very positive experiences of engagement with the Restorative Justice Project. Those who participated in this study reported being appropriately prepared for what was going to happen during the restorative intervention, although some young people would have wanted a bit more information about the possible outcomes of the meetings. Overall, however, young people stated that they were able to ask questions and that they were listened to by the Project Workers, with their views considered throughout the process. As one young person said,

*Everything I said they listened to and took it on. They didn't put words into my mouth, they never did things that I wouldn't like them to do. (Young Person 8)*

Young people felt respected and well supported by staff and one of the interviewees observed that 'you could tell they were interested in what you said' (Young person 3). The support of the staff was important as the experience of engaging with restorative interventions was, at times, highly emotional. As one interviewee reflected,

*it was a big deal; it's hard to talk about that kind of stuff, talking about it makes you remember what happened and that's not always nice. (Young Person 3)*

While young people were well informed about what the programme was

<sup>5</sup> All young people who have been in contact with Le Chéile in the years 2010–2014 were included in the potential sample of interviewees, and the researchers made contact with nine of those on the list. All of those who agreed to be interviewed were initially approached by Le Chéile staff, and only contacted by the researcher following that initial approach. It follows, therefore, that there may be a risk of positive bias within this sample. Positive bias refers to the potential for people who have more positive experiences than others to be more likely to engage in research about this experience. A positive bias in a research sample can therefore lead to more positive commentary from the perspective of this client group. It should be noted, however, that the positive experience is likely to not be the only determining factor in participation rates. Indeed, many young people that were out of reach by the time of the research, had simply changed their phone number and could not be contacted for this reason. Likewise, as with many criminal justice programmes, people may not wish to participate due to having moved on with their lives and not wishing to reopen the emotions of this period of their lives. Such need was therefore fully respected within the research process.

about, some reported that they did not really know what to expect of a Conference or a Victim Impact Panel. This was, however, more to do with their lack of experience of a particular situation rather than any omission in explanation of what the interventions are about; they had to experience it rather than form expectations before the meetings. Some were very clear about what they wanted out of the engagement with the Project, and mentioned wanting to understand why they behaved in a way they did and wanting to apologise to the victim. Young people recognised that even if initially difficult, the experience was positive for them and others, including the victims, as this interviewee observed:

*I was glad I did it. It was good for me to meet the victim and understand how my actions affect others. I think it was good for the victim as well, to see that I didn't plan any of the crime; that it was just random, like. (Young Person 6)*

In terms of outcomes, young people reported that the Project has had a positive, and in some cases profound, impact on their lives. Young people reported increased levels of empathy towards victims of crime and family members (which was supported and shown to be statistically significant by quantitative data recorded by the Project) and improved family relationships. Participants in the interviews spoke about how restorative justice had helped them to understand what their previous behaviour had meant to their victims. As one participant of the Victim Empathy Programme explained:

*You know more how the victim felt. If I was thinking about how the victims were feeling before then I probably wouldn't have done it [the crime]. (Young person 1)*

He went on to say that prior to undertaking the programme, he gave victims 'no thought'. The young person reported that he didn't think he would have gained the same understanding had it not been for Le Chéile and that participation in VEP gave him 'the push [he] needed' to change. Another participant reflected:

*... you think you are doing nothing wrong and it [the Victim Empathy Programme] gives you an insight into the lives of the person you've done it*

*to, how much it hurts them and how much you have scarred them.* (Young person 4)

All but one of the evaluation participants stated that taking part in the Restorative Justice Project had led to significant changes in relation to their ability to empathise. For two participants, it was also important for them to be able to share their learning with their friends:

*Yeah, that was a big thing I learned. It was about the effects of what I had done. It helped me to change the way I acted and what I would do when I was out with my friends. I started telling my friends about what I learned and talking about why we shouldn't do certain things. Some of my friends listened to me and others didn't.* (Young person 5)

There was a close relationship between reported changes in young people's behaviour and their perception of improved family relationships. Young people spoke about their parents 'not liking' their getting into trouble (Young person 8) and being 'given out to' by family members (Young person 4). While the family situations for five young people remained unchanged (especially where the young person reported a positive pre-existing relationship), for three others the change was quite dramatic (one other reported a small improvement), as this interviewee observed:

*My mother and my family seen me as a different person. My mother used to give out to me and tell me not to get into trouble, now she knows that this thing changed my life and I don't want to do the things I used to [do].* (Young person 4)

In addition to the changes described above, young people reported decreased substance use; better involvement in education; increased pro-social peer relationships and an overall reduction in their involvement in offending and level of engagement with criminal justice agencies.<sup>6</sup> As one interviewee stated,

<sup>6</sup> Due to the number of young people who have come through the Project in the first four years, and data protection considerations, the evaluation did not include a full reconviction study. The conclusions regarding decreased engagement with the criminal justice system are based on self-reporting by the young people who were interviewed, eight of whom stated that they had moved away from offending by the time the evaluation took place.

*I was in trouble two years ago, now you keep yourself to yourself. It kept me out of prison. (Young person 8)*

### *Victims*

In total, six individuals who were direct victims or acted as a victim representative in a restorative intervention were interviewed as part of this evaluation. Achieving high levels of victim participation has been noted as a common challenge among restorative justice projects. The findings of this evaluation were no different; however, it was noted that the Project has taken steps to promote victim participation as well as putting in place processes, such as Victim Impact Panels, which support the provision of restorative interventions even where there is no participation from direct victims of a particular offence committed by the young person.

Those victims who participated in restorative interventions, or who took part as victim proxies (representing the victim perspective in a Victim Impact Panel), found restorative justice to be a more inclusive, respectful and meaningful approach than the traditional criminal justice process. When asked to compare their experience of the Project with their involvement in the criminal justice system, one interviewee reflected that:

*With the restorative process, it was completely different [as compared to a negative experience in court] and people asked me how I felt about the process ... and the young person is involved and everybody gets involved in it ... It's our crime, it doesn't belong to the state, it never was, it's ours. (Victim participant 1)*

The traditional criminal justice process was criticised for not giving the victims the chance to participate, and sometimes making them vulnerable in the process. As the interviewee continued,

*I had an experience [of being in court] ... I didn't understand the court process really, I thought I had a solicitor there for me but when I went in I had nothing. I was interrogated by a solicitor ... When I went to the court there was no one there for me, I remember being interrogated ... and I said, 'where's my solicitor?' I really felt stupid. Now, no one explained that I didn't have a solicitor, they forgot about me. I was apparently a state witness ... I was being disciplined for being silly. I was the victim and I felt so vulnerable ... (Victim Participant 1)*

Half of those interviewed took part in Victim Impact Panels as proxy victims to explain to young people the impact of offending on the lives of those affected by their behaviour. They praised their preparation for these panels and commented on the professional approach by Le Chéile staff in the sessions. Some victim interviewees noted the importance of victim participation and wanted to see more engagement with the Project from those affected by crime. Victims reported decreased fear of crime and associated anxiety after participating in restorative interventions as well as noting a sense of ‘closure’ with regard to their own experience of victimisation.

### *Parents*

Parents of the young people involved with Le Chéile all described very positive experiences of the Project, which they felt was respectful and inclusive of them as family members. As one of them stated,

*I didn't even realise I needed so much help with my own son at the time, it helped everyone, there was so much trouble in the house over what he was doing. (Family Member 3)*

Parents reported positive changes for themselves, such as greater understanding of what was going on for their children, often linked with improvements in their own parenting skills and approaches. An outcome of this was parents reporting lower levels of stress or anxiety. Parents also stated that the Project assisted them in learning more about issues such as the reasons for offending and the nature of addiction which led to a greater understanding of their children’s needs. This has helped them to deal with and respond to challenging behaviours in a constructive way rather than reacting out of frustration.

The second main benefit cited by parents was the change in the behaviour of their children. This was seen as reducing stress and conflict within the home, often having a further impact upon other family members such as siblings.

### **Conclusions**

In the course of the evaluation, both young people and victims reported more confidence in the restorative justice process, and reflected on how their voices were heard and respected within it. This further supports the already existing evidence that restorative interventions are more inclusive

than the traditional criminal justice system. The professional and thorough preparation for the various forms of restorative interventions was praised by all participants, who regularly reported that engagement with the Project had a considerable – and in some cases profound – impact on their lives. The holistic approach implemented by the Project to working with young people and their families, as well as community representatives, ensured that the positive outcomes were not limited to a particular young person, but that they were in a sense ‘future proofed’ through improvement of family relationships, addressing the young person’s needs (whether educational, related to substance abuse or increasing their confidence to change their peer group) and increasing the young person’s understanding of the impact their offending can have on family and the wider community. As the Project largely focuses on working with serious and persistent offenders its key outcome is addressing young peoples’ needs and diverting them away from custody. In this respect, the Project plays an important role in ensuring that imprisonment is only used as a matter of last resort, and in ensuring appropriate reintegration of young people into the community in line with children’s rights standards.

While not discussed here in detail, it is important to state that the Social Return on Investment (SROI) forecast showed that the Project had a return of €2.92 for every €1 invested, with a potential to go to €3.50 with the increased number of young people availing of the programme currently. The cost effectiveness of restorative justice programmes provided by voluntary organisations cannot therefore be underestimated, and should be an important consideration for the State in planning and funding initiatives in the community and voluntary sector in the future.

Overall, the evaluation of the Project concluded that the model employed by Le Chéile, in co-operation with Young Persons’ Probation and other partners in Limerick, is primed for replication across Ireland. It is hoped that the learning from the Project will support the development of similar initiatives that clearly benefit not only the young people and victims, but also their families and the community as a whole.

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## **Court Report (Court of Appeal Northern Ireland)**

**Nash, Re Judicial Review [2015] NICA 18 (21 April 2015)<sup>1</sup>**

**Paul Doran<sup>2</sup>**

On 21 April 2015, at the Northern Ireland Court of Appeal, the Lord Chief Justice Morgan, sitting with two senior judges, delivered a significant and important judgment in respect of the work of the Probation Board for Northern Ireland (PBNI) and application of risk assessment.

The case was an appeal from a decision by Judge Treacy refusing the appellant's application for leave to apply for judicial review of a decision by the PBNI whereby it refused, *inter alia*, to provide the Crown Court and the Parole Commissioners with a risk assessment of the appellant. PBNI policy and practice are that it does not provide a risk assessment in the cases of terrorist/politically motivated offending.

The appellant had been convicted by a non-jury ('Diplock') Court in 2011 on firearms offences and PBNI were asked to provide a pre-sentence report, which it did. However, in keeping with practice since the 1970s, PBNI did not provide a risk assessment and restricted the report to a social history and current circumstances report, even though the appellant had indicated he was content to co-operate with such an assessment.

The Judge had found the appellant to be a dangerous offender under the 2008 Criminal Justice Order and imposed an extended custodial sentence (seven years' custody, five years' licence).

While serving his sentence, the appellant renewed his request for PBNI to carry out a risk assessment so that he could show a reduction in

<sup>1</sup> <http://www.bailii.org/nie/cases/NICA/2015/18.html>

<sup>2</sup> Paul Doran is Deputy Director of Operations at PBNI. Email: Paul.Doran@pbni.gsi.gov.uk

risk when he came before the Parole Commissioners to be considered for release. PBNI maintained its position in offering the appellant services in relation to resettlement but stated that it could not provide a risk assessment for the Parole Commissioners. The Parole Commissioners decided to release the appellant at the earliest possible Parole Eligibility Date, and he has complied with licence requirements.

The appellant argued that the PBNI policy, by not providing a risk assessment in cases involving perceived terrorism or political motivation, was unlawful. The appellant also argued that there was a duty of enquiry on PBNI to ascertain some method of ensuring that an appropriate assessment tool could be devised.

PBNI submitted that there was no statutory obligation to provide a risk assessment unless such an assessment instrument was available. PBNI had consistently stated that risk assessments would not be provided in relation to such prisoners and provided correspondence dating back to 2006, noting that a validated assessment instrument was not available for such cases. PBNI highlighted that the criminal justice system dealt with such offenders in a particular way and that the assessment tool employed by PBNI – ACE (Assessment, Case management and Evaluation) – was not validated for terrorist/politically motivated offences.

In a comprehensive ruling the Court of Appeal accepted that the assessment of risk lies at the core of PBNI's work and that an assessment of the factors giving rise to the risk of reoffending will inform the protective elements that can be put in place and assist in the determination of the most appropriate method of dealing with the offender. However, critically, the Court of Appeal accepted that such assessments must be valid and quoted from the PBNI Best Practice Framework ('accurate and defensible').

The Court of Appeal accepted that PBNI does not have access to intelligence material both in relation to the offender himself and his relationship with any terrorist or politically motivated grouping which might assist in explaining how he got involved and what protective factors might be put in place to prevent further involvement. It also accepted that even where no intelligence information is available, background factors in relation to the offender, his upbringing, his family and his place in the community give little or no assistance in relation to the risk of reoffending in these cases.

The Court provided reasons why the three case examples put forward by the appellant to challenge this reasoning were actually consistent with the PBNI view or of no assistance to the appellant and concluded that there are no accurate or defensible mechanisms available to PBNI which would enable it to carry out an assessment of risk in relation to the appellant.

This Northern Ireland Court of Appeal judgment has highlighted how risk assessment of politically motivated offenders presents a unique challenge for criminal justice bodies. It confirms that risk assessment is central to and underpins all probation work with offenders from pre-sentence to sentence completion stage in regard to all other types of offences.

In appropriate cases a validated risk assessment instrument applied by experienced and trained personnel can provide a proper basis for evaluation. This is an important and reassuring message for probation services and assists in clarifying the role of probation in the criminal justice system.

## Book Reviews

### **Criminal Justice in Transition: The Northern Ireland Context\***

**McAlinden, A. and Dwyer, C. (Eds.)**

Oxford: Hart Publishing, 2015

ISBN: 978-1-8494-6577-9, 416 pages, hardback, £55

During the last two decades, transitional justice has effected its own, very impressive transition; from the outer peripheries of academic analysis to the substantial occupation of undergraduate and postgraduate curricula worldwide. However, while yards of books address issues of central and tangential relevance to transitional justice, there has remained a noticeable gap in the market for an analysis of a country that is in the early stages of transforming key aspects of how it approaches criminal justice issues. *Criminal Justice in Transition: The Northern Ireland Context* nicely fits this space, showcasing a collection of contemporary essays that reflect recent developments in the political and conceptual bases of transitional justice.

The fact that a subject is large, complicated, and diverse enough to have a book of this nature is not in itself a sign of its intellectual status. However, when I first read who had contributed to this book and reviewed their impressive previous research contributions, I was left with no doubt that the book offered an excellent opportunity for the reader to access a stimulating collection of work written by experienced researchers within the context of transitional justice. Eye catching for this reviewer was the fact that all seventeen chapters of the book related specifically to Northern Ireland; a region of the UK with limited academic contributions in this field of study, with the exception of the occasional chapter in a criminology or criminal justice publication or journal article,

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but not a specific collection of work contextualised within the jurisdiction of Northern Ireland. Professor Shadd Maruna, in the foreword, makes an interesting substantive point in that ‘British Criminologists are almost famously disinterested in reading about Northern Ireland. Cambridge Professor Anthony Bottoms used to joke that by using the words ‘Northern Ireland’ in the title of an article in the *British Journal of Criminology* was the surest way to assure no one would read what you wrote’ (p. v). However, he reflects that there is an enormous amount to learn from Northern Ireland, due to the ‘unique historical, cultural and constitutional context of Northern Ireland’.

It is quite simply an outstanding achievement. I have read reviews that at times appear to enjoy denigrating rather than praising. Negative language (such as irony, sarcasm, disagreement) is much richer than positive language. But clichéd as they sound, the praises invited by this volume—‘indispensable’, ‘the standard source for years to come’, ‘a must for any serious student’—have to be used. First, the editors clearly describe the aim of the seventeen specially commissioned chapters, which cover most of the issues that preoccupy Northern Ireland’s experience of criminal justice in transition in a broad social, cultural, political, historical and comparative context, as well as shining a light on theoretical and empirical research in relation to criminal justice aspects in Northern Ireland. Second, post-devolution political processes are critically examined in relation to criminal justice policy throughout, with a much appreciated analysis of the criminal justice field seventeen years after the Good Friday Agreement brought an end to sectarian conflict in Northern Ireland.

The exemplary opening chapter by the editors clearly and effectively sets the scene for both a post and pre-devolution analysis of penal policy in a country beginning to redevelop itself in many criminal justice areas after a period of violent and sustained conflict. Whilst this reviewer was born in Northern Ireland and spent most of his life living in Northern Ireland, I found the chapter particularly useful in highlighting the historical context of Northern Ireland and political processes, as well as providing a useful insight into how the conflict impacted upon the policies employed during that period.

The seventeen chapters are divided into four parts:

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- (i) The first part under the heading ‘Conceptualising Crime and Criminal Justice in Northern Ireland’ includes two chapters dealing with issues from the past. The chapter by Dr Cheryl Lawther presents a thorough and engaging interrogation of issues relating to truth recovery, accountability, victims and limitations to a legal approach in seeking answers to the past. The other chapters include Professor Colin Harvey’s analysis of a human rights culture within the context of transformation, Professor Brice Dickson’s discussion on criminal justice reform with specific analysis of the drivers and participants involved in change in this arena, and finally Dr Clare Dwyer’s discussion in relation to the role of risk in the governance of Northern Ireland, post conflict and during the conflict, as well as the impact risk has had on transforming criminal justice policy in Northern Ireland.
- (ii) The second part under the heading ‘The Criminal Justice Process’ contains seven chapters. There are two chapters on issues pertaining to prisons and imprisonment, as well as prisoner reintegration. Professor Phil Scraton provides an informative and critically reflective account, not only of the prison regime during the conflict in Northern Ireland, but also post-conflict, in which he describes the post-conflict period in prison reform as being one of ‘stagnation’. As a Probation Officer myself, I found the chapter on this subject by Dr Nicola Carr particularly informative, especially in relation to the concept of neutrality during the conflict in Northern Ireland. Other chapters in this part include a highly recommended chapter on policing by Dr John Topping in which the nature of policing and its transition, post-Good Friday Agreement, is analysed extensively. There are two chapters on judicial performance and judicial selection processes and finally a chapter on the often controversial issue of miscarriages of justice and the courts in transition.
- (iii) The third part under the heading ‘Contemporary issues in Criminal Justice’ contains four chapters. Criminal justice issues in relation to women, young people, restorative justice and approaches to work with people convicted of sexual and violent crime are all addressed. The chapter on women in criminal justice provides the reader with a historical context to gender issues in prison during the conflict in Northern Ireland, and subsequent reforms post-conflict. The chapter on young people provides an excellent analysis of welfare and justice debates in relation to interventions employed with young

people during a period of transition, as well as analysing the legacy of past conflict. Anne Marie McAlinden's discussion on responses to sexual and violent crime evidences a sound examination of policy transfer largely adopted from criminal justice policy in England and Wales. The chapter also investigates issues in relation to risk, agencies involved in risk management, public attitudes to sexual offending and conflict legacy issues. Finally in this part Anna Eriksson's chapter is both insightful and engaging in relation to tracing the development of restorative justice practices in Northern Ireland since the Good Friday Agreement in 1998.

- (iv) The fourth and final part under the heading 'Overview and Prospects' addresses the issues of policy transfer, transitional justice and governing through the past and is a substantial critical reflection by both editors on a range of issues discussed within the various chapters in the book. I found this chapter well balanced and considered in relation to potential issues in the future.

The clichéd way of denigrating collections of this sort is to note that the contributions are 'uneven'; however, these seventeen chapters are remarkably even. They present as sober, judicious and genuinely informative, providing everything that average students of this subject area would want to know as well as enough stimulation for better students and criminal justice practitioners to follow up via the references listed after each chapter. There is also—again, with only a few exceptions—a reasonable balance between reflection and substance. Many readers might have preferred menus in some chapters—and there is, perhaps too little polemical jousting in some chapters—but overall, the balance is appropriate for a publication of this type.

**Wild Arabs and Savages: A History of Juvenile Justice in Ireland\***  
**Paul Sargent**

Manchester: Manchester University Press, 2013

ISBN: 978-0-7190-8916-9, 256 pages, hardback, £65

In this volume, Paul Sargent tracks the development of the Irish juvenile justice system from the mid-nineteenth century through to the present day.

In the introduction he states that there will be no debate, and no attempt at theoretical explanation. He explains that the book comprises four chapters that can be read as stand-alone pieces; they are not linked by narrative. In analysing the Irish juvenile justice system in this way, Paul Sargent has, in effect, provided a detailed literature review that will be of interest to a wide audience: those working within the broader Irish justice system, those with an interest in the development of State services and legislation relating to children and also those with an interest in contemporary service development and provision.

The book begins with an extensive chronology of juvenile justice developments dating from 1801 through to the present day. They include legislative, policy and service provision and demonstrate the slow move away from dependency on institutions and institutionalisation towards today's primarily community-based initiatives and sanctions.

According to the author, from the later nineteenth century religious orders dominated the landscape in the development and provision of services to address juvenile crime through the 'establishment of institutions whose aim [was] prevention, and to humanize and train to industry and order the young waifs and strays into society'. The State took a back seat. He highlights a focus on the destitute and wayward child and the risk posed to their morality. Paul Sargent's research shows that when dealing with these children, nineteenth century Ireland had only just begun to slowly move away from detaining children in a prison system to a system of holding and managing delinquent children in reformatory and industrial schools. This suggested some recognition that the needs of the detained child were different from those of their adult counterparts.

Chapter two explores the development of community-based initiatives, supported and supervised by the Catholic Church, such as playgrounds in deprived urban areas in the early and mid twentieth century aimed at preventing juvenile delinquency.

The book is then split into four main themes which focus on the governance of the troubled or troublesome child. In chapter three, the author examines 'The Changing Visibility of the Juvenile Justice System'. He refers to the 'problem' of juvenile offenders first becoming visible through the separation of juvenile from adult prisoners in the

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establishment of the Smithfield penitentiary for juveniles in Dublin in 1801. The chapter goes on to refer to the contribution of growth of statistical knowledge and innovations in the juvenile justice system, some of which were more 'successful' than others. The author cites the development internationally in the early twentieth century and since of the borstal, secure units, detention and assessment centres, diversion programmes and other community initiatives. Many were imported and applied in Ireland in emerging attempts to manage or regulate the behaviour of juveniles in Ireland through the justice system. How the institutions worked and their often baleful impact is part of the story of modern Ireland. The later community-based and diversion initiatives have contributed to changing the face of juvenile justice more recently.

Of particular interest too, is the narrative and detail regarding the Children Court as it operated in Dublin in 1948. Reference is made to evidence of a more child friendly ethos, where the presence of a Probation Officer was a significant innovation and a significant contributor in the work of that Court.

In exploring the changing rationales underpinning the system, chapter four refers to the emergence of the 'at risk child' and how there has been a move away from the dominance of the reformatory and industrial school model to the present-day juvenile justice system, where community initiatives and sanctions linked to probation, 'psy-expertise' and youth work rationalities are employed.

Chapter five considers the changing technologies used by the Irish juvenile justice system to regulate behaviour. Paul Sargent chooses to place technologies into two categories: disciplinary and pastoral, though he acknowledges that these categories may not be mutually exclusive. Here he refers to Niklas Rose's definition of both terms. He places industrial and reformatory schools, and places of detention under the disciplinary category. Pastoral technologies include the Garda Youth Diversion Scheme, restorative justice initiatives and probation interventions. The author makes reference to the Children Act 2001 as giving 'a wider scope for the technology of Probation to operate'. He attributes this to the Act's emphasis on community sanctions which the Probation Service supervise in community settings.

Chapter six deals with Paul Sargent's final theme: how, at different times, the Irish juvenile justice system has governed children within it, under different forms of childhood identity. He refers to the construction of the 'delinquent identity' in the mid 1800's which recognised such a

child as likely a victim of circumstances beyond their control. Their restoration or 'redemption' was deemed to require education based on religion and truth. Social disadvantage was identified as contributing to their delinquency. Referring to the Children Act 1908, Paul Sargent asserts that there is evidence in it that the State recognised that the child needed both reformation and protection. Regimes in industrial and reformatory schools were based on the idea that the child was 'susceptible to corrective influence' and therefore interactions with school staff were an opportunity for such influence.

Paul Sargent goes on to refer to the identity of the 'psychological child'. The idea that a child's criminality is based on an underlying psychological disturbance came to prominence in the 1920's in the United Kingdom. Interestingly, the author found that it was not until the late 1960's that there was evidence that this identity and thinking actually impacted on Irish government policy.

In drawing the chapter to a close, the author refers to two more identities, first the 'at risk child'. In the mid 1800's, the issue of risk pertained to the child's spiritual well-being. Catholic organisations became directly involved in reforming this population. The Children Act 2001 has now placed the 'at risk [of offending] identity' in a place of dominance in today's Irish juvenile justice system. The Act provides a statutory means to receive such a child into care placements; divert them under the Garda Youth Diversion Scheme; or place them under the supervision of a Probation Officer/on a community sanction.

Finally, Paul Sargent refers to the child as a 'bearer of rights' evidenced by the development and work of the Office of the Ombudsman for Children and The Office of the Minister for Children. He cites the publication of the National Youth Justice Strategy led by the Irish Youth Justice Service, a co-ordinating body under the Department of Children, as evidence of an approach based on acknowledgement of the rights of the child.

Throughout the book, using references to both general and to government/official publications, Paul Sargent has tracked the Irish juvenile justice system which began a little over two centuries ago. Initially, institutionalisation led by religious organisations was the norm. The book charts a slow move toward the mainstreaming of service provision for juvenile offenders to the present day with the State taking increased responsibility. Today, community-based interventions are to the fore, in contrast to the situation which prevailed for much of the

nineteenth and twentieth centuries.

*Wild Arabs and Savages* is the first history of youth offending and the juvenile justice system in Ireland. Paul Sargent has made a real and substantial contribution to Irish legal scholarship, social history and criminology. For readers interested in juvenile justice, criminology, history and social policy in Ireland this book is an essential and invaluable resource to be revisited many times.

### **What else could I do?: Single Mothers and Infanticide, Ireland 1900–1950\***

**Cliona Rattigan**

Dublin: Irish Academic Press, 2013

ISBN: 978-0-7165-3140, 272 pages, paperback, €24.95

In this well-researched book, *What else could I do?: Single Mothers and Infanticide, Ireland 1900–1950*, Cliona Rattigan uses the judicial records of over three hundred cases of infanticide tried in Ireland in the first half of the twentieth century to throw light on the social and economic conditions in which these offences were committed. By examining sentencing policy, she illuminates the response of official Ireland and, given the time span of her study, is in a position to compare differences between how cases were disposed of North and South of the border in the period 1920–1950.

This book gives voice to the young women who appeared before the courts charged with infanticide or concealment of birth in Ireland in the first fifty years of the twentieth century. It is this aspect of the work that I found most interesting as it provides access to information about the women's lives, their relationships, their position in society and what motivated them to take the lives of their infants. What emerges from Rattigan's work is a nuanced, multi-layered and complex picture which is both challenging and revealing in equal measure.

Against a socially conservative background, with an emphasis on sexual morality, single pregnant women were, for the most part, left to address their situation alone. Most single pregnant women in the sample

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did not confide in anyone; they concealed their pregnancies, gave birth unattended and took their baby's life shortly after birth. Rattigan emphasises the roles that shame, stigma and poverty played as factors motivating single mothers to take their infants' lives. She also makes reference to the social policy arena in which there was no welfare system of support and only access to private foster-care arrangements, which had to be paid for. The option of placing their child for adoption was not available to them as adoption was not legalised in the post-independence twenty-six county State until 1952. Furthermore, it was not possible for single mothers to seek maintenance from the father of their child until the enactment of the Illegitimate Children (Affiliation Orders) Act in 1930. The lack of provision and support for single pregnant women gives credence to the experience of Ena P. whose voice lends itself to the title of this book 'I gave birth to a child. I killed it. What else could I do?'

The majority of the women, who were before the courts charged with infanticide or concealment of birth, were from poor backgrounds. They came from rural areas, were in their mid-twenties and many of them worked as domestic servants. As domestic servants their income and, very importantly, their accommodation were dependent on their continued employment – employment which they rightly considered as being in jeopardy if their employers became aware of their condition. Bridget N, for instance, was dismissed by her employer because he suspected she was pregnant. Bridget's infant was born in the workhouse and there is evidence that she slept outdoors for some time after being discharged. In fact there are a number of references to young women, isolated and alone, wandering the backroads shortly after giving birth and living in fields and outhouses, perhaps for days, before killing their infants. One such woman was Mary T. who told the Garda Síochána that she had killed her child because she had nowhere to go and nowhere to take it. Mary had given birth alone in a disused house on a backroad. The loneliness, fear and isolation conjured up by Mary's experience is palpable.

The majority of the women in this study acted alone in killing their infants, fearing that the circumstances of their pregnancy would lead to rejection by their family. Some women, however, were aided by relatives, and others by the putative father of their child. Women in the sample from twenty-six counties in post-independence Ireland were most likely to confide in a female relative than their Northern counterparts and there

are a number of cases cited in the book where sisters, mothers and grandmothers appeared before the courts as co-defendants. The reasons proffered for the assistance of female relatives is diverse. Some were acting to protect the family's honour by disposing of the evidence of pre-marital sex; some were anxious to deal with matters to avoid the men of the family becoming aware of what was transpiring. Most women were, however, providing support and there is evidence in some of the narratives of tenderness and loving support provided to women in distress by their female relatives. While Rattigan makes the point that men are 'notably absent from the trial records' there were some exceptions to this. A particularly poignant and distressing aspect of the research was the finding that a small number of couples married in the last stages of pregnancy and still felt compelled to kill their child. This drastic step to conceal the infant is surely an indication of how shameful it was for it to be known that pre-marital conception took place, even if marriage followed.

It is apparent from the evidence surveyed in this study that young single women were subjected to a high degree of surveillance in rural Ireland. They were under constant scrutiny by their employers, family members, neighbours and sometime the civil authorities. Women's involvement in infanticide and concealment of birth was often suspected as a result of this close attention to them and their behaviour. There is an assertion in the book that neighbours were often driven by a desire to settle old scores and petty disputes rather than any higher motive.

Notwithstanding the range of severe pressures the women were under, it is difficult to comprehend the brutal ways in which some of the infants were killed and disposed of. The remains of infants were placed in ditches, rivers, lakes, boxes, suitcases and in one instance a chamber pot. One is left with a strong sense of sadness for the pain inflicted on them and the lack of dignity attached to their disposal. However, it is inferred that some of the women acted under severe mental distress; it is difficult, for instance, to comprehend the actions of the young woman who denied she was pregnant, gave birth alone in her place of employment and then brought sheets heavily soiled in blood downstairs in view of other members of the household. One can only speculate on the fragility of her mental state from this seemingly irrational behaviour.

Rattigan outlines the different legislative frameworks which operated in the Northern six counties and in the twenty-six counties post-independence. In the North the Infanticide Act was passed in 1922

making it a non-capital offence. In the twenty-six counties it took until 1949 for an Infanticide Act to be on the statute books. Nine women in the twenty-six counties were convicted of murder between 1922 and 1950 and while all nine were given the mandatory death sentence all sentences were commuted to life imprisonment with penal servitude. The reality is that women on both sides of the border were treated leniently by the courts and other sections of the criminal justice system. Most women were convicted of the lesser charge of concealment of birth and almost all served less than three years in custody. Two notable differences in relation to sentencing practices are evident between the two jurisdictions post-independence. The first is that in the Northern sample 45.8 per cent of the women are discharged on entering a recognisance, while the corresponding figure in the sample from the twenty-six counties is 17.8 per cent with a further 3.9 per cent discharged on recognisance and marriage, meaning that they gave the court an undertaking that they would marry the father of their child. The other difference between sentencing in the two jurisdictions is the number of women in the twenty-six counties who were sent to convents instead of prison, 49 per cent in the twenty-six counties as compared with 16.6 per cent in the North, if one combines the numbers who went to convents and those who went to the Salvation Army. While Rattigan and the other commentators she cites express the view that the courts may have considered a convent a more fitting place than a prison for a young woman all observers seem to agree that the women were disadvantaged by this arrangement. While Rattigan acknowledges that little is known about the women who served their sentences in convents what little can be gleaned tells us that the women's stay in convents sometimes exceeded the sentence imposed by the court. In the case of Bridget G, Sr. Frances Greer wrote to the county registrar in the Central Criminal Court telling him that the nuns would do their best to 'keep her in safety even after her time has expired'. Women sent to convents were unable to petition for reduction in their sentences, a right that was available to women sent to prison.

There is reference in the book to a letter sent by a Probation Officer, Elizabeth Carroll,<sup>1</sup> to the court but it is impossible to glean much about

<sup>1</sup> Known in Probation Service records as Evelyn Carroll, she was a Probation Officer between 1938 and 1969. Evelyn Carroll featured in the *Irish Probation Journal* 2014 as the author of 'Memorandum Re: Women and Girls Who Come before the Central Criminal Court on Serious Charges – And Other Relevant Matters', pp. 196-207.

the role of Probation Officers in cases involving women charged with infanticide or concealment of birth. One quote from the letter refers to Elizabeth's expectation that she will be travelling to Limerick the following week with another girl. One could deduce from this that this Probation Officer is involved in transporting women from court to a convent in Limerick. This begs further questions about the role of the Probation Service in the fate of women sent to convents as part of a court disposal. I also contend that it also points to the need for the Probation Service to remain vigilant about the role it plays within the broader criminal justice system and to constantly critically interrogate its practice to ensure that it acts in an ethical way, in keeping with its social work values.

This book is intriguing and never lost the capacity to keep this reader engaged. It identifies further areas for study, including what happened to the women sent to convents as part of the sentences imposed by the courts. A most compelling question raised relates to the impact and nature of Catholicism; was the expression of Catholicism different in Ireland than in other parts of the world? Did young single women in other Catholic countries experience the same shame and isolation that drove women in this study to kill their newborn infants? Was there something particular about the expression of Catholicism in the Irish context that enabled this to happen? These are questions for another day. In the meantime I highly recommend Cliona Rattigan's book – I particularly recommend it as compulsory reading to those working in a statutory context to address issues of marginalisation in our society, issues which are so often defined by prevailing social attitudes.

# General Information & Guidelines for Contributors

*IPJ*, a joint initiative of the PS and the PBNI, aims to:

- Provide a forum for sharing good theory and practice, increasing co-operation and learning between the two jurisdictions and developing debate about work with offenders.
- Reflect the views of all those interested in criminal justice in an effort to protect the public and to manage offenders in a humane and constructive manner.
- Publish high-quality material that is accessible to a wide readership.

*IPJ* is committed to encouraging a diversity of perspectives and welcomes submissions which genuinely attempt to enhance the reader's appreciation of difference and to promote anti-discriminatory values and practice.

**Preliminary Consultation:** If you have a draft submission or are considering basing an article on an existing report or dissertation, one of the co-editors or a member of the Editorial Committee will be pleased to read the text and give an opinion prior to the full assessment process.

**Submissions:** Contributions are invited from practitioners, academics, policymakers and representatives of the voluntary and community sectors.

*IPJ* is not limited to probation issues and welcomes submissions from the wider justice arena, e.g. prisons, police, victim support, juvenile justice, community projects and voluntary organisations.

Articles which inform the realities of practice, evaluate effectiveness and enhance understanding of difference and anti-oppressive values are particularly welcome.

Submissions (in MS Word attachment) should be sent to either of the co-editors.

Gail McGreevy, PBNI  
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Gerry McNally, PS  
gpmcnally@probation.ie

**Originality:** Submissions will be considered on the understanding that they are original papers that have not been published or accepted for publication elsewhere. This does not exclude submissions that have had limited or private circulation, e.g. in the writer's local area, or as a conference paper or presentation.

**IRISH PROBATION JOURNAL** is a peer-reviewed publication. The following types of submission are considered.

**Full Length Articles:** Normally around 3,500–5,000 words, though all contributions up to a maximum of 7,500 words including references will be considered.

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All *full-length articles* submitted to the journal are anonymised and then subjected to rigorous peer review by members of the editorial board and/or editorial advisory board and/or by appointed specialist assessors. The final decision to publish or reject is taken by the editors in the light of the recommendations received.

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