

Problem-Solving Justice and Problem-Solving Courts: What Northern Ireland Can Learn from the US Experience of Mental Health Courts

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Summary: The research and evidence from problem-solving courts in the USA consistently supports the notion that this model is effective, works in reducing reoffending and enhances treatment engagement. The approach draws on desistance theories and models to assist offenders to stop committing crime by supporting them in addressing their core needs and risks as well as encouraging treatment and an offence-free life. A problem-solving approach to justice was included in the Northern Ireland draft Programme for Government (PfG) (2016). As Probation interventions have a key role in delivering problem-solving justice, the author applied for and received a Winston Churchill Fellowship¹ in 2017. The fellowship provided an opportunity to engage directly with the staff and structures of problem-solving courts in New York that were providing an alternative to custody for complex and vulnerable offenders. This paper describes the current developments in problem-solving justice in Northern Ireland, outlines the approaches taken in the American context, reviews the learning from the study visit, and discusses how the experience and learning gained from the Winston Churchill Fellowship Project can serve to inform further developments.

Keywords: Problem-solving justice, problem-solving courts, mental health courts, probation, desistance, reoffending.

What are problem-solving courts?

The term ‘problem-solving courts’ refers to a judicial or criminal justice approach that attempts to address the underlying problems that contribute to criminal behaviour. It is based on the concept of therapeutic justice, whereby the offender is encouraged to engage in treatment interventions in order to reduce their risk of reoffending.

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¹ Winston Churchill Fellowships are for UK citizens to travel overseas to bring back fresh ideas and new solutions to today’s issues, for the benefit of others in the UK.

Current context: problem-solving justice

In early 2016 the Northern Ireland Executive announced a new approach in the Programme for Government (PfG) which captured the major societal outcomes that Government wanted to achieve over the following five years.²

The draft PfG, published for consultation in May 2016, set out key elements of the new approach with its focus on delivering improved societal outcomes. It recognises the importance of collaborative working across local government, the private sector and the voluntary and community sectors. Within the draft PfG the Department of Justice (DoJ) leads on Outcome 7 – *‘We have a safe community where we respect the law and each other’* (Northern Ireland Executive, 2016: 29) – with three indicators of change: reduced crime, reduced reoffending and increased effectiveness in the justice system.

A number of historical drivers contributed to the developments in 2016, which the Department acknowledged as being influential in taking a different approach in order to ‘turn the curve’ (DoJ, 2017a: 5). In 2015, the Northern Ireland Executive commissioned the Organisation for Economic Co-operation and Development (OECD) to conduct a Public Governance Review of Northern Ireland (OECD, 2016). The final report published by the OECD recommended that a pilot approach which was then being developed in Londonderry court area involving domestic violence should be expanded to include an offender programme element, and that these approaches should be developed more widely within the justice sphere.

In January 2016, the NI Assembly Justice Committee undertook two visits to observe problem-solving courts in New York and Glasgow. The Committee’s subsequent report (2016) noted that the approach was proven to reduce offending, rectify perceptions of inequality, increase public trust in the justice system and reduce the number of people going to prison. It recommended that a pilot problem-solving court should be developed, as part of the PfG, to be focused on drugs and alcohol addiction or on mental health issues. The Justice Committee also recommended that the Derry domestic violence court arrangements be further developed to encompass a problem-solving model.

In 2017 the then Minister for Justice announced that she would

² The draft PfG contains 14 strategic outcomes which, taken together, plan for and enable continuous improvement on the essential components of societal wellbeing. The outcomes are supported by 48 indicators with which to measure any change.

prioritise domestic violence, mental health problems and crimes against the most vulnerable by adopting a problem-solving justice approach (DoJ, 2017b).

Key principles of problem-solving courts

The key principles identified in the OECD Report (2016) include the following.

- *Creative partnerships:* Problem-solving courts work closely with other criminal justice agencies. The community is often involved in the judicial process alongside social services and treatment providers. Indeed, the community has a fundamental role to play in helping the justice system to identify, prioritise and deliver local problem-solving initiatives. The courts have sought to maximise contact between themselves and the community while retaining their independence and impartiality. This approach has been most effective, and it is important to recognise that problem-solving treatment programmes use various strategies to engage communities and victim groups, which is critical to the effectiveness and buy-in of all involved. Another strategy used effectively by problem-solving courts is to engage with the media. Regular contact with media outlets can provide opportunities to engage with the wider community. This enhances community buy-in, and sends a public message that problem-solving courts are not a soft option. It provides reassurance that the individuals who have come before the courts are engaging with treatment programmes to address areas of risk/need and that they are also held accountable and challenged on issues of non-compliance or non-engagement. This approach is well received by victims of crime, who welcome initiatives that support offenders in making positive changes to their lives and reduce the likelihood of further victimisation in communities. Through justice, health, community partners and stakeholders coming together, the process of fostering new approaches and new responses to include diversion and sentencing options is critical.
- *Team approach:* In problem-solving courts, all parties are asked to support the same goal: rehabilitation of the offender with the objective of reducing reoffending and crime. This requires a non-adversarial approach where the roles of the judge, the prosecutor and the defence lawyer evolve and adjust to the specificities of the

problem-solving approach. Judicial decisions are informed through the collaboration of team members (including social workers and treatment providers) before final adjudication.

- *Judicial oversight and interaction:* In a mainstream court in certain countries and jurisdictions, the role of the judge is that of a detached arbiter. The judge in a problem-solving court actively tries to build a relationship with the defendant and focuses on their treatment and rehabilitation. The judge fosters a dialogue and speaks directly with the defendant on a frequent basis, often over an extended period. This dialogue will include elements of positive reinforcement and validation but will also challenge the individual to commit to programmes, and impose sanctions when contracts are not completed.
- *Judicial monitoring:* In problem-solving courts the authority of judges is engaged to positively influence the behaviour of defendants by staying involved even post-adjudication. Defendants are required to account for their behaviour on a regular basis during status hearings. Prior to these hearings it is not uncommon for judges to discuss the progress of each defendant in conference meetings with other members of the problem-solving team. In fact, this approach is encouraged within all problem-solving courts.
- *Informed decision making:* The collaborative approach between all members of the team ensures that relevant and detailed information is available to inform targeted and timely decision making. The judge not only has access to a range of expert reports but has the opportunity to engage in discussion around the content of those reports to ensure that the appropriate areas of risk/need are addressed, balancing offender reintegration and public safety. This reflective, discursive approach is mirrored in the judge's direct conversations with the defendant, which contain elements of care and control. In addition, this approach increases judicial understanding and knowledge of the underlying contributory causes of criminal behaviour, including substance abuse, domestic violence dynamics, crime patterns in certain neighbourhoods, etc. Ongoing specialist training for judges in these areas is fundamental to the effectiveness of problem-solving courts.
- *Tailored approach:* Problem-solving justice is very much dedicated to the notion that once people reach the justice process, they should be treated as individuals who have a range of complex needs that have often not been the primary source of treatment or intervention. One of

the forces that have driven the expansion of problem-solving courts in the USA is the frustration of many justice professionals and judges who find that the same individuals seem to continually revolve around the system. Problem-solving courts reject the 'one-size-fits-all' approach to criminal cases where judges may merely act as 'case processors'. Instead, decisions in a problem-solving court try to meet the specific needs of each case and address the underlying causes of the criminal behaviour. To facilitate individualised justice, problem-solving initiatives invite many service providers to share the space with them in the court room, in order to create a centralised and collaborative 'one-stop-shop' approach which makes it easier for the offender to access the appropriate help that they need. By customising problem-solving courts and problem-solving initiatives, it seeks to address the underlying problems that an individual presents with, thereby reducing the likelihood of repeat offending and increasing the likelihood that the offender can become a productive and valued member of society.

- *Accountability*: Judicial monitoring is one of the most distinctive characteristics of problem-solving courts and emphasises the accountability of offenders. In order to achieve this, there must be rigorous compliance, monitoring, engagement and in turn clear consequences and sanctions for those who do not comply. This can improve accountability of service providers by requiring that there are regular up-to-date reports and court reviews as a means of ongoing assessment, review of treatment, engagement and progress.

Mental-health courts in the USA: the experience

A substantial number of criminals and offenders suffering from mental illness navigate the criminal justice system (Denckla and Berman, 2001). It is recognised that prisons are not suitable environments to treat and manage those diagnosed with mental illness, yet many offenders with mental illness find themselves returning repeatedly to institutions of the criminal justice system (Watson *et al.*, 2004). Mental-health courts in the USA were established to stop this revolving door, and the Winston Churchill Scholarship provided the opportunity to focus in particular on these courts.

The study began at the Center for Court Innovation in New York,³ which is engaged in research and policy development around problem-

³ <https://www.courtinnovation.org/>

solving courts. It is a non-profit think-tank that helps courts and criminal justice agencies to reduce crime and increase public confidence in the justice system.

A number of valuable lessons were learnt at the Center for Court Innovation. The key one was the importance of the participation of the individual and the relationship with the judge in the problem-solving court. This is fundamental to the effectiveness of problem-solving courts. Wales *et al.* (2010) argue that the observed reduction in recidivism among participants in mental-health courts was the result, in part, of the particular role of the judge in conveying elements of procedural justice. Firstly, the judge demonstrates a heightened level of interpersonal engagement with participants that affords them dignity, respect and voice. Secondly, the judge ensures oversight of accountability for participants and service providers alike; and finally, it is the judge who ensures the transparency of decision making through an open negotiation process.

The Brooklyn Mental Health Court,⁴ based in New York, was visited to witness first-hand how it operated. This Mental Health Court aims to balance the judicial process with the treatment needs of defendants with poor mental health and public and community safety concerns. It aims to identify, assess, evaluate and monitor offenders with mental illness. As well as creating links between the mental health arena and the criminal justice system, the court tries to build public confidence in a system which can deliver high quality, community-based interventions as a realistic alternative to custody. There was an opportunity to meet with the clinical team that serviced the court, which consisted of the team leader, co-ordinator, social workers, psychologists and psychiatrists, and to observe the processing of cases.

In one case a female prisoner had been convicted of a larceny offence in relation to the theft of a credit card, and sent to Riker's Prison (New York's high-security prison). The judge heard her plea that she was in treatment for mental health issues and the reasons around her situation. The judge directed 18–24 months of residential treatment. He was extremely supportive and asked if she understood what the conditions were, accepting and acknowledging that she had a serious drug and alcohol problem. He agreed that he would review and direct her to outpatient treatment and told her that he could then discuss the case with probation, and gave her a range of options and directions in terms of

⁴ <https://www.courtinnovation.org/programs/brooklyn-mental-health-court>

what would happen. He explained that if she did comply she would not go to jail, but if she failed during the course of the treatment, he would indeed send her to Riker's Prison for a period of two to four years.

One of the observations from the visit to Brooklyn Court was the significance of graduations. If the individual successfully completes the judge's direction, then there is a graduation ceremony. These graduations are a very important aspect of the problem-solving courts, where individuals are rewarded with certificates after successful completion of the programme. It is an important motivating factor and an acknowledgement of achievement. Family and friends are invited to observe this graduation; interestingly, 80% of the individuals that come through the Mental Health Courts successfully graduate, which is a true testimony to their success (Aldigé Hiday *et al.*, 2014).

While in New York, there was also an opportunity to meet with consultant forensic psychiatrist Dr Merill Rotter, Director for the Mental Health Court within the Bronx. He advocated for a very strong clinical team to support this Mental Health Court, as the process requires clinically informed judicial oversight and supervision.

An important model that Dr Rotter introduced to mental-health problem-solving courts is the 'sequential intercept model' as set out by Munetz and Griffin (2006). This model provides a conceptual framework for communities to organise targeted strategies for justice agencies involved with individuals with behavioural and health disorders. Within the criminal justice system there are numerous intercept points and opportunities for linkage to services for the prevention of further penetration in the system. The sequential intercept model has been used as a focal point for states and communities to assess available resources, to determine gaps in services and to plan for community change. These activities are best accomplished by a team of stakeholders that cross over multiple systems, including mental health, substance abuse, law enforcement, pre-trial services, courts, jails, community corrections, housing, health, social services, peers, family members and many others. The model helps to assess for appropriate diversion activities and how they may be developed as well as how agencies can better meet treatment needs, when to begin activities to facilitate re-entry and, finally, how to provide appropriate treatment and supervision in the community.

There was also the opportunity to visit the Queens County Supreme Court, where there are a number of problem-solving courts. Time was spent with Judge Marcia Hirrsch and her court team. The ethos of this

mental health court treatment model is one of least restrictive care. It is an attempt to treat the individual in the community and provide wrap-around services for the individual. The judge applies a diversion approach to mental health treatment, ideally without or instead of criminal prosecution. This happens through the court effectively adjourning the participant's case if assessed as suitable, so that they can be dealt with by the court directly intervening to address their assessed underlying needs and risks prior to sentencing. Further visits were carried out in Washington, DC, Carolina and Florida.

The Pretrial Services Agency (PSA) in Washington is equivalent to the UK concept of Probation Services. Meetings with PSA highlighted the seamlessness of the points of contact on the frontline, effectively illustrating the sequential intercept model. The PSA team interview individuals, conduct assessments, carry out drug tests when required and access mental health needs, referring to the diagnostic team for screening assessment if deemed appropriate.

This takes place on a daily basis in the court, which is a pioneering approach. The team, on site, will then determine suitability for the problem-solving court. The report is prepared by the Supervision Treatment Team, with an assessment and conditions of treatment for consideration by the judge.

During the visit to Washington, DC, there was an opportunity to meet with a range of policy makers, including Captain David Morrisett who outlined the importance of the supporting research. There are a growing number of studies in relation to mental health courts that have been subject to rigorous evaluation, and studies that have identified the profiles of defendants who are more likely to benefit from participation in mental health courts (Frailing, 2010; Moore and Hiday, 2006; McNiel and Binder, 2007; Boothroyd *et al.*, 2005). Although the numbers of published mental health studies are still relatively small and the studies vary in the outcomes measured as well as the degree of statistics on the significance of their results, the outcomes have been generally very consistent and positive (Sarteschi *et al.*, 2011; Steadman *et al.*, 2011).

In Carolina and Florida, there was an opportunity to meet with several leading judges in the field of mental health, and the author spent time with Judge Steve Leifman and his team, who highlighted the differences between defendants in traditional courts and those in mental health courts. Mental health court defendants have lower rates of

reoffending, longer times in the community before committing new offences and fewer days in incarceration. The studies that followed participants for a period of time after they exited the mental health courts showed that positive effects can endure (McNiell and Binder, 2007). Mental health participants also demonstrated greater engagement in community-based treatment than non-participants, validating the assumption underlying mental health courts' design and operation (Perez *et al.*, 2003). The combination of treatment and judicial supervision improves engagement and public safety outcomes. (Perez *et al.*, 2003).

Reflections from site visits

1. *A theoretical framework:* The framework informing practice in the courts is based on risk, need and responsivity (RNR) principles that are very well known to probation practice (Andrews and Bonta, 2003, 2010; Bonta and Andrews, 2010) and the risk of harmful reoffending is assessed and understood in addition to individualised needs of the participant being addressed. All of these needs are adhered to in terms of providing evidence-based strategies for working with offenders using validated risk assessment tools, such as the Assessment, Case Management & Evaluation System (ACE), B-SAFER (for domestic violent offenders), Risk Matrix 2000, and Stable and Acute 2007 (SA07) (for sex offenders). These are then matched to the needs and risk of the individual and the appropriate interventions and treatment.
2. *Procedural justice approach:* Practice is based on fair and consistent procedures, allowing the voice of the offender to be heard and ensuring respectful interactions at every stage of the process. There is an underlying principle that offenders can understand the reasons for their decisions and accept their responsibilities. Offenders do recognise the holistic approach and concern of the judge and the genuine interest in their case and personal circumstances.
3. *Multi-agency approach:* This is a very apparent practice within the New York Mental Health Courts and was underpinned by the principle of co-operation, sharing and partnership. This was evident across the practice of defence lawyers, the judge, the treatment accommodation providers, social services, probation and parole.
4. *Success:* A further element that was apparent was the hope and desire for success and the trust that exists between the individual and the

court. The clinical team, the defence, the prosecution and all of the community treatment providers felt that trust was absolutely fundamental to their success, and the relationship with the judge played a big part in a successful outcome in the mental health courts that were visited.

5. *Successful outcomes*: Research indicates that a successful outcome is: the participant's graduation from the courts, the dismissal or conditional discharge of the case at the end of treatment, staying out of prison and remaining free of illegal substances (Frailing, 2010). The successful outcomes can also be personal outcomes for participants who have developed a sense of self-worth and optimism and recognise that they can contribute as a citizen, as a member of their community and, importantly, within their own family.

Conclusion

In the US, jurisdictions such as Washington, DC have based their decision to develop mental health courts, in part, on the success of drug courts. Research showed that participants in drug courts have higher rates of treatment retention and lower rates of recidivism than defendants not going through these types of court (Jewell *et al.*, 2017). Likewise, research shows that mental health courts have reduced recidivism (Anestis and Carbonell, 2014).

Another reason for developing mental health courts was the belief that, fundamentally, untreated or inadequately treated mental health needs contributed to criminal behaviour (Stefan and Winick, 2005). It is also clear that justice involvement can help connect people to appropriate treatment, which can improve the symptoms of mental illness and reduce problematic behaviour and related recidivism. Judicial supervision, including the use of gradual incentives and sanctions, can also help keep people in treatment and the overall combination of treatment and judicial supervision aims to reduce recidivism and improve public safety.

The research undertaken demonstrates that mental health courts in all of the states visited by the author in the USA are supported by investment in resources, evaluation and training, and by building confidence and buy-in from the community and victims' groups (Justice Center, 2015).

Resources are a crucial factor in the establishment of mental health courts. Although once in operation these can be cost-effective,

experience in the United States shows that the development of problem-solving courts including mental health courts requires investment (Berman and Feinblatt, 2015).

Likewise, it is extremely important to build community confidence. It is important that the community and wider public understand that these courts are not a soft option. These courts can be extremely challenging in having individuals confront the reasons for their offending for the first time. It was observed first-hand on this study trip that some initial participants asked to leave the treatment programme because they found it too difficult.

The problem-solving approach in the US is both creative and innovative. The courts clearly target the root problems of offending and apply a rehabilitative approach. Those delivering services were committed to ensuring that the revolving door syndrome was disrupted. It is important that those delivering services are supportive, enthusiastic and committed to the principles of rehabilitation.

The outcomes achieved in the US include reducing overcrowding in jails, encouraging and delivering on family life, reducing the number of victims, saving money and rehabilitating individuals (Butts, 2001).

In Northern Ireland over 70% of individuals within criminal justice have some form of mental health problem. There is clearly a need to develop strategies to deal with those with mental health problems in the justice system. Two pilot problem-solving courts are currently operating in Northern Ireland, one addressing domestic violence and the second substance misuse. It is an opportune time to build on existing knowledge and practice and extend this provision to the area of mental health.

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