

## Pre-sentence Reports in the Irish Youth Justice System: A Shift to Risk-Oriented Practice?

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**Summary:** A pre-sentence report is ordered by the court to assist in relation to the sentencing process. In cases involving child offenders these reports are prepared by Young Persons' Probation (YPP) Officers. YPP is a specialised division of the Probation Service established to work with young people aged 12–18 years. The information presented in the report assists the judge in court in determining the most appropriate means of proceeding with the case. Commentators argue that reports increasingly refer to the risk of reoffending and offender management, and are less concerned with the background, personal circumstances and attitude of the young person to the offence. This paper draws on research exploring contemporary policy and practice in the Irish youth justice system to identify any ideological shifts. It focuses primarily on accounts by YPP Officers of report preparation and how they define their role and daily practice. The findings are discussed with reference to penal policy and practice in other jurisdictions.

**Keywords:** Youth justice, Ireland, Children Courts, young offenders, probation, penal policy, sentencing, pre-sanction reports, risk, compliance, penal policy, risk assessment.

### Introduction

This paper aims to examine the preparation of pre-sentence reports in the Irish youth justice system in relation to perceived changes in penal policy and practice in Anglophone countries.

The origins of pre-sentence reports can be traced to the work of John Augustus in the US during the mid-1800s (Panzarella, 2002), and to the

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practice of social enquiry in the English Police Courts (Magistrates Courts) during the 1870s (Downing and Lynch, 1997).

Commentators suggest that pre-sentence investigation has undergone significant changes since its introduction (McWilliams, 1986) and that the pre-sentence report process has progressed through three eras of reform: Era 1, epitomised by the understanding of the offender as a sinner in need of moral reform; Era 2, marked by the understanding of the offender as suffering from a social deficit and in need of professional treatment; and Era 3, where the Probation Officer no longer pleads for or treats offenders but rather assesses with the aim of bifurcation. Bifurcation is the practice of dividing offenders into two classes – (1) offenders who are deemed to require detention or incarceration as a sanction and (2) offenders who can be worked with within the community (Downing and Lynch, 1997; McWilliams, 1986).

## **Policy and practice change**

It has been said that contemporary penal institutions are undergoing adjustments in relation to practice, structure and underlying ideology (Garland, 2001; Feeley and Simon, 1992). An in-depth discussion on the changing penal policy and practice fields as suggested by Garland (2001) and Feeley and Simon (1992) is outside the scope of this paper. David Garland suggests that Anglophone penal policy and practice have undergone a shift in ideology and operation. He proposes that penal policy and practice have moved from an era that centralised individualised rehabilitation to an era that has reinvented rehabilitation as a means of controlling and managing criminal behaviour as an everyday phenomenon (Garland, 2001). Garland argues that penal institutions have moved away from seeking to treat offending and antisocial behaviour towards a model that manages such behaviour.

Feeley and Simon (1992) suggest that contemporary penal systems aim to manage offenders as opposed to rehabilitate them, and describe contemporary penal institutions as adopting actuarially driven categorisation and thereafter sanctioning as best practice. Within this model the deficit with which the offender is associated no longer requires ‘fixing’. Rather, the deficit represents risk that is in need of expert management (Feeley and Simon, 1992). The role of the expert and practitioner has been transformed from that of ‘treating’ to ‘managing’.

## Young people in the criminal justice system

The particular position of young people within the criminal justice system, where they are referred to as vulnerable beings before the law and in need of extra protections in the face of punitive sanctions, makes the youth justice system a key site in which to explore ideological changes in relation to treatment and welfare approaches. The traditionally strong emphasis on treatment and welfare within youth justice systems may be more resistant to change and provides an important context in which to explore ideological shifts.

Garland (2001) argues that the establishment of the juvenile court emerged from the treatment and welfare ideological framework of the penal-welfare era, a period when young people were recognised as being in need of special treatment with a view to rehabilitation. He goes on to argue that the youth justice system has since become less concerned with rehabilitating young people and has adopted a model more in line with the adult criminal justice system and due process (Garland, 2001).

Further, many practices adopted in the US in relation to young offenders support the New Penology. The number (approximately 2,500 in March 2014; Lazerwitz and Terceño, 2014) of young offenders serving life without parole (albeit that the law is gradually changing in the US, see *Miller v Alabama*<sup>1</sup>), the retention of the death penalty for young offenders until recently (see *Roper v Simmons*<sup>2</sup>), the prosecution of young people in the adult system and the use of 'boot camp' style interventions for young people exhibiting problematic behaviour (Feeley and Simon, 1992, p. 463) are characteristic of the New Penology in practice.

## The Irish criminal justice system and the changing penal field

Kilcommins *et al.* (2010) present a convincing argument on the delayed adoption of penal-welfare ideals in the Irish penal system. They argue that rehabilitation was beginning to take hold in the Irish system during the late 1960s, at the time that it was starting to wane elsewhere. In their view, there was minimal evidence of a 'Culture of Control' or a New Penology taking hold within the Irish penal system at that time.

Changes during the past decade suggest a shift in organisational structures, now more aligned with Culture of Control and New Penology

<sup>1</sup> *Miller v Alabama* 567 U.S. SC (2012).

<sup>2</sup> *Roper v Simmons* 543 U.S. 551 SC (2005).

characteristics. There has been an increase in IT system efficiency.<sup>3</sup> System efficiency is a key part of the government's Strategic Management Initiative (SMI). Launched in 1994, SMI (Humphreys *et al.*, 1999) required the public sector to adopt a business model of organisation, modernisation and enhanced management. A value-for-money examination of the Probation & Welfare Service was published in 2004 (Comptroller and Auditor General, 2004; Probation & Welfare Service, 2006), and in 2010 same-day report assessments for the courts were piloted by the Probation Service (Probation Service, 2011).

Further, the Probation Service Annual Reports 2004–2012 highlight an increased emphasis on evidence-based practice. The National Youth Justice Strategy 2008–2010 (Irish Youth Justice Service, 2008) and An Garda Síochána Youth and Children Strategy 2009–2011 (Garda Síochána, 2009) stress the adoption of evidence-based initiatives as a key goal.

While judges have retained their independence and discretion in sentencing, there has been a move towards sentencing guidelines in the development of the Irish Sentencing Information System (ISIS). ISIS was piloted to provide information that *may* assist judges when sentencing. Data collection began in 2007 and it is envisaged that the ISIS system will develop further (ISIS, n.d.)

There has been an expansion of community service,<sup>4</sup> an incorporation of risk assessment tools across a number of criminal justice agencies<sup>5</sup> and the inclusion of bifurcation policies.<sup>6</sup> Healy (2009) suggests that the Irish Probation Service appears to be moving towards a model more aligned

<sup>3</sup> For example, the PULSE (Police Using Leading System Efficiency) IT system used by An Garda Síochána was established in 1999. In 2010 PULSE incorporated the tracking and reporting of young people before the courts with the Case Management System. The Probation Service Case Tracking System (CTS) in 2008 provided Probation Officers with access to criminal histories for report writing. In 2012 the Probation Service CTS expanded to include monthly reporting on Probation Service clients by community-based organisations.

<sup>4</sup> See The Criminal Justice (Community Service) Act, 1983 (Amended 2011), the Children Act 2001 and The Management of Offenders: A Five Year Plan (1994). See also McNally (2009).

<sup>5</sup> The Probation Service incorporated the LRI-R for adults in 2004 and the YLS/CMI for young people in 2005. The Garda Youth Diversion Projects adopted the YLS/CMI in 2010. The National Youth Justice Strategy 2008–2010 discussed the incorporation of structured risk assessment across the youth justice service sector as a priority.

<sup>6</sup> Early attempts at establishing such practice are evident in the establishment of intensive supervision in 1979 and the Bridge Project in 1991 (McNally, 2009). In 2004 a framework for 'Effective Offender Supervision' was established and in 2006 there was a specific reference to targeting of resources (Probation & Welfare Service, 2006; Probation Service, 2007).

with practices related to the Culture of Control and the New Penology than penal welfarism.

Finally, the incorporation of risk assessment tools across a number of criminal justice agencies suggests an adoption of risk-oriented approaches across various criminal justice agencies. A recent study exploring the use of structured risk assessment within the adult division of probation in Ireland found that Irish Probation Officers combine their clinical judgement with the assessment results, primarily utilising the structured risk assessment as a starting point from which to build according to their professional clinical judgement (Bracken, 2010).

However, many studies report a gap between a risk-oriented policy at institutional level and resistance and negotiation at practice level (Beyens and Scheirs, 2010; Field and Tata, 2010; McNeill *et al.*, 2009; Phoenix, 2010; Robinson, 2001). McNeill *et al.* (2009) argue that hypotheses that focus solely on the macro structures and policy neglect to explore how practice occurs at the micro level. This, they argue, results in what they describe as a 'governmentality gap' – a disparity between institutional and frontline ideology or a lacuna between 'governmental rationalities and technologies on the one hand and the construction of penalty-in-practice on the other' (McNeill *et al.*, 2009, p. 420).

The impact, if any, these changes have had on practice within the Irish system merits exploration. This paper focuses on one component of the system, the pre-sentence report, and seeks to confirm whether characteristics of the reported changes in other jurisdictions are evident in the Irish youth justice system.

### **Young Persons' Probation**

The establishment of the Young Persons' Probation (YPP) division is an example of a modernisation and a broadening of expertise and professionalism, which has been an ongoing process within the Irish Probation Service (McNally 2007, 2009). The establishment of YPP as a special division within the Probation Service in 2006 was a response to the enactment of the Children Act 2001 and aimed to deliver a range of youth-specific supports, sanctions and activities for young people (Probation Service, 2006).

This section will explore contemporary developments (over the past decade) in the Probation Service, with particular emphasis on the YPP division, and will discuss YPP's role in the preparation of pre-sentence reports.

The enactment of the Children Act 2001 has been described as a significant event in the area of Irish youth justice, particularly because the preceding Act (Children Act 1908) had been in place for over a century (Kilkelly, 2006). Youth justice matters developed late in Ireland, but the enactment of the 2001 Act led to significant changes and placed youth justice at the centre of many policy- and practice-based initiatives (Seymour, 2013). The Probation Service plays a central role in implementing the 2001 Act and is a key agent in applying the core principle of the Act – detention as a last resort.

The incorporation of structured risk assessment tools into practice further supported and strengthened the bifurcation process by facilitating the categorisation of young people according to their suitability for community sanctions, and provided courts with information in relation to how best to proceed – incarceration or management of the young person in the community. The expansion of restorative justice approaches created a new position for the victim in the process and cemented the ‘responsibilisation’ of the offender as best practice – rehabilitation being linked to reparation.

The Probation Service Annual Reports 2004–2012 indicate a growing discourse relating to public protection, risk and restorative approaches when referring to young people. The 2009 Annual Report discussed the establishment of ‘Effective Offender Supervision’, where interventions are based on an assessment of risk of harm and reoffending in young people. The above trends are, perhaps, indicative of ideological as well as modernisation changes.

### **Pre-sentence reports in the youth justice system**

Probation Officers prepare pre-sentence reports in many jurisdictions, a practice that has existed for over a century. In Ireland pre-sentence reports in the Children Courts are prepared by YPP officers; this practice was placed on a statutory footing by the enactment of the Children Act 2001.

According to Field and Tata (2010), sentencing is more than a narrow legal process and has traditionally incorporated individual social narratives. Pre-sentence reports are a tool used to facilitate the court in combining the legal and social elements of justice and therefore allow the court to understand issues outside of the offence (Field and Tata, 2010).

There have been conflicting arguments in relation to the influence of actuarial risk assessment in the sentencing process. In line with the penal shifts outlined, international commentators have argued that pre-sentence reports are increasingly concerned with risk assessment and discussions of management over and above social enquiry and welfare interventions (Field and Tata, 2010; Hannah-Moffat and Mauruto, 2010; Netter, 2007; Simon, 2005).

Further evidence of the impact and influence of risk assessment in report writing is visible in the perceived focus on criminogenic needs over and above 'self-defined needs' or 'clinically defined holistic needs', whereby risk assessment may exclude social-cultural understandings of needs and can overlook issues such as deprivation and poverty (unless criminogenic) (Hannah-Moffat and Mauruto, 2010). This emphasis potentially omits needs identified by the client themselves and/or restricts practitioners in including broader non-criminogenic needs identified through their professional judgement.

Commentators (Persson and Svensson, 2012) have also argued that reports now have a double aim. Alongside their traditional role of assisting the court in sentencing, they facilitate post-sentence planning and determining how a sentence should be served.

Others have questioned the ethics of including the results of risk assessment in reports, because decision-making and punishment of a person are being potentially determined by *possible* future behaviour that may never occur (Gledhill, 2011; Hannah-Moffat, 2010; Maurutto and Hannah-Moffat, 2006; Monahan 2006; Netter 2007).

Yet the inclusion of risk assessment enables the practitioner to determine the level of intervention required for the individual – low-level intervention for those rated as low risk and high-level intervention for those rated as high risk – thereby facilitating the efficient targeting of resources to those who need them most (Andrews *et al.*, 2008).

### **Pre-sentence reports in the Children Courts**

Pre-sentence reports can be ordered by the court once guilt is established. A judge may order a report in any case but is obliged to do so in cases where a community sanction, detention or a detention and supervision order is being considered. The yearly average of reports ordered from 2008 to 2013 was 890 (Irish Probation Service Annual Reports 2008–2013).

Pre-sentence reports are constructed in a narrative format based on interviews with the offender and, where appropriate, other relevant persons. The report informs the court on the personal and social history of the young person, their family, accommodation circumstances, education and/or training. It provides information and assessment relating to the current offence and any offending history. It assesses the young person's attitude to the offending behaviour and, where applicable, to the victim, and the level of risk of reoffending in the future. Based on this information, the report will propose a programme for the management of the young person in the community.

The court can also seek information regarding the care and control of the young person and whether any lack of parental/guardianship responsibilities contributed to the offending behaviour. The court can decide not to order a report where the penalty for the offence is fixed by law or the young person was subject to a prior report prepared not more than two years previously, and the attitude of the child and the circumstances of the offence are similar.

## **Methodology**

This paper draws on data collected from in-depth qualitative interviews with five YPP officers. It explores the pre-sentence report from the perspective of the YPP officer, and their understanding of their role in the preparation process and the information-gathering exercise.

The YPP officers were recruited through the Probation Service, which invited all YPP Probation Officers to participate. Six officers responded and five indicated an interest in participating. The five officers worked on different teams in different areas of the country. The sample consisted of three female officers and two male officers. The average length of service with the Probation Service was 13.5 years. Three officers had worked prior to the introduction of structured risk assessment tools and two officers joined the service subsequent to the change in practice.

The interviews were guided by a topic guide consisting of open-ended questions. The topic guide was piloted prior to the study. The interviews lasted, on average, 50 minutes. All five interviews were audio recorded, transcribed and the transcriptions were entered into NVivo for analysis. Content analysis of the sources classified the data into nodes and sub-nodes. The nodes were thematically organised according to patterns



generated from the transcriptions, and were then independently reviewed to explore the reproductive value of the coding system.

The findings were reviewed by reference to characteristics of the Culture of Control and risk-oriented theses to establish the influence of these on the construction of pre-sentence reports in the Irish youth justice system.

The aim of the study was to explore three questions in relation to the pre-sentence report process:

1. YPP officers' understanding of their role in the report preparation process
2. their understanding of the information-gathering exercise
3. what information they considered important to include when preparing the report.

## **Limitations**

The sample size was small and therefore findings should be considered as preliminary results from which further research in this area can be conducted. However, it should be recognised that the in-depth nature of qualitative enquiry penetrates understandings, which supports robust descriptions of a system. While the sample is small, the benefit of the in-depth enquiry should not be underestimated.

## **Findings and discussion**

This section discusses findings resulting from five interviews conducted with YPP officers in relation to their understandings of the pre-sentence report preparation process. It addresses the three aforementioned questions with the aim of establishing the underlying ideological framework applied in practice. Each question is considered below.

*Question 1: How do YPP officers understand their role during the report preparation process?*

All YPP officers reported understanding their role in the pre-sentence report process in dual terms. The first phase was reported in terms of assessing the young person and thereafter producing a report based on the assessment. The second phase was reported in terms of utilising the

information contained in the report to determine how best to proceed in relation to appropriate interventions. The report was discussed as a tool to guide and assist the court in determining the most appropriate sanction and thereafter was reported as assisting the YPP officer in determining how best to intervene in the young person's life following a court ordered sanction supervised by YPP.

All officers included in the study discussed their role in relation to the report preparation process with reference to three overarching themes:

- (a) the identification of risks and needs relating to the young person's offending behaviour
- (b) a shift to a more structured and formal procedure with reference to the report preparation process
- (c) changes to their role as a result of macro changes within the service.

Each is discussed in detail below.

- (a) *The identification of risks and needs relating to the young person's offending behaviour*

When discussing the assessment process all YPP officers adopted a language of risk and referred to their role as identifying risks/needs, selecting a recommendation (risk/need determined) and relaying this information to the court:

*We do the assessment for ... to see if they're suitable for probation supervision and also when that happens we're involved in the supervision of the child in the community ... That's really is our main aim, we identify the risk factors and then we look at how we, it's best to assist I suppose, to assist them in reducing them [risk factors]. (YPP Officer 1)*

This officer described conducting an assessment to compile information relating to the young person's risk factors and then utilising this information to make a recommendation in relation to the most suitable community sanction. This information was discussed in terms of assisting with the formulation of an intervention with the aim of facilitating the young person in reducing any identified risk factors.

On the face of it the role of the officer in the pre-sentence report process has not altered, in so far as they collate information for

presentation to the court to assist in the decision-making process. However, what may have changed is the nature of the information and the manner in which it is collated, and the underlying ideology regarding the type of information that it is important to include. What appears to have changed is the inclusion of a risk status resulting from an assessment conducted with a structured risk assessment tool. Furthermore, the language of the officers, when referring to their role, invariably incorporates the concept of risk.

While the officer has retained the practice of reporting the social and personal background of the young person to assist the court in understanding the young person, the risk discourse, when referring to their role, appears to have incorporated another layer of information reporting. Further, the use of a structured risk/need assessment tool to generate risk information signifies a change in practice.

*(b) A shift to a more structured and formal procedure with reference to the report preparation process*

Three officers included in the study had experience of conducting assessments prior to the introduction of structured risk assessment tools. These officers reported their role in the report preparation process as having become more formal and clinical over the years. They reported this as having occurred as a result of the introduction of a structured risk assessment tool into the process. They regarded practice prior to the introduction of the structured tool as more flexible and less focused on risk of reoffending. They discussed the report preparation process prior to the introduction of risk assessment tools as more concerned with reporting on broader social and personal circumstances, and more an explanatory exercise than a gathering of risk information exercise.

*It's made it more formal, because you'd have things like the area that they live and there isn't really room for that and ... probably it would be different type of language as well. More formal and more limited ... it's a more clinical report nowadays. Which isn't a bad thing but it doesn't really encourage the welfare side of things. (YPP Officer 1)*

The officers who commenced working in the service subsequent to the introduction of risk assessment discussed relying heavily on it at the outset of their career but less so as time went on. While there was discussion in relation to a formalising process, all officers discussed their

retention of a large degree of discretion and, in this respect, their retention of professional clinical judgement as a key tool in relation to practice.

These findings suggest that the YPP officers included in this study understand their role in identifying, reporting and thereafter working to reduce risk. This would indicate that risk-oriented practice is evident in the pre-sentence report preparation process. However, in line with traditional probation practice, the officers discussed retaining and utilising their professional clinical judgement and elements of discretion alongside adopting more structured and formal practices in assessment.

*(c) Changes to their role as a result of macro changes within the service*

Concerns were raised in relation to changes in the officers' role resulting from the shedding of some elements of their traditional social work identity as a result of changes in corporate strategy. The potential for this change to impact on their professional role was raised. Resistance at practice level was discussed, and officers reported maintaining their traditional social work practices during daily practice:

*Traditionally the Probation Service would have worked from a welfare model but we've moved away from that and there is a different corporate strategy and philosophy at the moment. But still a large component of our work would still be welfare really because we have to work with the client in his or her environment, and we do, I would take a holistic approach really. You can't really see the young offender outside of the context of the family and upbringing. I would see a large input around welfare. (YPP Officer 5)*

Concerns were raised regarding the Probation Officers' role as increasingly becoming referral agents and managers of reporting. The Probation Service works in partnership with community organisations,<sup>7</sup> and the practice of working with probation-funded projects has resulted in some officers reporting their role in terms of assessing, categorising and referring on to an appropriate project. This was reported as impacting on their role as they understood it to be:

<sup>7</sup> These organisations accept referrals from the service and thereafter assist offenders in relation to reintegration and resettlement following a period of detention as well as providing programmes that assist with promoting desistance.

*maybe the difficulty of having all those services is that we become a referring agent and that we actually don't do some of the work that we should be doing with them 'cause we are outsourcing it really and ... really like I suppose from my point of view and others who work on the team it's ... it's easy to get into that and you're not using your own skills and that. You just manage it as opposed to working with it. (YPP Officer 4)*

The growing presence of the victim was reported as changing the process by introducing another concern into the matrix. The inclusion of the victim requires officers to widen their interest beyond the offender and consider issues relating to victims and public protection. It realigns the Probation Officer in relation to their client and potentially creates a dual duty of care:

*Well, I've been a Probation Officer for over 17 years and when I initially joined I was a probation and welfare officer ... but I was told very clearly by my manager that I was a Probation Officer not a social worker. And I suppose what has happened over the years is that it has developed into a public protection role and that it's now about public protection. We still meet the needs of the young person, but having been around for so long it's now about public protection. Victim awareness is developing and restorative justice is developing and that would certainly be around the victim. (YPP Officer 1)*

The changing role discussed by the officers alongside the centralisation of the victim and the realignment of public protection concerns is similar to arguments contained in Garland (2001) and Feeley and Simon (1992), and may indicate that some elements of the former models are gradually encroaching into these areas of practice.

*Question 2: What information is important when preparing a pre-sentence report?*

Traditionally the sentencing process was concerned with past events, the offence committed and any criminal history. The aim of the pre-sanction report, in this study, includes concerns relating to future behaviour – what is likely to happen and how such events can be addressed.

Three themes emerged in relation to what information was important when preparing a pre-sentence report:

- (a) distinguishing between low-, moderate- and high-risk offenders through risk assessment (prediction of future behaviour)
- (b) making a determination in relation to the young person's compliance identity (description of young person's present inner behaviour/attitude)
- (c) assisting the court in selecting a sanction/intervention that will result in no further offending and lead to a change in behaviour (change future behaviour).

Each theme is discussed in detail below.

- (a) *Distinguishing between low-, moderate- and high-risk offenders through risk assessment (prediction of future behaviour)*

A theme that emerged from the data on the pre-sentence report preparation process was distinguishing between young people who could be diverted from the system totally, those who required some form of intervention but could remain in the community, and those who required high-level or intensive intervention and/or management in a detention facility – a form of trifurcation.

Officers reported the practice of categorisation as a core aspect of the assessment process and discussed proposing interventions appropriate to the categorisation identity. The inclusion of this information in the report was discussed as central in relation to deciding what level of intervention the young person required and what sanction pathway was most appropriate for the young person:

*If they're showing signs of heading down a prosocial road of course you wouldn't want probation. But some people would take longer and that's why we'd recommend probation. We'd see that there is potential, that the protective factors are pretty good ... The guy we consider to be low risk, we don't want them at all ... Moderate to high are a huge concern for public protection.*  
(YPP Officer 1)

In this respect information relating to the classification of the young person in terms of their risk/needs was key to include in the report as it facilitated reporting on the likelihood of reoffending, identifying criminogenic needs that, if met, were likely to reduce the prospects of future offending, and identifying interventions and sanctions that matched the risk/need status of the young person. This information was

presented to the court to assist in the decision-making process by providing an additional layer of information for the court to consider.

The inclusion of such information and its utilisation in assisting with the decision-making process may indicate a shift in the type of information deemed important to that process. It may, therefore, be argued that there has been a shift towards relying on information that reports on the likelihood of future behaviour. However, the practice of categorisation and classification in terms of potential future risk, followed by sentences appropriate to such classification, is not a new phenomenon within the Irish youth justice system. One need only look to the Children Act 1908 to see the segregation and categorisation of young people according to perceived risk and assessed potential for negative influence on others.<sup>8</sup>

What is new is the structured nature of the assessment adopted by practitioners, the external validation of such practices and the perceived objectivity and empirical soundness of the tools that now assist in determining the risk/need identity of the young person.

Professional judgement alone is no longer a satisfactory means of classifying a young person. The combining of professional clinical judgement with an objective assessment instrument and using such information to guide the decision-making process may be described as a novel development.

While the incorporation of what is described as an efficient and objective tool into the assessment process does indicate a change in practice, the desired goal of the practice has remained the same – namely, categorisation. The retention of professional clinical judgement during the assessment and categorisation process within the Irish system points to a combining of methods as opposed to an adoption of wholly new methods, and may suggest less of a shift to late modern practices when compared to changes reported in other jurisdictions.

<sup>8</sup> Under the 1908 Act a 15 or 16 year old was certified by the court as unruly or as exhibiting a depraved character (s102 (3)), or found to be incorrigible and exercising bad influence on other boys in St Patrick's Institution (Prevention of Crime Act 1908 (s 7)) (Walsh, 2005). In other words, there was a dual model in operation in relation to this age cohort: firstly, depending on how they were perceived by experts, they were sent to either a prison or a Borstal; secondly, those who were initially sent to St Patrick's Institution could be imprisoned as a result of exhibiting certain characteristics while detained (Walsh, 2005).

- (b) *Make a determination in relation to the young person's compliance identity (description of young persons' present inner behaviour/attitude)*

A second theme, in relation to what information was important to include in the pre-sanction report, was the identification of those who will/can engage with the process. Levels of compliance can be difficult to gauge and can result in subjective judgements and implicit communications regarding risk between practitioners. The officers placed a large degree of emphasis on 'risk' and 'protective' factors when writing a report. Both external risk and protective factors could be overridden by the young person's attitude and level of compliance with the process. Thus, a key influencing factor when writing the report, regardless of external risks such as education, living conditions and family support, was the young person's attitude.

The officers described young people as exhibiting three types of compliance identities during the report writing process – the first was obvious non-compliance, the second was partial compliance (compliant in all aspects necessary to succeed in the process), and the third was fully compliant (compliant in all aspects, and deemed to be complying due to an internal desire for change).

*You have the total anti, anti, anti everything, state authority and they tell you they don't want to engage and that's it ... they're just not going to engage ... it's our job to try to engage them, sometimes you're successful and sometimes you just can't do it because they just don't want it ... you can have young people and they can do all the right things and say all the right things with the purpose of getting the whole probation thing over and done with. They could be a low overall score but as soon as they come out of probation they are likely to re-offend again. [Others are] prosocial and they have found themselves being mouthy to a guard and there would be a lot of 'I know that I have done wrong' and they would come from a background where they would be very prosocial and they engage very easily. (YPP Officer 1)*

Compliance was a key influencing factor during the decision-making process. Young persons who fully complied with the requests of the court and the YPP officer were reported as being more likely to have a recommendation for no further involvement with the Probation Service or dismissal under section 1(1)(i) of the Probation of Offenders Act 1907:



*If a first-time offender and it was once off and you felt that the young person would not offend again and there was good support at home, good structures and he was in school and activities, and was doing well – a fairly normal life and things were OK and this was a blip on the landscape and you were reasonably confident that there would be no involvement with further offending behaviour, yeah you would [recommend a dismissal under the Probation of Offenders Act 1907]. If you felt a client didn't require any services I'd be anxious not to bring children into the system when we can avoid it. If they have a lot of support and are doing quite well and it would be of no benefit to them – being involved with us – it wouldn't be in their best interest. (YPP Officer 5)*

Young people who partially complied were reported as often scoring lower than what the YPP officers expected. This sometimes led to a reversion to clinical judgement and alternative means of reporting on the young person. When officers suspected or found a young person to be dishonest or withholding information they communicated these findings to the court. The court was required to make a decision on limited information:

*I was working with a young person and ... I'd say for two months of preparing the pre-sentence report he led me a merry dance and when I was due to complete the YLS, he would have been moderate, but when I made further enquiries he sky-rocketed to high, very high. I couldn't use it 'cause this person had led me on a merry dance and I said in the report that I didn't use the tool 'cause this young person had not been honest and I felt that if I used it, it would not be honest. (YPP Officer 4)*

The level of compliance was an important ingredient in the report preparation process. Cases of non-compliance often resulted in little or no information being gathered due to the young person not complying with requests to meet and divulge such information or due to misleading information. The reporting of non-compliance required officers to form a judgement in relation to a young person as a result of the compliance identity as opposed to other background information that was either not available or considered inaccurate. On these occasions officers reported reverting to their professional clinical judgement to establish a better understanding of the young person.

While non-compliance and partial compliance were associated with risk because they implied that the young person was unwilling to engage

with interventions aimed at reducing offending, they were also associated with young people who could not comply due to external influences such as lack of family support, peer influence or substance abuse issues. In this respect some non-compliance/partial compliance could have treatment implications, more associated with penal-welfarism, where the young person is understood as not being in a position to comply due to external influences, as opposed to refusing to comply. When this occurred, officers reported having to look beyond the young person's attitude and explore reasons why the young person was not complying – something that a risk assessment tool does not always achieve. These situations are evidence of the officers approaching compliance issues in a more traditional manner and using their professional judgement to make a decision on, firstly, the young person's compliance identity and, secondly, why this identity is as it is.

*Say if you're living in an unsupportive environment, it has a domino effect. And for people to engage you need support from your parents and in some cases where the support isn't forthcoming you may not turn up for appointments and you might have to call them. If the parents are disconnected from the young person they're not going to help ... it's very hard to deal with that and number one, at the end of the day, the responsibility does fall with the parents ... but if you're meeting a lot of resistance you'll have to deal with it some way ... you have to highlight it to the court and the court will raise it with them. (YPP Officer 5)*

Officers reported compliance as an important part of the process, particularly in relation to understanding a young person. The often ambiguous nature of non-compliance resulted in the officers relying on professional judgement to negotiate their understanding of the young person and determine how best to proceed. This practice indicates that officers have retained elements of practice related to seeking aetiological understandings of behaviour and signifies the retention of social work ideals – characteristics not aligned with late-modern practice models.

- (c) *Assist the court in selecting a sanction/intervention that will result in no further offending and lead to a change in behaviour (change future behaviour)*

All officers discussed the inclusion of a recommendation regarding the most appropriate intervention to meet the needs of the young person as a

core piece of information during the report preparation. Regarding the main influencing factors relating to offending behaviour, all the officers in this study referred to social and environmental issues. In other words, all officers associated offending behaviour with issues external to the young person. However, in terms of sanctions or interventions, all officers spoke of attempting to work with the young person to help them change their decisions and behaviours to reduce the likelihood of reoffending. They discussed attempting to assist the young person in changing their internal decision-making processes:

*I try to teach them to let it go over the head, over the head instead of taking it head on and always fighting with people head on. You know, being nice gets things done; being aggressive doesn't ... that's the cognitive behavioural therapy and you're trying to change the mindset and the way they think.* (YPP Officer 3)

They spoke of facilitating a young person's internalising behaviour more in line with dominant social norms:

*I use lots of different things, like motivational interviewing; that's what I use most. Motivational interviewing is moving them from not noticing and not being interested in doing something to being interested and making changes. And then making changes last so they become normal or normalised behaviour.* (YPP Officer 4)

Officers referred to assisting young offenders in relation to overcoming, through internal change, the external forces that influence the behaviour. They discussed their role in terms of re-socialising the young person in relation to their attitude to offending behaviour as opposed to treating the 'causes' of the behaviour (which had been described as being external to the young person). While the officers reported this as their goal, they referred to difficulties in achieving this goal as a result of often having to address welfare issues not being addressed by other agencies (non-criminal justice). This often meant responding to crises in the young person's life rather than conducting 'offending work'.

*Your role profile, as set out by the Department of Justice, is assessing for risk and offending behaviour and implementing interventions that focus on offending behaviour. I don't think it actually takes into account the actual*

*day-to-day stuff in respect of welfare, education and all that kind of stuff because the reality is the threshold is very high for the HSE and also for the Education and Welfare Board to become involved. So, so you do end up doing that kind of work, and sometimes it isn't necessarily acknowledged, but I think the general consensus is that everybody knows that that's what you're going to be doing when you take on this job. (YPP Officer 2)*

Only one officer reported working in an area where multidisciplinary teams operated in partnership with the Service, thereby allowing the officer to refer the young person on to services according to their needs. This was reported as allowing the officer to be solely concerned with offending behaviour and changing the young person's internal decision-making. The multidisciplinary model was reported as facilitating probation work by reducing the likelihood of the officer getting overly involved with issues considered outside the Probation Officer's remit:

*We have very good interagency work here, between the HSE and other various agencies, addiction services and that. So when other issues do come up we'd have social workers already involved ... I'd be looking at offending behaviour ... I know speaking to my colleagues in other areas, say about homeless services we have, they think we're very lucky. (YPP Officer 4)*

On the face of it this type of practice is in line with Garland's thesis that the aim of the system is no longer to treat the causes of crime but rather to teach people to desist from offending behaviour. The fact that officers in this study reported ensuring that welfare needs were met either by themselves, when no other agency was available, or through appropriate referral indicates that the late-modern practice in relation to solely focusing on 'offending work' within YPP may not be fully in line with what has been described in other jurisdictions. The referral of young people to projects funded by the Probation Service, more aligned with penal-welfare ideals in treating social deficits, indicates an attempt to retain elements of a welfarist agenda within the probation model.

## **Conclusion**

This paper has explored the pre-sentence report as used in the Children Courts in Ireland with reference to reported changing penal policy and practice in Anglophone jurisdictions. Macro changes in the Probation

Service indicate a move towards a model that prioritises system efficiencies, structured approaches to risk assessment, trifurcation practices and the growing centrality of the victim.

Findings relating to frontline practice suggest that the process of pre-sentence report preparation in the Children Courts has undergone substantial formalisation since its origins as a practice of special pleading to the Court in relation to saving sinners through moral reform. The streamlined approach, particularly evident over the past five to eight years, which has incorporated risk-oriented approaches, illustrates a changing field in pre-sentence report preparation.

While findings indicate adoption of risk-oriented discourse during the report preparation process, this is not as evident when officers discuss their daily practice and interaction with the young people.

The changes, at practice level, discussed in this paper are subtle and are best understood as a gradual change in how the individual is assessed rather than a sudden discernible ideological shift. Many of the changes discussed operate in parallel with practices more aligned with traditional approaches that incorporate treatment ideals, utilise professional judgement and operate an informal approach to information gathering and communication. As has been argued elsewhere in relation to other areas of the system (Kilcommins *et al.*, 2010), the pre-sentence report preparation process in the Irish youth justice system, while adopting elements of the risk approach, may be described as a dual welfare/risk model. It would appear that YPP officers are achieving a balance between risk-oriented approaches on one hand and fulfilling the broader needs of young offenders on the other.

Whether the gradual introduction of risk-oriented approaches is a sign of an encroachment by a new policy incrementally filtering down to practice or whether a dual model will persist remains to be seen. What is evident is that the more obvious changes in organisational structure and operations, alongside the less obvious changes in practice in YPP work, may indicate a more gradual move towards a model more associated with the Culture of Control and the New Penology than was evident when Kilcommins *et al.* (2010) were reporting.

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