

The Introduction of Family Conferencing to the Probation and Welfare Service.**Brian McNulty, Probation and Welfare Service****Summary**

This article describes the introduction by the Probation and Welfare Service (PWS) of family conferencing. It begins by outlining perceived weaknesses in the present retributive justice system in meeting the needs of young offenders and their victims. It identifies family conferencing, which focuses on making amends to the victim rather than punishing the offender, as an aspect of restorative justice and as another way of working with young people who have offended.

This article describes the concept of 'cross grade groups' within the PWS. It explains how this mechanism was used to interpret best practice for family conferencing, applying it to the Irish context and developing policy and procedures which allowed for the commencement of Part 8 (Section 78-86) of the Children Act 2001. It describes the roles of participants involved in family conferencing, the preparation and chairing of the family conference and outlines the decision making process. The article also offers some facilitation techniques that may help practitioners to make best use of the process.

Keywords Restorative Justice, responsibility, diversion, negotiation, facilitation, family conferencing

Introduction

Within the prevailing retributive system of justice a young offender must adapt to the legal process and depend on many professionals who decide the consequence of his/her offence...

'From the point of view of the consumer of juvenile justice the defendant's role under the justice model is increasingly one of observer rather than participant. (Atkinson in Jackson 1998:34)

This exclusion of the offender can lead to a reduction of his/her sense of responsibility for the offence. He may also have difficulty understanding the language used in court and the reasons for decisions, which further alienate him from the process.

Within the Irish court system considerable time could elapse from the detection of the crime to the final decision of the court. It can be argued that even following a plea of guilty; adjournments to facilitate reports from psychiatrists, social workers or probation officers may prolong the decision making process even further. Maxwell and Morris (1992) writing about the New Zealand system state that "time frames should be realistic so that young offenders can associate the punishment with the offence, repay their debt quickly and proceed with their lives putting the past behind them." (Maxwell and Morris 1992:15). Long court procedures may serve to minimise the offence in the mind of the young person and so increase the possibility of further involvement in crime.

The victim of the offence can also play a marginal role in court proceedings. If the offender

pleads 'guilty' the victim will probably not get any opportunity to present his/her version of events. If the offender pleads 'not guilty' the state may call the victim to give evidence in order to support the case for the prosecution. The victim is then open to a possible intimidating cross-examination by the defence.

The

'gulf in relevance between the punishment and the crime when the state rather than the victim is the prime focus is often so large as to make the experience meaningless in accountability terms.' (Zehr 1994 cited in Jackson 1998:40)

In this adversarial atmosphere the victim and the offender do not get an opportunity to hear and understand the full experience of the offence for the other.

Children Act 2001

Much of the legislation relating to the area of youth justice was encapsulated in the Children Act 1908. The Children Act 2001 sets out a comprehensive modernisation of the legislation dealing with offending by children with an emphasis on differing pathways for offending and non-offending children. This included the introduction of a range of options, new structures and sanctions in order to meet a child's needs.

The spirit underpinning the Children Act includes the diversion of children and young people from the court, conviction and custody. There is an emphasis on the role and responsibility of parents and the rights and interests of victims. All these principles are incorporated in the family conference convened by the Probation and Welfare Service. The overall implementation of the Children Act 2001 is the responsibility of three separate government departments: Department of Health and Children, Department of Education and Science and the Department of Justice Equality and Law Reform. Implementation is co-ordinated by the National Children's Office.

The Probation and Welfare Service has an important role in the implementation of the Children Act 2001. In particular the PWS is responsible for the delivery of a range of community sanctions and other interventions, including family conferencing, contained in Parts 8, 9 and 10 of the Children Act 2001.

Family conferencing is a significant option within the Children Act. There is provision for conferences convened by three different agencies. Part 2 of the Act relates to the Health Board convened family welfare conference, where it appears that the child may require special care. Part 4 relates to the Garda Conference under their diversion programme and the third agency designated to convene a family conference is the Probation and Welfare Service.

Restorative Justice

Family conferencing can be placed within the restorative justice paradigm. (Polk, 1994) Restorative justice is an alternative to the traditional approach of retributive justice, which, it argues, is failing to have any significant impact on crime in society. Within the retributive justice court system the state is perceived as the prosecutor. The victim may be asked to act as a witness for the state. The court will usually punish the offender with the aim of reducing the possibility of a re-occurrence of the crime and in the hope of deterring others from committing a similar act.

In contrast, restorative justice aims to make amends for the crime committed rather than punish the offender:

'Restorative justice seeks to redefine crime, interpreting it not so much as breaking the law, or offending against the state, but as injury or a wrong done to another person or persons. It encourages the victim and the offender to be directly involved in resolving any conflict through dialogue and negotiation.'
(Dept. of Justice, New Zealand 2000 (Cunneen, 2002:8))

This new focus on healing and the related empowerment of those affected by a crime has potential to enhance social cohesion in our increasingly disconnected societies (McCold and Wachtel, 2004:2). Family conferencing is a procedure, which meets the criteria for consideration as a restorative justice outcome as it seeks to empower the victim, the young person and his family.

The Family conference

A key principle of family conferencing is the involvement and empowerment of families. The family conference is designed to create a forum, which empowers families to have a meaningful voice, exercise responsibility and take a lead in decision making over their own affairs. In addition the family conference aims to engage the victim, the young person and his/her family, and appropriate professionals, and others who can contribute to the conference. The process of sharing ideas about the young persons offending behaviour and how this has affected the victim helps the family construct a resolution and plan that will be acceptable to the court. Family conferencing provides significant opportunities to work systemically as it allows us to ask questions that can broaden the awareness of participants, explore how their actions are affecting each other and help them uncover what will resolve their difficulties.

Court Referred Family Conference

The Children Act 2001, Part 8 (Sections 78-87) outlines the arrangements pertaining to the court referred and PWS convened family conference. When a young person is charged with an offence and

- a. Accepts responsibility;
- b. The Court considers an action plan desirable; and
- c. The child and child's family agree to participate.

The Court may direct the PWS to arrange for the convening of a conference rather than proceed with the Court case. The Court may also direct the conference to address matters it considers appropriate.

The conference will be held within 28 days of the Court's referral.

The family conference shall endeavour to formulate an action plan that should be agreed unanimously. The action plan may include:

- An apology to the victim;
- Financial or other reparation to any victim;
- Initiatives within the child's family and community that might help to prevent re-offending;
- An activity that might help the child understand the consequences of his offending.

The action plan should be written in a way that the child understands and signed by the child, the convenor (Probation and Welfare Officer [PWO]) and one other person who is usually a family member. The PWO then submits the action plan to the Court.

The Court can:

- Approve the plan or amend it.
- Order the child to comply and be under the supervision of the PWS.

The Court then adjourns the case for six months when a review will take place. If the Court is satisfied at the review that the child complied with the plan the charge can be dismissed.

If the PWS is unable to convene the family conference the Court can resume proceedings and reach a decision of guilt or innocence in the case. If the family are unable to formulate an action plan the Court might decide on a plan and order the child to comply and be supervised by a PWO. The Court has also the option to resume court proceedings if a plan is not formulated. If the child fails to comply with the action plan the PWO can apply to have the case returned to court again leading to the resumption of proceedings.

The Youth Justice Cross Grade Group

In 2003 the Principal Probation and Welfare Officer established thirteen cross grade groups, chaired by the relevant Assistant Principal Probation and Welfare Officer with responsibility for the area. Membership was selected from those who volunteered to participate in these groups which aimed to include all grades and regions within the service.

The cross grade group with responsibility for Youth Justice focused on The Children Act 2001 and in particular family conferencing. The group explored the literature and examined advantages and disadvantages of family conferencing as it is currently delivered in countries such as New Zealand, Australia, United Kingdom and Norway. The cross grade group consulted with

a number of other services, including Juvenile Liaison Officers involved in the Garda restorative conference, Victim Support, staff involved in existing restorative justice projects in Nenagh and Tallaght and Health Board funded family conference projects.

A number of factors influenced the thinking of the cross grade group in exploring the best approach for the PWS in implementing family conferencing. These included the 28-day time frame within which the family conference must be convened, the issue of neutrality central to the process and the potential number of referrals the Service might get from the Courts.

Following consultation and gathering of information the cross grade group concluded that the preparation and chairing of the family conference could be separated. Further consultation took place on potential family conference configurations. Consideration was given to; Senior Probation and Welfare Officers (SPWOs) chairing all conferences, specialist staff designated as family conference convenors, or outsourcing the preparation of family conferences. The Service decided that it was most feasible for family conferences to be prepared and chaired by two PWOs from each team while the SPWO would substitute for a PWO if required and monitor the quality of the Service.

Training of staff to convene family conferencing was integral to the success of its implementation. Some training had been provided in 2000 mainly to SPWOs by trainers from New Zealand. This training in conjunction with the cross grade group was built on by staff development sections of the PWS who were given the challenging task of devising and presenting a training programme for staff members involved in the implementation of family conferencing.

Preparation for the Family Conference

The Children Act 2001 legislation specifies that the conference shall be held within 28 days of the court referral. It allows an extension of time up to a maximum of a further 28-days in exceptional circumstances. This is in contrast with the usual time taken to deal with a young person within the alternative juvenile court system

The PWO who prepares for the conference must ensure that the family and young person understand the procedure and what will be expected of them at the family conference. Bearing in mind that non-participation will lead to a court case and probable conviction, it appears that there is a certain level of pressure on the family to participate. They need to understand that they will be required to have a genuine discussion with the victim in order that the young person can understand fully the harm he/she has caused. Prior to the conference the family will be asked their views on inviting appropriate professionals to the conference. They will then have an opportunity to listen to the observations and suggestions of the professionals attending the conference before the family formulates their own action plan which will then be considered by the court.

Preparation also involves inviting the professionals identified by the family to the conference. Professionals invited should be reminded that they are not attending a case conference where

they are the decision-makers. They will need to understand that a family conference involves a handing over of the decision making power. They are acting as a resource to the victim, young person and his/her family who are working towards their own resolution. Professionals may find it uncomfortable to hand over power in this way. Considerable discussion may be needed to clarify their roles prior to the conference. Concerned people in the young person's life such as a favoured relative or sports coach may also be asked to attend if they are considered helpful to the process.

The officer preparing for the case conference has also the responsibility of engaging the victim in the process, explaining the concept and inviting him/her to attend. The situation of the victim is quite different to the family of the offender in that, despite the apparent benefits of taking part, there is no obvious consequence if he/she decides not to participate. If the victim is unable to attend he/she may send a representative or may wish to express his/her feelings by way of letter or tape. However the quality of the conference and the restorative possibilities are greatly enhanced when the victim participates. Given the requirement that the conference must be convened within 28 days there is a little urgency in engaging all participants.

The Family Conference

Prior to the conference the PWO 'chairing' will have discussed the case with the PWO 'preparing' but will not have any contact with participants. The PWO preparing will act, as an observer at the conference while his/her colleague will chair the meeting. A family conference can be broken into four stages.

1) Introduction: Participants introduce themselves and describe their relationship to the young person. Following introductions the PWO chairing reminds participants of the task at hand, the nature of confidentiality and the importance of hearing every one's point of view. Clarifying the role of participants may help understanding at this stage.

2) Restoration: This involves an objective presentation of the offence and an exploration with all participants of how this behaviour has affected the victim, the young person and his family. The young person might first be asked to respond to the charge and encouraged by the chair to explore his attitude to the offence. He/she might also be asked to consider what the experience might have been like for the victim. The victim would then be asked to respond to what the young person has said. The chair can allow this exchange to take place between victim and young person for some time to allow a greater understanding of each other's point of view. The chair is expected to mediate between the parties. Members of the family and then professionals might then be asked to respond to what they have heard. Discussion should focus on the offending behaviour and how the young person can put things right. Participants should be encouraged to give a balanced response looking for positives in the young person's behaviour and possible explanations for his action. Negative criticism of the young person is unlikely to help in finding a resolution.

3) Family Time: The young person and his/her family then move to another room where they formulate their action plan. The family will need to address how the young person can 'make up for' the harm he/she has caused the victim. The chair will usually drop in during family time to answer questions and encourage progress but not to influence the content of the plan.

4) Conclusion: The family then presents their action plan to the full conference. Following feedback the family may choose to make alterations.

The plan will then be presented to Court on the Court date specified and if accepted the court will adjourn the case for six months for full implementation of the plan

An actual family conference is a once off event and success will depend on an open, honest and respectful sharing of feelings and a successful expression and appreciation of different perspectives. Careful mediation and facilitation techniques are required of the officer chairing to ensure that all participants are fully understood and can work towards a common view on how restoration can take place. Some facilitation techniques may be helpful to this process.

Facilitation of the Family Conference

The use of circular, curious, reflexive questions and the use of a reflecting team approach (Selvini Palazzoli et al 1980, Cecchin 1987, Tomm 1988, Anderson 1987) developed by family therapy practitioners are among the techniques can be used and adapted to help explore different attitudes and perspectives thus increasing understanding among participants in family conferencing.

The PWO chairing meets all participants for the first time at the conference. Thus the chair will be seen to begin this process from a position of neutrality where he/she can best engage all participants.

The process of circular questioning, as demonstrated by the Milan team (Selvini Palazzoli et al 1980), the conference begins with the chair engaging the victim and offender in exploring the differences and similarities in their stories. Both would be asked to share their understanding of the offence and to respond to the others comments. The family can also be engaged in this way. Circular questioning involves the therapist conducting:

'his investigation on the basis of feedback from the family in response to the information he solicits about relationship and therefore about differences and change.'
(Selvini Palazzoli et al 1980:8)

The chair responds to what participants say rather than with a question he/she has previously prepared. This allows a greater exploration of the family's position and allows them reflect on their understanding and the understanding of the victim and find new meanings. New meanings allow family members to understand the problem and possible solutions in a different way.

Peggy Penn (1982) has outlined a number of categories of circular questioning. Of particular interest to family conferencing might be 'a tracking of a sequence of behaviour around a problem.' (Penn, 1982:273) A question about what different members of the family do when the problem occurs may uncover a sequence of behaviour in the family of which the offending behaviour is a part. Parents for example may be asked to consider what they do when their son stays out until 4 a.m. They might then decide together to respond differently by perhaps insisting on a consequence if the young person persists on staying out on his late night escapades.

In the context of family conferencing a dyadic question, can also track the circularity process. In this case the circularity of questioning might involve asking one family member what he/she thinks another member's view is on a topic. A teenage offender may feel threatened by this assorted group of adults and may not be engaging verbally in the session. The chair could ask the parents how they think their son understands the offence. Following their response the young person would then have three interpretations of his action, his own understanding and what his father and mother believe is his understanding. If there are sufficient differences in the interpretation of his actions the young person may wish to clarify and so become involved in dialogue. Regardless of the effect of these questions, significant perspectives of relationships within the family and between the family and the victim will have been explored.

Use of reflexive type questions by the chair may also be helpful to participants involved in the family conference. Questions are considered reflexive when they 'trigger family members to reflect upon the implications of their current perceptions and actions and consider new options.' (Tomm, 1988:9) These questions are designed to mobilise the family's own problem solving resources. An example of this type of question might be 'If Johnny was to sort out his problems with the court and stay out of trouble, how life would be different for the family?'

The PWO previously involved in the preparation of the conference, though present, does not take an active part in the conference. This helps to maintain neutrality in the facilitation of the conference. This PWO could have a useful role acting as observer during the conference. He/she could be given an opportunity to share his/her reflections on what has been said prior to the family taking time out to prepare their action plan. Members of the Milan team (Selvini Palazzoli et al, 1980) would have appreciated this concept of second order cybernetics which 'Conceptualises the treatment unit as consisting of both the observer and the observed in one large bundle.' (Boscolo et al, 1987:14) Tom Anderson has developed this idea and has called it 'a reflecting team', where the observer discusses his/her observations with, in this case the chair, and in the presence of the participants. (Anderson, 1987: 415-428) This discussion may be helpful in clarifying issues, which the family may wish to address in their action plan.

Conclusion

It is suggested in this article that the retributive justice system does not fully meet the needs of young people who have offended, or their victims. International experiences point to the impor-

tance and value of restorative approaches in dealing with young offenders. In this regard the Children Act is progressive legislation with an emphasis on diversion and focusing on the rights and responsibilities of parents and the involvement of victims. The Probation and Welfare Service family conference embodies all these principles.

Court referred family conferencing under the Children Act is an alternative restorative justice approach in working with young people, which allows their diversion of the offender from court conviction and custody. This is a new intervention for the Probation and Welfare Service and with the emphasis on empowerment of the family and the involvement of the victim it can be considered a radical change to the traditional Probation and Welfare Service response to young people who offend. Maintaining a truly restorative approach will be a challenge for an organisation that operates primarily within the retributive system of justice. Good facilitation is crucial to a truly restorative family conference outcome. Some facilitation techniques have been suggested when chairing a family conference.

The cross grade group, a new consultative structure within the PWS was significant in the implementation of family conferencing by the Probation and Welfare Service. It will continue to have an ongoing role as a steering committee to oversee the development of family conferencing. Already a number of challenges are arising for the Service; including liaison with Courts to inform Judges about this new option in dealing with young offenders and exploring how more victims can be involved in the process.

Probation and Welfare Officers who have had the opportunity so far to prepare or chair family conferences are positive about the benefits of this type of intervention with young offenders and the victims of their crimes. They increasingly appreciate the value of a restorative justice approach when working with offenders. The Service is well placed to steer this innovative aspect of the Children Act 2001 offering a systemic, restorative and client directed option, and empowering families whose children offend.

References

- Andersen T.**, (1987) The Reflecting Team: Dialogue and Meta-Dialogue in Clinical Work. *Family Process* 26:415-428
- Ainley M.**, (1984) *Using Family Therapy*. Ch.6. Basil Blackwell. Oxford
- Boscolo L.**, Cecchin G., Hoffman L., Penn P., (1987) *Milan Systemic Family Therapy*. Basic Books. London
- Cecchin G.**, (1987) "Hypothesizing, Circularity, and Neutrality Revisited; An Invitation to Curiosity". *Family Process* 26:305-413
- Children Act**, 2001, Sections 29, 78 and 79, Government publications
- Cunneen J.**, (2002) Baseline Study, Nenagh Community Reparation Project. Funded by the Probation and Welfare Service
- Jackson S.**, (1998) "Family Group Conferencing in Youth Justice: The Issues for Implementation in England and Wales." *The Howard Journal* 37 34-51

- Maxwell G., Morris A.**, (1992) "The Family Group Conference: A New Paradigm for Making Decisions about Children and Young People." *Children Australia* 17, 4: 11-15
- McCold P., Wachtel T.**, (2004) Paper at the Fifth International Conference on Conferencing, Circles and other Restorative Practices
- Polk K.**, (1994) Family Conferencing: Theoretical and Evaluative Questions, cited in : **Alder C., Wundersitz J., Editors**, *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism*. Australian Government Publications Accessed 6-4-03
Available from: <http://www.aic.gov.au/publications/lcj/family/>
- Penn P.**, (1982) "Circular Questioning" *Family Process* 21: 267-280
- Tomm K.**, (1988) "Interventive Interviewing: Part 3 Intending to ask Linear, Circular, Strategic or Reflexive Questions?" *Family Process* 27: 1-15
- Selvini Palazzoli M., Boscolo M., Cecchin G., & Prata G.**, (1978) *Paradox and Counter Parado*. Jason Aronson, Inc., New York
- Selvini Palazzoli M., Boscolo L., Cecchin G., Prata G.**, (1980) *Hypothesizing-Circularity-Neutrality: Three Guidelines for the Conductor of a Session*

Brian McNulty, Probation and Welfare Officer based at Theatre Court, Mallow St, Limerick.

Email: bamcnulty@pws.gov.ie