

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

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**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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