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# THE IRISH REVIEW OF COMMUNITY ECONOMIC DEVELOPMENT LAW AND POLICY

*The Irish Review of Community Economic Development Law and Policy is an online journal, published four times a year by the Northside Community Law & Mediation Centre, in Coolock, Dublin. The journal seeks to offer a platform for interaction that encourages greater scholarly and academic collaboration in the areas of social policy, law and community development, promoting the practice of CED law and policy in Ireland and learn about these initiatives in other countries.*

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## Address

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# EDITORIAL

## Andrea Mulligan and Roslyn Palmer

*Editors at Northside Community Law & Mediation Centre.*

*Email: [editor@nclc.ie](mailto:editor@nclc.ie)*

The suggested theme of this issue is Restorative Justice, a key part of the CED lawyer's toolkit. Restorative Justice looks beyond traditional legal procedures for solutions to legal problems. It acknowledges that the law's blunt, adversarial approach is not necessarily the best or the only remedy for interpersonal conflict. Crucially, for the CED lawyer, it seeks to preserve and repair relationships between the parties, and often between parties and the community at large.

We begin with articles by Paul Gavin and Niamh Joyce, and Shane McCarthy that provide a comprehensive picture of Restorative Justice in Ireland today. As well as providing theoretical background, these articles chart the development of Restorative Justice in Ireland, paying particular attention to projects in Nenagh, Tallaght and Limerick. Both articles acknowledge the challenges experienced in Restorative Justice, and the debate that exists as to the extent that the practice may be used to deal with serious crimes. Kevin Sweeney's article focuses on one particular aspect of Restorative Justice in Ireland: the practice as it relates to juvenile justice. The article considers the Restorative Justices provisions of the Children Act 2001 and assesses their success, while considering international scholarship and experience in the area.

Saoirse Brady's article explores a subject beyond our suggested theme: reform of the social welfare appeals process. Social welfare is closely linked to Community Economic Development and it has long been a concern of the Free Legal Advice Centres. The article highlights the fact that the inefficiency of the social welfare appeals process raises key issues of fair procedures and access to justice.

The next two articles form a new section of the Review, which we are pleased to introduce in this issue. The purpose of this section is to publish reports, case studies and interviews that present the work of Community Economic Development organisations. Claire Casey, Dr. Sinéad McNally, Marian Quinn and Aine O'Keefe present a valuable account of the work of the Childhood Development Institute and Foróige Tallaght in Tallaght West. Their in depth experiences of those organisations afford a special insight into the progress of Restorative Justice in that area. Valerie Gaughran, manager of Mediation Northside (part of Northside Community Law and Mediation Centre) in Coolock, Dublin, provides an account of the development of mediation services and in particular of innovation in community mediation. The novel forms of community mediation practiced by Mediation Northside should be of special interest to the CED lawyer.

Finally, we are delighted to publish Stephen Kirwan's review of *Community Economic Development Law - A Text For Engaged Learning* by Susan D. Bennett, Brenda Blom Bratton, Louise A. Howells, and Deborah Kenn. Professor Bennett is a member of this journal's International Advisory Board. As CED law expands beyond the United States, this text book should provide a valuable resource for practitioners, academics and activists in the field.

# Articles

## RESTORATIVE JUSTICE

justice

# RESTORATIVE JUSTICE IN THE REPUBLIC OF IRELAND: REPORTS, RECOMMENDATIONS AND DEVELOPMENTS

## Paul Gavin

*Senior Research Officer for the National Commission on Restorative Justice 2008 – 2009.*

*PhD candidate, Kingston University, London*

*Email: p.gavin@kingston.ac.uk*

## Niamh Joyce

*Intern Researcher for the National Commission on Restorative Justice, summer 2007,*

*Research Scientist at UCD for Dr. Marie Keenan*

*Email: niamh.joyce@ucd.ie*

### Abstract:

In December 2009 the Final Report of the National Commission on Restorative Justice (NCRJ) was published. The NCRJ stated that the introduction of restorative justice into the Irish criminal justice system would provide “a positive contribution to the lives of all citizens, especially those connected to offending behaviour.” Over three years have passed since the NCRJ presented its Final Report. Up to this point restorative justice in Ireland has been legislated for at a youth justice level only. At an adult level, restorative justice operates through two local community schemes in Nenagh in County Tipperary, and Tallaght in south Dublin. This paper will review the work undertaken by the NCRJ as well as outlining the development of restorative justice in Ireland at a youth justice level (as per the Children Act 2001) and an adult level. The authors will also critically examine what has happened since the NCRJ recommended that “a restorative perspective be introduced nationally into the Irish criminal justice system.”

### Keywords:

Restorative justice, juvenile justice, alternative dispute resolution, probation.



## Introduction

In an Irish context, restorative justice can be traced back to the ancient Brehon Laws of dispute resolution.<sup>1</sup> However, interest in the modern concept of restorative justice only began to take off in Ireland in the late 1990s.<sup>2</sup> In 1998 the National Crime Forum<sup>3</sup> reported favourably on the use of restorative justice and in 1999 the Nenagh Community Reparation Project (NCRP) began as a small pilot project funded by the Probation Service. The NCRP facilitates a type of restorative justice known as community reparation. In 2000 Restorative Justice Services (RJS) was established, and it provides two types of restorative justice service: offender reparation and victim-offender mediation. The Children Act (2001) contains the only existing restorative justice legislation in Ireland, and it refers specifically to restorative justice in a youth justice setting. Under the 2001 Act, the Garda Youth Diversion Programme facilitates restorative conferencing and restorative cautioning in accordance with sections 26 and 29 of the Act, while the Irish Probation Service provides family group conferencing under section 78 of the Act. These programmes will be discussed in detail at a later stage in this paper.

In 2007 the Oireachtas Joint Committee on Justice, Equality, Defence and Human Rights published its report on restorative justice and it made a number of recommendations.<sup>4</sup> These included the recommendation that a cross-sectoral working group be created by the Department of Justice, Equality and Law Reform to develop a national strategy for restorative justice that is based on international best practice.<sup>5</sup> In response to this recommendation the then Minister for Justice Equality and Law Reform, Michael McDowell T.D., established the National Commission on Restorative Justice (NCRJ) in 2007. Under its terms of reference the Commission was tasked with reviewing existing models of restorative justice in use in this jurisdiction and contemporary developments in restorative justice in other jurisdictions, as well as considering whether restorative justice models should be further developed in Ireland at a national level.<sup>6</sup>

The aim of this paper is to evaluate restorative justice developments in Ireland since the NCRJ published its Final Report in 2009, and to determine whether the recommendations made by the NCRJ have been adhered to in practice. With regard to both new and existing restorative justice developments in Ireland, the authors put forward the argument that restorative justice needs to be further developed in this jurisdiction to conform to the NCRJ's recommendations as well as international standards in the area of restorative justice. The article will begin by examining some of the main recommendations contained in the Final Report of the NCRJ. It will outline the models of restorative justice

1 The Brehon laws, which prescribed restitution rather than punishment for wrongdoing, date back to Celtic times and formed a justice system that was well-established in Ireland for over 1500 years until they were replaced by common law in the seventeenth century. The development of restorative justice in modern society represents an enlightened, modernised variation of this peaceful approach to justice.

2 David O'Donovan, 'The National Commission on Restorative Justice: A Review and Plan for Development' [2011] IPJ 8, 165 – 184.

3 National Crime Forum, *Report of the National Crime Forum* (IPA, 1998).

4 The recommendations were: **1.** Restorative justice should be developed as a more regular feature of the Irish criminal justice system; **2.** Existing restorative justice programmes for juvenile offenders should be supported and the number of Garda JLOs increased; **3.** The adult restorative programmes in Tallaght and Nenagh should be given greater State support; **4.** Restorative practices for adult offenders should be provided for in legislation; **5.** A cross-sectoral working group should be created to develop a national strategy; **6.** The working group should consider expansion of existing criminal justice programmes to include restorative justice elements; **7.** Foster awareness of restorative justice among the judiciary; **8.** Restorative justice services should collaborate with victim support agencies; **9.** Increased funding for restorative justice should be supported by the State; **10.** The Department of Justice, Equality and Law Reform should assess new ways of configuring and re-deploying resources in the criminal justice area.

5 Houses of the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights, 'Report on Restorative Justice' (2007) [http://193.178.2.84/test/R/2007/REPORT\\_20070103\\_1.html](http://193.178.2.84/test/R/2007/REPORT_20070103_1.html) accessed 28 March 2013.

6 National Commission on Restorative Justice, *Final Report* (Department of Justice and Law Reform, 2009).

which the Commission deemed most suitable for use in Ireland, as well as the offences which may be considered appropriate for referral to restorative justice. The authors will critically examine the restorative justice programmes currently in operation as well as discussing recent developments in the field of restorative justice in Ireland. Finally, having critically examined restorative justice in Ireland by locating its development within the wider context of the NCRJ's Final Report and international literature, the authors will conclude with some recommendations for the ongoing development of restorative justice in Ireland.

## The Work of the National Commission on Restorative Justice

The Final Report of the NCRJ was published in December 2009. To begin with, the Commission made a bold statement of intent by moving away from Marshall's widely accepted definition of restorative justice and formulating its own definition, giving due regard to its terms of reference. Marshall defined restorative justice as "a process whereby all parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future."<sup>7</sup> The Commission's new definition of restorative justice stated:

*Restorative justice is a victim sensitive response to criminal offending, which, through engagement with those affected by crime, aims to make amends for the harm that has been caused to victims and communities and which facilitates offender rehabilitation and integration into society.<sup>8</sup>*

This definition set the tone for the rest of the report. The NCRJ placed equal emphasis on the importance of victims, offenders and the wider community in the restorative justice process. The NCRJ's definition of restorative justice is arguably more comprehensive than Marshall's as it notes the potential benefits of restorative justice for victims and offenders and it makes a distinct reference to the central role of the community in the restorative process.

In recommending that restorative justice be introduced into the Irish criminal justice system, the NCRJ considered the following three model options of restorative justice to be most appropriate for use in Ireland:

- ▶ Victim-Offender Mediation
- ▶ Restorative Conferencing
- ▶ Reparation Panels.

Victim-Offender Mediation (VOM) normally involves a face-to-face meeting between victim and offender<sup>9</sup> and takes place in a controlled environment. It provides the victim with the opportunity to explain how the offence has impacted on them, and it also allows the offender to put things right with the victim, usually by some form of reparation and apology. VOM has benefits for both victim and offender. On the part of the victim it can grant them a sense of empowerment and autonomy which the offence itself may have stolen from them. It can also result in any monetary loss to the victim being repaired through reparation. Benefits to the offender include enabling them to see and learn of the impact of the offence and a greater possibility of reducing the risk of re-offending.<sup>10</sup>

<sup>7</sup> Tony Marshall, *Restorative Justice: An Overview* (Home Office, 2009) 5.

<sup>8</sup> National Commission on Restorative Justice (n 8) 34.

<sup>9</sup> VOM can be indirect or direct. As mentioned above, direct victim-offender mediation involves a face-to-face meeting. Indirect victim-offender mediation can take place in a number of ways including the following: through video conferencing, by letter, by telephone or via shuttle dialogues (where the facilitator meets with the offender and the victim separately).

<sup>10</sup> National Commission on Restorative Justice (n 8) 38 - 42.



Restorative Conferencing is different to mediation as it involves more parties. The main goals of the conference are to provide an opportunity for the victim to be directly involved in the discussion of the offence and in decisions regarding sanctions, as well as increasing the offender's awareness of the human impact of their behaviour. It is a structured event which involves the following participants in the process: the victim, offender, facilitator, family members, friends, community representatives and State services such as police, social workers and probation officers. The reason behind the extended group is that in some way they are all connected to the victim or offender and therefore are in some way all affected by the crime committed. They also provide support for the victim and offender.<sup>11</sup>

The Reparation Panel is essentially what has been in use in both Nenagh and Tallaght as Community and Offender Reparation Panels. Such panels usually consist of a small group of citizens who undertake face-to-face meetings with offenders. During the meeting they discuss the nature of the offence and its consequences and they develop a set of proposed sanctions to which the offender must agree.<sup>12</sup>

Another task of the NCRJ was to consider a specific range of offences which would be deemed suitable for restorative justice. In order to determine exactly what type of offences might be considered appropriate the Final Report devotes an entire chapter to Criminal Sanction Options in the Irish Courts. National data from the District Court and the Circuit Criminal Court was gathered, and this examined the range of offences presenting before the courts as well as the disposals utilised by the courts in each case. The NCRJ refused to prescribe a set list of offences for which restorative justice would be suitable. It stated that it did not "deem it necessary to adopt a definitive range of offences for which restorative justice would be most applicable, but considers that persons appearing before the District and Circuit Criminal Courts are those most appropriate."<sup>13</sup> The NCRJ went on to recommend that:

*Initially, offences where sentences of up to three years' imprisonment are being considered by a court should be eligible for referral to restorative justice. While no offence should in principle be excluded from the restorative process, certain serious offences such as domestic violence and sexual assaults should be excluded from the initial phases of implementation.*<sup>14</sup>

Furthermore, the NCRJ recommended that legislation be introduced to provide for restorative justice as an option to be considered by the courts. It stated that legislation will "confer legitimacy on the process" while enabling "a continuity of operation and consistency of application that is not available from ad hoc arrangements."<sup>15</sup> The NCRJ recommended that any legislation should clearly articulate the underlying assumptions of the restorative process. Specifically, any legislation should ensure that:

- ▶ The response to the crime is aimed at repairing the harm suffered by victims
- ▶ Offenders accept responsibility for their actions and are made aware of the consequences
- ▶ Victims have the opportunity to express their views and participate in the process
- ▶ The broader community has a stake in the process.<sup>16</sup>

11 *ibid.*

12 *ibid.*

13 *ibid.*, 81.

14 *ibid.*

15 *ibid.*, 84.

16 *ibid.*, 85

Legislation will be discussed in greater detail in the final section of this paper. The next section will critically examine the restorative justice programmes for juveniles that were established under the Children Act (2001), as well as the Nenagh and Tallaght pilot projects for adults (NCRP and RJS). Each of the programmes will be evaluated in terms of their development before and after the publication of the NCRJ's Final Report in 2009.

## A Critical Review of Restorative Justice Programmes in Ireland

This section will evaluate well-established restorative justice programmes in Ireland in the context of the following recommendations made by the Oireachtas Joint Committee on Justice, Equality, Defence and Human Rights and the NCRJ:

- ▶ Restorative justice should be developed as a more regular feature of the Irish criminal justice system;
- ▶ The adult restorative programmes in Tallaght and Nenagh should be given greater State support;
- ▶ Foster awareness of restorative justice among the judiciary and other key stakeholders;
- ▶ Increased funding for restorative justice should be supported by the State.

## Garda Youth Diversion Programmes

Section 26 of the Children Act (2001) provides the legislative basis for the Garda Youth Diversion Programmes to facilitate both restorative conferencing and restorative cautioning. Section 29 of the Act provides for the convening of a conference in respect of a child who is being supervised by a Juvenile Liaison Officer. The 2001 Act replaced the Juvenile Liaison Officer Scheme, which had been in place since the 1960s, with the Diversion Programme. The aim of the programme is to divert any child who takes responsibility for their offending behaviour away from the criminal justice system by way of a caution, which can be either formal or informal.

There are currently over 100 Garda Diversion Projects in operation throughout the country and in 2011 there were 27,384 incidents referred to the Diversion Programme. The total number of children referred was 12,809 and 903 referrals were dealt with using restorative justice in 2011.<sup>17</sup> Many of these referrals involved cases of assault, both on members of the public and on members of An Garda Síochána, robbery, arson, burglary and public order. Although 903 is a small percentage (7%) of over 12,800 referrals, it is encouraging to see the increased use of restorative justice year on year. In 2006 there were only 307 cases where restorative justice was used.<sup>18</sup> This equates to an increase of over 150% in the use of restorative justice in 5 years which is a very positive development.

Police-led programmes are not unique to Ireland and are used in Australia, the USA and the United Kingdom to name but a few other jurisdictions. Statistics shows that police-led programmes are highly effective and report high levels of satisfaction from participants. An evaluation of police-led conferencing in New South Wales<sup>19</sup> showed that 70% of contractual obligations were fulfilled by offenders. In the USA evaluations have shown that of those who took part in restorative conferencing, over 90% of victims and offenders expressed satisfaction, felt that they were treated fairly and would recommend the process to others. 94% of victims felt that their opinions were taken into account and

17 An Garda Síochána, *Annual Report of the Committee Appointed to Monitor the Effectiveness of the Diversion Programme* (AGS, 2011) 5.

18 An Garda Síochána, *Annual Report of the Committee Appointed to Monitor the Effectiveness of the Diversion Programme* (AGS, 2006) 5.

19 Lawrence Sherman and Heather Strang, *Restorative Justice: The Evidence* (The Smith Institute, 2007).

94% of offenders felt that they had acquired a better understanding of how the offence affected the victims.<sup>20</sup> In the United Kingdom an evaluation of the Thames Valley Police Initiative reported that:

- ▶ Offenders and victims were generally satisfied that they were treated fairly
- ▶ Victims and offenders felt that the encounter helped the offender understand the effect of the crime
- ▶ Over half of the participants gained a sense of closure and felt better because of the meeting and four-fifths felt holding the meeting was a good idea.<sup>21</sup>

Irish figures on the Garda Youth Diversion Programme are indicative of the programme's ongoing success following the publication of the NCRJ's Final Report. Empirical findings from similar programmes in Australia, the USA and the UK underline high rates of victim and offender satisfaction with the process, demonstrating the internationally recognised viability of police-led restorative programmes for juveniles.

### Court Referred Probation Service Conference

Section 78 of the Children Act (2001) provides for family conferencing which is organised by the Probation Service. These conferences explore ways in which the young person can take responsibility for their behaviour and face the consequences of their actions, and if possible, make amends to the victims. Between October 2004 and January 2009, 173 such conferences were referred to the Probation Service by the courts. 145 took place and of these 97 were successful, leading to the completion of 86 action plans and the disposal of the cases concerned. 48 cases were unsuccessful which resulted in the criminal proceedings being re-activated in the courts.<sup>22</sup> In 2011 only 19 family conferences took place. This represents a decrease of over 40% of the figure for 2009 when 32 took place.<sup>23</sup>

The small number of family conferencing events taking place in recent times is concerning, especially when compared to the increase in numbers being referred to the Garda Diversion Programme year on year. This suggests either a lack of awareness on the part of the judiciary in the area of restorative justice or that offenders are being dealt with through the Diversion Programme and therefore do not require a court referred conference. However, a solution to this worrying trend seems to have been found in Limerick: the recently established Le Chéile pilot project (this project will be outlined in the next section of this paper) accepts referrals from Young Persons' Probation for restorative conferencing, in addition to referrals for victim-offender mediation, victim-impact panels, the victim empathy programme and reparation.

Although the Le Chéile project has not been placed on a statutory footing, since its establishment in 2010, the programme has had a steady uptake of referrals, with the capacity to receive up to 40 referrals annually.<sup>24</sup> Le Chéile's restorative programme is currently confined to Limerick city. Taking into account the fact that the programme is still developing, its success in terms of the steady uptake of referrals since its inception is exemplary.

20 Paul McCold & Benjamin Watchell, *Restorative Policing Experiment: The Bethlehem Pennsylvania Police Family Group Conferencing Project* (1998) as cited by David O'Mahony & Jonathan Doak, *Restorative Justice and Criminal Justice: International Developments in Theory and Practice* (NCRJ, 2009).

21 Carolyn Hoyle, Richard Young & Roderick Hill, *Proceed with Caution: An Evaluation of the Thames Valley Police initiative in restorative cautioning* (Joseph Rowntree Foundation, 2002) 30 -42.

22 National Commission on Restorative Justice (n 8) 45.

23 Irish Probation Service, *Annual Report* (IPS, 2011) 39.

24 Conversation with Mary Henihan, Restorative Justice Coordinator of Le Cheile, 6 April 2013.

Although there is a slight distinction between family group conferencing and Le Chéile's restorative conference, insofar as Le Chéile's restorative conference does not require State agencies such as social workers to attend the restorative event, Le Chéile demonstrates the potential of external restorative services to process the referrals received by Young Persons' Probation for restorative conferencing. Referrals to external restorative services such as Le Chéile could dramatically increase the number of referrals for restorative conferencing if such services were made available on a national scale.<sup>25</sup> The use of external restorative justice services for juvenile restorative justice is an established practice in jurisdictions such as Belgium, which has a juvenile restorative justice service called Arpège that caters for the French-speaking part of Belgium, and OSBJ is the equivalent restorative service for juveniles in the Flanders region. These services operate on a national basis and the success of the programmes is reflected in the amount of referrals they receive on an annual basis. In the Flanders region alone<sup>26</sup>, OSBJ received 4,050 referrals for victim-offender mediation in 2009 and 114 referrals for restorative conferences in that same year.<sup>27</sup> Ireland could certainly benefit from a similar restorative justice service on a national scale.

### **Adult Restorative Schemes: Nenagh Community Reparation Project (NCRP) and Restorative Justice Services (RJS)**

The NCRP began in 1999 as a small pilot project funded by the Probation Service. The type of restorative justice model used by NCRP is the Community Reparation Panel. The aims of the programme are as follows:

- ▶ Enhance community safety and protection
- ▶ Develop alternative measures for less serious crime
- ▶ Strengthen the community by involving victims, offenders and community members in a balanced approach to criminal behaviour
- ▶ Reduce crime by increasing offender accountability to victims and the community.<sup>28</sup>

Funding allocated to the NCRP at the initial phases of implementation was minimal and this was reflected in a 2004 evaluation of the project.<sup>29</sup> This evaluation showed that in the 12 months from September 2003 to September 2004 there were only 21 offenders referred to the project. Between 1999 and 2007 there were 105 referrals – an average of 13 cases per year. While this figure is too small to have any real statistical significance it is worth pointing out that from 1999 – 2006 there were 94 referrals and of these, only 18% re-offended.<sup>30</sup> The majority of referrals to the project at the time were for first-time offenders, and for offences which would not normally attract a custodial sentence but which could result in referral to the Probation Services. However, the programme understandably had to develop its eligibility criteria on an incremental basis and the NCRP did not limit its eligibility criteria to first-time offenders on a long-term basis (as discussed below).

25 *ibid*, 30 April 2013.

26 Belgium has a population of 10,839,905 people with over 6,000,000 of those inhabitants living in the Flanders region.

27 Johan Put, Inge Vanfraechem & Lode Walgrave, 'Restorative Dimensions in Youth Justice' [2012] YJ, 12(2) 90.

28 Nenagh Community Reparation Project, *Report to the National Commission on Restorative Justice* (2007) p. 3.  
<http://www.nenaghreparation.com/reports/ncrp-report.pdf> accessed 28 March 2013.

29 Nenagh Community Reparation Project, *Evaluation* (2004).  
<http://www.nenaghreparation.com/reports/ncrp-evaluation-2004.pdf> accessed 28 March 2013.

30 Nenagh Community Reparation Project (n 30) p. 10.

RJS was established in 2000. It operates in Tallaght in south Dublin and it provides offender reparation and victim-offender mediation. RJS provides “an opportunity for individuals involved to address the damage and hurt caused by the offending behaviour.”<sup>31</sup> According to its Annual Report in 2007, RJS dealt with 81 referrals to the offender reparation programme and 75 successfully completed their contracts. Between 2004 and 2007 the victim-offender mediation programme received a total of 51 referrals arising from 55 offences. Of the 51 referrals there was only an agreed outcome in 45% of cases.<sup>32</sup> In light of this low percentage it is submitted that more detailed evaluations of RJS cases are necessary in order to review the outcomes of the cases and the factors that could contribute to a higher rate of agreed outcomes overall.

In early 2011 the national media reported a proposed expansion of the pilot schemes in operation in Tallaght and in Nenagh.<sup>33</sup> The scheme in Tallaght received a small increase in funding enabling the scheme to expand to manage up to 300 offenders.<sup>34</sup> The project in Nenagh received an increase in funding of €65,000 to provide the necessary services to manage up to 100 offenders in Nenagh while also expanding beyond the county of Tipperary.<sup>35</sup> Sufficient funding is an essential consideration if restorative justice is to be expanded throughout the country and given the perilous state of the economy, this may prove to be more and more difficult in the future. With this in mind, restorative justice has the benefit of being a much less expensive option than traditional criminal justice sanctions and in the long run it could save the exchequer millions. This issue will be discussed at a later stage in this paper.

The scheme in Tallaght which was running in the local District Court has now been extended to the Criminal Courts of Justice in Dublin.<sup>36</sup> At District Court level, 12-16 judges are now involved in referrals to RJS.<sup>37</sup> The increasing number of judges making referrals to RJS demonstrates that the Commission’s call for a positive buy-in from stakeholders has been taken on board by RJS and various members of the judiciary in Dublin. Between 1999 and 2010, the average number of cases referred to the NCRP on an annual basis was 16. However, in 2011, the total number of referrals to the programme was 40, following the expansion of the programme to four District Court areas.<sup>38</sup> In 2012, the programme also began to receive referrals from Birr District Court in County Offaly. The programme received a total of 55 referrals from all five District Courts in 2012.<sup>39</sup> Both the Nenagh and Tallaght schemes have therefore expanded considerably in terms of the courts referring cases to the programmes and the increasing number of referrals. Despite receiving additional funding in recent years, the number of referrals to the programmes could be higher. It is submitted that legislation would resolve this issue as many commentators believe that by according restorative justice the status of legitimacy through legislation, this would ensure a consistent flow of referrals<sup>40</sup>.

31 Shane McCarthy, ‘Perceptions of Restorative Justice in Ireland: The Challenges of the Way Forward.’ [2011] IPJ 8, 195.

32 National Commission on Restorative Justice (n 8) 46 – 47.

33 James Hayden, ‘Restorative justice scheme to be rolled out in two counties’ *Irish Examiner* (12 January 2011) <http://www.irishexaminer.com/ireland/restorative-justice-scheme-to-be-rolled-out-in-two-counties-141777.html> accessed 28 March 2013.

34 *ibid.*

35 *ibid.*

36 Peter Keeley, Restorative Justice Service Tallaght. ACJRD Conference entitled *An Update on the Probation Service Restorative Justice Projects*. (Dublin: 21 November 2012).

37 *ibid.*

38 Emily Sheary, NCRP Coordinator, Correspondence by telephone, Thursday 14 March 2013.

39 *ibid.*

40 David O’Donovan (n 4) 176.

In relation to the offenders admitted to the programme, NCRP initially limited its cases to first-time offenders. However, in recent years, the programme has also accepted offenders who have previous convictions.<sup>41</sup> This development is commendable as rejecting offenders with previous convictions could arguably create a degree of bias with first-time offenders receiving preferential treatment as regards the option of restorative justice. Another noteworthy development regarding NCRP and RJS concerns the types of offences that the programmes process. In previous years, the majority of the cases referred to NCRP were public order and other lower level offences. However, in 2012, the programme accepted some higher tariff offences such as section 2 and section 3 assault, as well as higher level theft.<sup>42</sup> In a similar vein, at the end of 2011, RJS introduced a reparation model for higher tariff offences.<sup>43</sup> However, by November 2012, it had been in operation for 12 months with no evaluations available as of yet.<sup>44</sup>

As regards re-offending, by 2012, NCRP reported that 75-80% of offenders had not re-offended.<sup>45</sup> According to RJS, in respect of the lower tariff model of restorative justice, 78% of offenders admitted to the programme had not re-offended. These findings therefore indicate relatively low rates of recidivism.<sup>46</sup> Such low rates of recidivism mirror similar results in other jurisdictions. Sherman and Strang<sup>47</sup> have cited studies in Australia, the UK and the USA, all of which have shown a reduction in recidivism after violent crime when the parties engage in restorative processes.

NCRP and RJS have therefore evolved considerably in recent years with respect to the number of District Court areas referring cases to the programme, the average number of annual referrals, the characteristics of the offenders admitted to the programme and the types of offences suitable for the programme. These developments are in line with the recommendations the NCRJ made with respect to the ongoing development of existing restorative programmes in Ireland. While the expansion of the schemes in operation is welcome, it is disappointing that there were no new schemes suggested for piloting in different areas throughout the country. However, given the current economic climate, perhaps we should not expect too much too soon. Given that the NCRJ estimated that between 210 and 420 diversions from custody by restorative justice could save between 42 and 85 prison spaces per annum, and a financial saving to the State with savings of between €4 - 8 million,<sup>48</sup> the schemes in Nenagh and Tallaght should be closely monitored and reported on. Overall, the Probation Service appears to have adhered to the recommendations made in the NCRJ's Final Report in 2009, as evidenced by the following developments in the context of both the Nenagh and Tallaght pilot projects:

- ▶ Positive buy-in from the stakeholders
- ▶ Significant increase in the number of referring courts and referrals
- ▶ Models now processing higher tariff offences.
- ▶ Changing profile of the referred offender.<sup>49</sup>

41 Emily Sheary (n 40).

42 *ibid.*

43 Peter Keeley (n 38).

44 *ibid.*

45 Emily Sheary, Nenagh Community Reparation Project. ACJRD Conference entitled *An Update on the Probation Service Restorative Justice Projects*. (Dublin: 21 November 2012).

46 Peter Keeley (n 38).

47 Lawrence Sherman & Heather Strang (2007) (n 21) 68.

48 National Commission on Restorative Justice (n 8) 108.

49 Una Doyle, An Overview of Restorative Justice within Probation Service Practice. ACJRD Conference entitled *An Update on the Probation Service Restorative Justice Projects*. (Dublin: 21 November 2012).



While these developments are encouraging, the programmes should be subject to ongoing evaluation and scrutiny in order to determine whether they can sustain increasing levels of referral as well as maintain a reduction in recidivism rates. Furthermore, the Final Report of the NCRJ was published in 2009. Since then there have been changes in costs, in the number of offences before the courts and in the number of offenders in prison. Therefore, the original projections in terms of diversion and savings, which will be examined in the final section of this paper, would need to be revised to be brought in line with more up to date figures. In addition to developments in the context of existing restorative programmes in Ireland, the next section demonstrates a renewed interest in restorative justice within the Irish jurisdiction as new research and practices have recently emerged.

## Further Restorative Justice Developments in the Republic of Ireland

### Restorative Justice Prison Pilot Projects

The Irish Prison Service recently launched pilot projects in Wheatfield Prison and the Dochas Centre in order to introduce restorative practices in a prison context.<sup>50</sup> The aim of both projects is to provide prisoners with another avenue to:

- ▶ Address and take responsibility for their offending behaviour
- ▶ Make reparations to the community
- ▶ Raise victim awareness among the prison population.<sup>51</sup>

The pilot projects have focused on the following restorative practices so far: conflict awareness/resolution; disciplinary adjudications; and community reparations. Victim-offender conferencing has not yet been implemented as a feature of either project but prisoners have already expressed an interest in engaging in restorative justice processes with their victims and it is envisaged that the pilot projects will begin facilitating victim-offender conferencing in 12 months' time.<sup>52</sup> The prison pilot projects have only just begun so as yet, there are no programme evaluations available.<sup>53</sup> However, the pilot projects will be evaluated after two years with a view to further developing restorative justice practices in Irish prisons and potentially developing a similar practice guide to the National Offender Management Service (NOMS) guide,<sup>54</sup> which has been drawn up by the Thames Valley Partnership in the UK<sup>55</sup> in the context of prison-based restorative justice.<sup>56</sup> The Wheatfield and Dochas pilot projects should receive full support from the Department of Justice and Equality in light of the NCRJ's recommendation that restorative justice can be applied at a post-court stage, in respect of persons in custody.<sup>57</sup> The Commission supports such measures as part of a pre-release programme.<sup>58</sup> The literature suggests that it is best to offer restorative justice at all stages of the criminal procedure

50 Austin Stack, Restorative Justice and the Irish Prison Service. ACJRD Conference on *Varied Applications of Restorative Practice*. (Dublin: 21 January 2013).

51 Irish Prison Service, *Strategic Plan 2012-2015* (Department of Justice and Equality, 2012) 31.

52 Austin Stack (n 52).

53 Austin Stack, Correspondence by telephone, Friday 1 March 2013.

54 The NOMS practice guide focuses on both community and prison-based restorative justice conferences.

55 Thames Valley Partnership, *Wait 'Til Eight: An Essential Start-up Guide to NOMS RJ Scheme Implementation*. (National Offender Management Scheme, 2013).

56 Austin Stack (n 55).

57 National Commission on Restorative Justice (n 8) 20.

58 *ibid*, 108.

– including within the prison setting – so that the parties themselves can choose the right moment to engage in restorative processes.<sup>59</sup> The Wheatfield and Dochas pilot projects therefore represent a positive and necessary development in the context of RJ in Ireland.

### Facing Forward/UCD Project: Sexual Trauma and Abuse: Restorative and Transformative Possibilities?

Facing Forward, a non-governmental organisation, is currently undertaking research in collaboration with UCD on the possibility of using restorative justice to address sexual trauma and abuse. Dr. Marie Keenan of UCD is the project's Principal Investigator. One of the aims of the study is to discover if there are gaps in current service provision for those who have suffered sexual trauma and those who have offended in the area of sexual crime, as well as their families and extended networks.<sup>60</sup> The research design is informed by participatory and emancipatory action research. By interviewing victim-survivors and offenders and a wide range of stakeholders and service providers, the project aims to discover if there is a need for restorative approaches to sexual crime in Ireland.<sup>61</sup> The results of the research will inform decisions regarding the possible future development of a restorative justice programme in Ireland for people who have been affected by sexual crime, for those who have committed sexual abuse/violence, and for the families and communities of both. <sup>62</sup> Although the NCRJ recommended in its Final Report that restorative justice should not be used in Ireland for serious crimes such as sexual offences at the initial phases of implementation, an ever-increasing body of international research on restorative justice in cases of sexual violence has emerged in recent years.<sup>63</sup> Daly asserts that contrary to those who are critical of using restorative justice for cases of sexual violence, research findings are generally positive.<sup>64</sup> In an Irish context, Keenan submits that restorative practices have a lot to offer in the aftermath of sexual abuse, as long as such practices are conceived alongside and not instead of the criminal and civil law proceedings.<sup>65</sup> Although research in this area is still in its infancy in Ireland, the suitability of restorative justice in cases of sexual violence within the Irish jurisdiction may be subject to review in the future.

### Le Chéile Pilot Project

As regards recent developments in the area of juvenile restorative justice in Ireland, Le Chéile (a not-for-profit organisation that provides a mentoring service for young people) established the Restorative Justice Pilot Project in Limerick for youth offenders, in close collaboration with Young Persons' Probation, in 2010.<sup>66</sup> The project is funded by Irish Youth Justice Service (IYJS) and the Limerick Regeneration Agency. It targets juvenile offenders aged 12-18 who have been referred to Young Persons' Probation and it uses several types of restorative justice models to address juvenile offending: victim-offender mediation; victim impact panels; and restorative justice conferencing.

59 Kristel Buntinx, *Victim Offender Mediation in Severe Crimes*. Paper presented at a meeting jointly convened by the Probation Service and Facing Forward. Dublin: 30 May 2007.

60 Conversation with Dr. Marie Keenan, 27 March 2013.

61 *ibid.*

62 *ibid.*

63 See for example: Mary Koss et al. (2004) 'Expanding a Community's Justice Response to Sex Crimes through Advocacy, Prosecutorial and Public Health Collaboration: Introducing the RESTORE Program' [2004]. JIV 19; and Shirley Julich, et al, *Project Restore: An Exploratory Study of Restorative Justice and Sexual Violence* (AUT University, 2010).

64 Kathleen Daly, 'Conferences and Gendered Violence: Practices, Politics and Evidence' in Estelle Zinsstag & Inge Vanfraechem (eds), *Conferencing and Restorative Justice: International Practices and Perspectives* (OUP, 2010) 118.

65 Marie Keenan, *Child Sexual Abuse and the Catholic Church: Gender, Power and Organization Culture* (OUP, 2012) 272.

66 Le Chéile, Le Chéile 'Restorative Justice Pilot Project Launched' *Le Chéile News* [2010] Vol. 1(2).

Le Chéile also places particular emphasis on reparation and it has developed a victim empathy programme which can be used for various types of offences.<sup>67</sup> As the project is newly established, there are no concrete evaluations of the programme available as yet. However, Le Chéile has highlighted that in practice, the programme is gaining momentum at the grassroots level in Limerick.<sup>68</sup> The commitment that Young Persons' Probation has shown in referring cases to Le Chéile has contributed significantly to the programme's success to date.<sup>69</sup> As we will discuss in the next section, building societal support for restorative justice is crucial for the ongoing development of restorative practices in Ireland.

## Analysis and Recommendations

Given that the Final Report of the NCRJ was published over three years ago it could be argued that, up to this point, successive governments have been slow to act on its recommendations. However, there are a few points which must be considered. The NCRJ was established during a very different economic climate in 2007. By the time its Final Report was published it had become certain that any new initiatives, regardless of any long-term savings that they may offer, would only be considered in light of the deteriorating state of the public finances. Nonetheless, the principles of restorative justice, as well as the recommendations laid out in the NCRJ Final Report, appear to have popular political support and a recent debate in Seanad Éireann would support this claim.<sup>70</sup> The Minister for Justice and Equality, when recently questioned on the progress of implementing the recommendations of the NCRJ, stated:

*The Probation Service is now in the process of finalising an integrated Restorative Justice Strategy. This strategy will set out a series of actions which the Service will drive forward, in collaboration with its partners, to bring about greater availability and integration of restorative practices at various stages of the criminal justice process. For my part, my focus is to develop, to the greatest extent possible, the range of non-custodial options available to the courts. I believe restorative justice has a place in that range of options and it is my intention to build on the progress being made.*<sup>71</sup>

While the Probation Service intends to expand restorative justice practices, it has implemented the widest strategy possible at present in light of the economic climate.<sup>72</sup> Therefore, while the rate of expansion may be slow, the increase in funding in 2011 is more than welcome.

67 Le Chéile (2013) [www.lecheile.ie](http://www.lecheile.ie).

68 Sean Kinahan, Le Chéile Restorative Justice Pilot Project Limerick. ACJRD Conference entitled *An Update on the Probation Service Restorative Justice Projects*. (Dublin: 21 November 2012).

69 Mary Henihan (2013) (n 26).

70 <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/seanad2013032000037?opendocument> accessed 29 March 2013.

71 Dáil question addressed to the Minister for Justice and Equality (Mr. Shatter) by Deputy David Stanton. <http://www.dailwatch.ie/en-gb/users/david-stanton> accessed 29 March 2013.

72 Vivian Guerin, Comment made at the ACJRD Conference entitled *An Update on the Probation Service Restorative Justice Projects* (Dublin: 21 November 2012).

Critically, the Irish criminal justice system may not be ready for the introduction of restorative justice at a national level just yet. McCarthy<sup>73</sup> has highlighted a “gap in the knowledge of legal practitioners and possibly also among other key players and stakeholders within the Irish criminal justice system with regard to this entire area of law.”<sup>74</sup> The most striking feature of McCarthy’s research is the finding that 75% of those questioned did not know what restorative justice involved.<sup>75</sup> If restorative justice is to be implemented nationally, it is imperative that legal practitioners and other stakeholders within the justice system are fully informed about it. There are a number of ways in which this can be done. For example, study visits have been identified as a very effective tool to reach legal professionals, judges and prosecutors as such visits provide the opportunity to gain a closer insight into the restorative process.<sup>76</sup>

In order to educate legal practitioners and other key stakeholders within and outside of the criminal justice system, perhaps it would be worth focusing on the existing projects in Nenagh and Tallaght, as well as those at a youth justice level operating through An Garda Síochána, Young Persons’ Probation and Le Chéile, in order to raise more public awareness of restorative justice and the potential benefits that it may have. The recently established prison pilot projects and the Facing Forward / UCD project on restorative justice in cases of sexual violence demonstrate a continued interest among key stakeholders in developing restorative approaches to crime in an Irish context. It will be interesting to see how these projects develop and whether they influence the broader restorative justice landscape in Ireland.

McCarthy makes the following four recommendations which need to be observed if restorative justice is to have a future in Ireland:

- ▶ Efforts must be made to raise the profile of restorative justice among all the key stakeholders.
- ▶ An education strategy on Restorative Justice is needed to inform and to ensure that all stakeholders understand restorative approaches, their benefits and the unique contribution of each stakeholder to the process.
- ▶ Restorative justice should be legislated for.
- ▶ There should be on-going evaluations of the efficacy and effectiveness of restorative justice.<sup>77</sup>

It is difficult to argue with any of these recommendations as they closely resemble those of the NCRJ. Raising the profile of restorative justice at all levels of society, along with an education strategy, should be of utmost priority if restorative justice is to be further developed at a national level. Support for restorative justice must extend beyond the criminal justice system and include voluntary and community groups, schools and the broader community. The role of the media should also be central to the distribution (and creation) of knowledge as what we see as crime and justice is largely defined, described and delimited by media content and process.<sup>78</sup>

73 Shane McCarthy (n 33) McCarthy conducted an interview-based survey among 12 defence solicitors representing defendants in criminal law proceeding at a District Court, as well as an experienced District Judge and another solicitor who had experience with restorative justice.

74 *ibid*, p. 188.

75 *ibid*.

76 Ricarda Lummer, Otmar Hagemann & Mario Nahrwold, *Improving Knowledge and Practice of Restorative Justice: Scientific Report* (Kiel University of Applied Sciences, 2012) 174.

77 Shane McCarthy (n 33) 198.

78 Brunilda Pali & Christa Pelikan, *Building Social Support for Restorative Justice: Media, Civil Society and Citizens*. (European Forum for Restorative Justice, 2007) 176.

Careful monitoring of the existing programmes along with detailed analysis of success rates as well as failures would also be vital, as it could help provide the basis for any future legislation for restorative justice at a national level.

With respect to future legislative developments in this jurisdiction in the context of restorative justice, the recommendations of the NCRJ provide a crucial starting point.<sup>79</sup> However, we must also take note of legislative developments in other jurisdictions. The forthcoming UK legislation on adult restorative justice at the pre-sentencing stage is noteworthy. On 26 April 2013 the UK Crime and Courts Bill received Royal Assent.<sup>80</sup> The proposed legislation makes it explicit that courts can use their existing powers to defer sentencing to allow for a restorative justice activity to take place. The Bill has been described by the Restorative Justice Council as “the biggest development for restorative justice in England and Wales since legislation introducing referral order panels to the youth justice system in 1999.”<sup>81</sup> Belgium is currently the only jurisdiction that makes restorative justice complementary to judicial proceedings at every level of the justice system<sup>82</sup>. Restorative justice is essentially integrated into the Belgian justice system on a complementary basis but it is executed by external mediation services.<sup>83</sup> However, other European countries including Ireland need to adhere to the *EU Directive 2012/29/EU of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime* which replaces *Council Framework Decision 2001/220/JHA*<sup>84</sup>. The EU Directive, which puts victims’ rights on a statutory footing, sets out clear guidelines and recommendations and simultaneously grants Member States a significant degree of flexibility to enact restorative justice practices and legislation.<sup>85</sup> In light of recent legislative developments in Europe, and particularly in the United Kingdom, perhaps now is the time for Ireland to consider enacting legislation on restorative justice.

Given the current economic climate it would be fair to state that restorative justice is not going to be at the top of the current government’s agenda. However, according to a 2007 cost estimate put forward by the NCRJ, the cost per restorative case (based on information obtained from the Nenagh and Tallaght programmes) is €3,250.<sup>86</sup> In comparison, in 2007 terms, the cost of a probation order is estimated at €8,200, while community service orders cost €2,205 per case and the cost for supervision during a deferment of penalty or suspended sentence is €5,535.<sup>87</sup>

79 If Ireland introduces legislation on restorative justice in the future, the NCRJ recommends that such legislation must articulate the following key objectives of the restorative justice process: the response to the crime is aimed at repairing the harm suffered by victims; offenders accept responsibility for their actions and are made aware of the consequences; victims have the opportunity to express their views and participate in the process; and the broader community has a stake in the process.

80 Restorative Justice Council (2013) ‘Legislation for Restorative Justice’  
[http://www.restorativejustice.org.uk/news/important\\_milestone\\_for\\_rj/#.UX0P7oZv9f8](http://www.restorativejustice.org.uk/news/important_milestone_for_rj/#.UX0P7oZv9f8) accessed 28 April 2013.

81 *ibid.*

82 Tinneke Van Camp, *Is there more to restorative justice than mere compliance with procedural justice? A qualitative reflection from the victim’s point of view*. PhD Thesis in Criminology, Faculty of Arts and Sciences: (University of Montreal, 2011) 84.

83 *ibid.*

84 Directive 2012/29/EU of the *European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime*.

85 As a form of secondary legislation, the *EU Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime* is binding on EU Member States as to the result to be achieved, though it leaves it to the respective national authority to decide how the Community objective set out in the directive is to be incorporated into the Member State’s domestic legal system before a specified date.

86 National Commission on Restorative Justice (n 8) 90.

87 *ibid.*, 93.

In 2006, the average cost for keeping an offender in prison was €91,700.<sup>88</sup> Although this cost-benefit analysis needs to be updated in 2013 terms, it is nevertheless noteworthy as it highlights that, with the exception of community service orders, restorative justice is by far the cheapest sanction. Any arguments put forward regarding the immediate costs that would be incurred by rolling out a national restorative justice scheme for adults are outweighed by the significant savings the government would make over the coming years. Therefore, the economic crisis cannot and should not preclude the Irish government from continuing to promote and develop restorative justice practices in Ireland as per the recommendations of the NCRJ Final Report.

## Conclusion

As this paper illustrates, although severe budgetary restrictions have curtailed the extent to which restorative justice has developed in Ireland since 2009, the recommendations of the NCRJ have nevertheless been followed to the greatest extent possible by existing restorative programmes. Critically, however, all of the restorative justice programmes discussed in this paper needs to be monitored and evaluated on an ongoing basis, as per the recommendations of the NCRJ. Although the adult and juvenile restorative programmes in operation in Ireland have moreover followed the recommendations of the NCRJ, the government has yet to implement legislation on restorative justice and introduce adult restorative schemes throughout Ireland. In light of the findings and the recommendations discussed in this paper, now may just be the time to start sowing the seeds of a strategy that will save millions for the exchequer, as well as having a positive effect on offenders, victims and the community at large. As demonstrated by the authors, restorative justice continues to gather momentum in Ireland on many levels, from the grassroots level to the political arena and among key stakeholders within the criminal justice system.

In order to create a more restorative Ireland, it is essential that a strategy is implemented whereby key stakeholders and society at large are thoroughly informed about restorative justice. Recent legislative developments in the UK will hopefully encourage the Irish legislature to consider adopting a similar approach in Ireland in the future. The renewed interest in restorative justice in this jurisdiction, as highlighted by this paper, indicates that the time is ripe in Ireland for some fresh ideas and concrete action.

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88 *ibid.*



# RESTORATIVE JUSTICE IN IRELAND – THE THEORY, THE EXPERIENCE AND THE POTENTIAL

**Shane McCarthy**

*Practising Solicitor and PhD candidate at University College Cork.*

*Email: [shane@shanefmccarthy.com](mailto:shane@shanefmccarthy.com)*

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## **Abstract:**

This paper explores the understanding of Restorative Justice (RJ) in the modern Irish criminal justice system. It will seek to define restorative justice, examine its prevalence in Ireland and the practical impact that restorative justice projects have on the communities in which they are situated. It further considers the potential for restorative justice in the mainstream criminal justice system and concludes by offering suggestions as to how restorative justice might be incorporated and developed to the benefit of communities.

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## **Keywords:**

Restorative justice, criminal justice, community development, victims.

## Introduction

It is usually at the point of crises that governments find themselves searching for alternatives that will re-establish confidence in the criminal justice system. The current obvious lack of equilibrium in the Irish criminal justice system indicates that change is required. There is an opportunity to re-mould the criminal process in a manner which benefits all stakeholders in our society. The nationwide roll out of Restorative Justice can be viewed as such an opportunity.

In November 2010, Dermot Ahern, the then Minister for Justice, Equality and Law Reform announced a scheme to build the foundation for the implementation of a robust restorative justice system, providing an alternative to a prison sentence of less than 12 months duration. Currently there are operational schemes in Tallaght and Nenagh and all of the current indications are that this system will be approved for a nationwide roll out during 2013 and 2014.<sup>1</sup>

This paper will first examine the definition and aims of restorative justice and will identify who such a system is designed to serve. A review of the restorative justice principles, as applied by the Gardai with their youth and adult cautioning schemes, will be followed by a study of the functioning of the adult restorative justice programmes, which are currently operating in Ireland. Finally, it is proposed to examine the potential effects of the introduction of a comprehensive restorative justice programme in Ireland and the steps including the type of community participation and investment which will be required to ensure the success of such an undertaking.

## Restorative Justice: An Overview

In March 2007, the then Tanaiste and Minister for Justice, Equality and Law Reform, Mr. Michael McDowell, T.D., appointed the members of the National Commission on Restorative Justice. In his announcement he said:

*Restorative Justice is a victim and community oriented approach which requires the perpetrator to face up to the harm that he or she has caused and repair or make good the damage done. Restorative Justice puts the victim at the centre of the process. I want to see how it can be expanded in Ireland with appropriate structures and a sound funding base.<sup>2</sup>*

One of the first tasks that the Commission completed was to define Restorative Justice to clarify what might best suit an Irish context. Most researchers agree that restorative justice is not easy to define although its general principles include:

- (1) crime is a violation
- (2) this violation creates an obligation
- (3) reparation can fulfil this obligation<sup>3</sup>.

It is clear that elements of restorative justice programmes differ from one jurisdiction to the next. Yet the programmes

1 See speech of Minister of State, Ms. Kathleen Lynch T.D., Seanad Éireann – Wednesday 20<sup>th</sup> of March 2013 wherein she stated that: "It is the Minister's intention to develop and extend restorative justice practices to the greatest extent possible and provide them as a nation-wide non-custodial option within the criminal justice system. The provision of restorative practices is a priority for the Probation Service."

2 National Commission on Restorative Justice Final Report June 2009 pg 29.

3 The Irish restorative justice programmes have been established with a particular focus on (a) involvement of the victim and meeting the victim's needs (b) managing the encounter between victim and offender to promote communication and explore reconciliation (c) the victim getting recompense (not necessarily financial) for the harm or injury suffered. National Commission on Restorative Justice Final Report June 2009 pg 46.

share a process based on face-to-face interactions between victim, offender and the community.<sup>4</sup>

The National Commission on Restorative Justice settled on the following definition:

*Restorative Justice is a victim-sensitive response to criminal offending, which through engagement with those affected by crime, aims to make amends for the harm that has been caused to victims and communities and which facilitates offender rehabilitation into society.<sup>5</sup>*

This definition of Restorative Justice is clear evidence of a forward looking approach, offering the chance to translate a negative experience into a positive framework which offers all parties the opportunity to become involved in establishing a basis from which to progress.<sup>6</sup>

The Restorative Justice projects which the Irish definition most closely relate to are the programmes in Timaru, New Zealand where offenders were provided with a means of making reparation to their victim or community.<sup>7</sup> The restorative justice system is traditionally perceived as having its roots in the Australian Aborigine community and also in the Maori communities of New Zealand as these systems prevail to the present day. The clearest examples of success of the alternative, restorative approach to justice is still evidenced in the dispossessed aboriginal communities in the State of Western Australia and also in the Maori communities of New Zealand where it is considered that the restorative justice processes and family based problem solving skills are based on local culture, knowledge and experience. It should not be forgotten, however, that restorative justice was once common place in Ireland under the Brehon law system where the community had a direct say in the justice process.<sup>8</sup> At times during the recent troubles in Northern Ireland when certain nationalist communities barricaded themselves away from contact with a unionist community, which they considered hostile to them, a community based restorative justice programme often became the normal way of administering justice.<sup>9</sup>

4 Jersey has successfully maintained a system of informal community justice in the face of international developments. The majority of offenders pass through a Parish Hall Enquiry, based on the principles of restorative justice, and if matters can be resolved at this level a formal appearance in Court can be avoided. See Probation in The Republic of Ireland: Context and Challenges Deirdre Healy and Ian O'Donnell Probation Journal Vol 52(1):56-68, 61.

5 National Commission on Restorative Justice Final Report June 2009 pg 9.  
See also speech of Minister of State, Ms. Kathleen Lynch T.D., Seanad Éireann – Wednesday 20<sup>th</sup> of March 2013 wherein she stated that this definition of restorative justice was the one which the development of restorative justice in Ireland would be based.

6 "Why Restorative Justice? Repairing the harm caused by Crime", Roger Graef, Calouste Gulbenkian Foundation, London, 2001, pg 15.

7 New Zealand introduced the restorative justice on a legislative basis with their groundbreaking Children and Young Persons' and Families Act 1989. They further enshrined the Restorative Justice Processes in legislation for adult offenders in The Sentencing Act of 2002, Parole Act 2002 and Victim Act 2002. These Acts lay down the principle that criminal proceedings should not occur if other methods of addressing the problem are available, measures that address offending behaviour should strengthen the family, sanctions should involve the least restrictive alternative and should take heed of the interests of crime victims. For further discussion see "Towards a Restorative Society a problem-solving response to harm". Martin Wright pg 11.

8 See National Commission on Restorative Justice Final Report June 2009 pg 43.

9 See O'Mahony D. & Doak, J. "Restorative Justice & Criminal Justice: International Developments in Theory & Practice" where it is stated: "Community based programmes can stand entirely apart from the formal criminal justice system; particularly in settings where there is a lack of confidence among the community in the capacity of the existing institutional arrangements to respond to crime and neighbourhood disputes. This perceived lack of legitimacy within both nationalist and loyalist areas of Northern Ireland was instrumental in the development of localized restorative justice programmes as alternatives to "self-policing" by paramilitary organizations in the mid 1990s."

## The Aims of Restorative Justice

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The purpose of Restorative Justice is to help people address problems, which have been linked to the commission of criminal offences. Two key notions are that crime must be viewed as a violation of the individual as well as an offence against the State and also that crime affects more than just the victim. It also has an effect on the offender, the families of the victim and the offender, the local community and the State.

The retributive justice system, which is almost universally practiced in Ireland at the moment, is in stark contrast to that practiced using the restorative justice principles. With the current system, although court cases are conducted on behalf of the victim and the community, they seem to operate mostly according to the requirements of the courts. The result is that many victims feel distant and marginalized from “their” process. There is little sense of closure, forgiveness or encouragement for victims to get on with their lives by putting the damage caused by the crime behind them.<sup>10</sup>

For offenders, the court process does the opposite of what is intended in that it can help distance them from their actions. Although the spotlight is on the person in the dock, the offenders take very little part in the proceedings and generally watch passively as their lives are discussed by strangers in complex, legal language that they do not understand. Frequently, if they plead guilty, it is on legal advice that it will reduce the anticipated sentence rather than out of remorse and a desire to make good the harm they have done.<sup>11</sup>

A major component of the application of restorative and community justice programmes is the aim of restoring victim dignity and to facilitate offender reintegration. The process seeks to bring victims and offenders into contact with each other, on a voluntary basis and in a managed and safe setting. The bringing together of both parties lies at the core of Restorative Justice. This encounter enables victims to explain to their offenders the impact that the offence has had on them, while offenders are given the opportunity to make right, in a practical way, the wrongs done to their victim or victims.

People who come before the Courts for minor crimes are generally a relatively disempowered and socially excluded category of citizens, notwithstanding the great variations among them in terms of age, gender, ethnicity, offence type and so on.<sup>12</sup> The Restorative Justice approach is rooted in evidence-based thinking, it involves critical reflection and then organized problem-solving: secondly it is premised on a collaborative effort between practitioner and offender to enhance problem-solving skills; and thirdly, applied to the resolution of “real life” situations, it presents an opportunity to contribute to the achievement of greater social justice and the development of community sentences

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10 “Why Restorative Justice? Repairing the harm caused by Crime”, Roger Graef, Calouste Gulbenkian Foundation, London, 2001, pg 13.

11 See Christie, N., “Conflicts as property” British Journal of Criminology 17 (1), 1-15 (1977) as quoted in “Towards a Restorative Society a problem-solving response to harm” Martin Wright pg 21. Nils Christie refers to the fact that defendants generally have a lawyer to speak for them and consequently are required to say little or nothing for themselves and also that defending lawyers commonly regard it as their duty to attack the victim’s credibility as a witness. If the offender is convicted his/or her lawyer generally denies or minimises the harm suffered by the victim so that the Court will impose a lighter sentence. Christie states, “Conflicts belong to the people directly involved and should not be ‘stolen’ by professionals”.

12 See “The Irish Prison System - Vision, Values Reality” March 2012 Jesuit Centre for Faith & Justice pg 17 where it is stated: “... a number of research studies over the past two decades reveal a consistent picture: a high proportion of people in prison come from economically disadvantaged backgrounds, have few educational or training qualifications and have a history of unemployment. Significant numbers have suffered mental illness or have substance abuse problems; many have experienced homelessness at some point in their lives.”

informed by reintegration rather than simple punishment.<sup>13</sup>

The idea of diverting appropriate offenders from going to prison where this seems socially and financially unnecessary is a central part of this philosophy. The rehabilitation of the offender is a further central tenet of this policy. An effective intervention has the potential to contribute to social justice through outcomes that involve reparation being made to the victim, the reintegration of those who offend and simultaneously protects future potential victims by a reduction in the recidivism rate. In part, the achievement of social justice hinges on the solving of personal and social problems associated with offending, but more importantly it is dependent on the responsiveness of that endeavour to the particular needs and circumstances of a given situation.

These programmes seek to hold offenders accountable and reduce re-offending by relying on informal community involvement and varying forms of supervision.<sup>14</sup> The criminal justice system, as currently formatted, does not have a community input.<sup>15</sup> There are currently two structured restorative justice projects operating in Ireland<sup>16</sup> however the limited scale of the services which these two schemes provide has been found to be inadequate to support substantive research.<sup>17</sup>

In short, the current criminal justice system as operated in Ireland allocates blame and punishment whilst the Restorative Justice system holds the perpetrator responsible and requires him or her to make things right and attempts to place the victim in a central role in the process.

## Victims, Offenders, Community and The State

The key stakeholders in the process of Restorative Justice are the victim, the offender, the community and the State.

The victim is empowered to face the offender and highlight the hurt and injury the offenders behaviour has caused. Aside from the possible physical injury or financial loss attached to crime, psychological distress and increased suspicion can result in victims restricting their activities. In the retributive justice system where crime is defined as breaking the law or offending against the State it is usual for the victim to have no role in the process. The victim has no say, he or she often feels neglected and his or her role is reduced to that of a witness, at best and frequently, in the event of a guilty plea being entered the case might be concluded without the victim even being aware that

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13 Probation and Social Justice David Smith and Maurice Vanstone British Journal of Social Work (2002) 32, 815-830.

14 Restorative Justice Practice: An examination of Program completion and recidivism, Kimberly de Beus and Nancy Rodriguez, Journal of Criminal Justice 35 (2007) 337-347. 337.

15 In England it has been suggested that all future probation orders should routinely have victim-offender mediation built into them as part of the order. Furthermore, this process should be conducted by the supervising probation officer so that "the offender communicates to the wider community, as well as to his victim, his apologetic recognition of the wrong he has done". It has also been suggested that a reparative element would be incorporated into every community sentence to "demonstrate that rehabilitation is itself fundamentally restorative and benefits the community as well as the offender." "Moving Probation Forward – Evidence, Arguments and Practice Wing Hong Chui and Mike Nellis, Pearson Longman 2003 at pg 52.

16 The Nenagh Community Reparation Project and the Restorative Justice Services Tallaght.

17 National Commission on Restorative Justice Final Report June 2009 pg 31.

the case has concluded.<sup>18</sup> Whilst there have been some attempts to improve the treatment of victims, the focus of the current retributive justice model is still very much on the offender. Some recent legislation has fallen into the trap of assuming that whittling away the safeguards for defendants is somehow in the interests of victims whereas this does not benefit the victims in any appreciable way.<sup>19</sup> In the restorative justice model the victim is in a position to secure both explanations and assurances from the offender. The process may include an apology, which many victims greatly value, or it may also allow the victim to receive some form of material and psychological reparation.<sup>20</sup>

The offender has the chance to tell his or her side of the story. The impact of listening to the victim can be profound. The offender, by proffering an apology and having it accepted, has the assurance that this offence can be placed in the past and that he or she can resume normal life in the community, thus mending fences.<sup>21</sup> The offender being held accountable in the community has the benefit that the offender may not need to be sent to prison. Prisons foster social exclusion, family break-up and homelessness. Most hardened criminals are hardened in prison: the place to learn how to behave in the community is the community.<sup>22</sup>

A study in Northern Ireland found that 98% of young offenders who participated in a restorative justice programme felt that people had listened to them. Moreover, 97% of the offenders accepted responsibility for their actions.<sup>23</sup> A recent study revealed that 89% of the victims who participated in a Restorative Justice system received an apology, whereas only 19% of the victims whose cases were dealt with in Court received one. Victims who went through the Restorative Justice scheme were also found to be much more likely to feel that the apology received was sincere. The majority of victims participating in restorative justice conferences were willing to forgive offenders for their violation and were 60% less likely to be fearful of being re-victimised compared with those who had their cases dealt with through the Courts.<sup>24</sup>

The role of the community in the restorative justice process is vital. The community often serves the role of victim representative and also offender recipient. Additionally, the community can have a positive influence on offenders such as to reduce stigmatization, provide a feeling of value, and create incentive for reform.<sup>25</sup> Unfortunately, the

18 "Victims are often the forgotten parties in the criminal justice system, despite their involuntary and highly distressing involvement in the arena... however without the co-operation of the victim in reporting crime, furnishing evidence, identifying the offender and acting as a witness in court, most crime would remain unknown and punished." "The Place of Victims in the Criminal Justice System", Sheena Norton, Irish Probation Journal Vol 4, No.1, September 2007 pg 63.

19 An example of such legislation is the Criminal Justice Act 2007, which limits the right to silence in some instances.

20 See National Commission on Restorative Justice Final Report June 2009 pg 69 where the emerging body of literature in the field of therapeutic jurisprudence is discussed, which suggests that there are psychological benefits for victims in a restorative encounter.

21 Carole Gleeson, then Project Co-ordinator of the Nenagh Community Reparation Project in a discussion with me on the 3<sup>rd</sup> of December 2010 stated that the Restorative Justice system is extremely effective at identifying problems for offenders. She gave an example of a case which she is currently dealing with where she was able to identify both addiction and psychological issues in the offender and was accordingly able to arrange the appropriate treatment. It was her view that if this matter were dealt with on a plea basis in the local District Court it would be highly unlikely that these underlying problems would have been discovered with potentially disastrous consequences at a later stage.

22 "Towards a Restorative Society a problem-solving response to harm". Martin Wright pg 8.

23 "Restorative Justice & Criminal Justice: International Developments in Theory & Practice, David O'Mahony & Jonathan Doak, pg 124.

24 Recent surveys have shown that before restorative justice mediation 25% of victims feared re-victimisation; after it only 10% did. See "Why Restorative Justice? Repairing the harm caused by Crime", Roger Graef, Calouste Gulbenkian Foundation, London, 2001, pg 30.

25 Programmes that involved face to face contact between the offender and the victim were generally more successful in reducing offending, in many instances by 25%. "Restorative Justice & Criminal Justice: International Developments in Theory & Practice, David O'Mahony & Jonathan Doak, pg 140.



community can also hinder offender reintegration by labelling and ostracising offenders.<sup>26</sup> The goal of this type of justice is to restore a sense of community in the offender, the offender's family, the victim(s) and the community at large while at the same time holding the offender accountable for the offence.<sup>27</sup>

A victim's absence from the process removes the opportunity for a face-to-face encounter between the victim and the offender and prevents direct engagement by offenders to apologise for their actions and to offer reparation. To counteract some of this difficulty a facilitator may offer the victim to communicate indirectly by letter or some other means. In Northern Ireland a practice has developed of using surrogate victims in shoplifting cases (where a security officer or store manager – who is not a direct victim – may represent the shop) and this was found to be useful and effective.<sup>28</sup>

Many criminal offences which do not involve direct harm or loss to an individual are frequently referred to as "victimless". These include motoring offences, damage to public property and certain drug related offences. However, none of these offences can truly be regarded as "victimless" since in all cases either the State, the taxpayer or the broader community will ultimately suffer some degree of harm and will bear the cost of putting it right. Any act that is contrary to the criminal law is usually considered harmful and undesirable to society at large and the purpose of the "restorative process" in these instances is to make the offender fully aware of the consequences of his or her actions and to enable some form of restitution to be made to the State, community or relevant corporate entity.<sup>29</sup>

A number of restorative justice programmes through greater community involvement achieve enhanced citizen involvement in the rehabilitation, sanctioning and surveillance of the offender than would be possible if the focus were solely on offender supervision.

Participants in the restorative justice system are reported to be extremely satisfied with the process and outcomes indicate significantly higher levels of satisfaction amongst both victim and offender participants as compared to those who have been through the Court system. Solicitors and Gardai who have participated in these schemes have also expressed satisfaction with how the system works in practice.<sup>30</sup>

26 Restorative Justice Practice: An examination of Program completion and recidivism, Kimberly de Beus and Nancy Rodriguez, *Journal of Criminal Justice* 35 (2007) 337-347. 339.

27 This sentiment is not a new one and is clearly reflected in the ancient African proverb (and subsequent title of a book by Hillary Rodham Clinton) "It takes a village to raise a child".

28 See National Commission on Restorative Justice Final Report June 2009 pg 67.

29 "Restorative Justice & Criminal Justice: International Developments in Theory & Practice" David O'Mahony & Jonathan Doak, pg 112. An example of this type of "restorative process" in relation to drug offences is given as possibly including those who have suffered harm or addiction as a result of drug abuse could explain the impact of supplying a particular drug. It is suggested that the impact of motoring offences could be explained to the offender by a past victim, paramedic or police officer.

30 Restorative Justice Practice: An examination of Program completion and recidivism, Kimberly de Beus and Nancy Rodriguez, *Journal of Criminal Justice* 35 (2007) 337-347. 338. Analysis of thirty five different studies has found significantly higher levels of satisfaction among victim and offender participants than other justice system alternatives. In addition the majority of victims participating in restorative justice conferences were willing to forgive offenders for their violation. Another school of thought however is that this process may not always be primarily in the interests of the victim but may be about reducing recidivism and promoting the reintegration of offenders into the community. This issue of "secondary victimisation" is when the victims of crime experience further victimisation through their experience with agencies of the criminal justice system, which they may perceive as insensitive or even harmful. The Nenagh Community Reparation Project carried out an extensive evaluation in 2004 which included feedback from key stakeholders outside of the project management which included the Judiciary, Gardai and solicitors. All of the feedback received was positive and it was illustrated that 84% of first time offenders who participated in the project had not re-offended. Nenagh Community Reparation Project, Evaluation 2004.

## The State also Benefits

There is a considerable dividend to the State where a Restorative Justice programme costs less than other sanctions. The process, when successful, removes the need for a trial and also lessens the demand for prison capacity.<sup>31</sup> Benefits also arise from the potential for offenders concerned not to re-offend and international studies have consistently shown lower recidivism rates amongst people who have participated in this process.<sup>32</sup> The benefit involves not only the saving in future criminal justice resources that might be needed to arrest, prosecute, defend, convict and imprison or otherwise sanction the offender, but also benefits from the absence of injury and harm to victims and the community as well as generating gains in terms of democracy, civilization and international prestige.<sup>33</sup>

## Restorative Justice in Ireland

The Probation Service has, as its mission statement, the aim

*“To foster public safety and promote the common good by challenging the behaviour of offenders and advancing recognition and use of community based sanctions, thereby reducing the level of re-offending.”*

This mission statement incorporates the idea of community building and indicates an obvious belief in a clear link between the use of community sanctions and reduced recidivism.<sup>34</sup> In 1997 an expert group was established by the Minister for Justice, Equality and Law Reform to examine the role, needs and organisational structure of the Probation and Welfare Service. The first recommendation in the final report of this group was for “a significant shift in policy to facilitate the increased use of a greater range of non-custodial sanctions.” Notwithstanding the announced desirability of a shift in focus away from custody to non-custodial sanctions it must be noted that financial resources appear to continue to be focused on custodial measures.<sup>35</sup> A further recommendation of this expert group was to “expand the range of community-based sanctions to include treatment orders, mediation orders, reparation orders, counselling orders and combination orders”.

Restorative justice programmes are often cited as inappropriate for certain types of offenders and are generally perceived to be more appropriate for those offenders charged with less serious crimes. This position has to a large

31 The most recent figures available estimate the cost of keeping an offender in prison at €77,222 per annum whereas the cost of putting an offender through a restorative justice programme is estimated at €3,250. National Commission on Restorative Justice Final Report June 2009 pg 90.

32 In international studies of countries where the option of restorative justice rehabilitation programmes are available it has been found that offenders who have received rehabilitative treatment have a recidivism rate of about 12% lower than offenders who do not receive such treatment programmes. “Restorative Justice & Criminal Justice: International Developments in Theory & Practice” David O’Mahony & Jonathan Doak, pg 141.

33 “The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country.” Winston Churchill, Speech as Home Secretary in The Houses of Parliament, July 20<sup>th</sup>, 1910.

34 See Probation in The Republic of Ireland: Context and Challenges Deirdre Healy and Ian O Donnell Probation Journal Vol 52(1):56-68, 57.

35 In 2011 it appears that for every Euro allocated to the Irish Prison Service a mere 13 cent was allocated to the Probation Service. See “Comprehensive Review of Expenditure – Justice Vote Group” June 2011 which details a 2011 allocation of €41,253,000 for the Probation Service as opposed to an allocation of €313,000,000 for the Irish Prison Service.

extent been the one adapted in this jurisdiction.<sup>36</sup> I recently conducted a survey and I found that 66% of the practising criminal law defence solicitors at a recent sitting of the District Court in a provincial town indicated that restorative justice should apply to minor offences only.<sup>37</sup>

The National Commission on Restorative Justice did not adopt a definitive range of offences that could be considered appropriate for a Restorative Intervention but indicated that initially cases in which the Court is considering a custodial sentence of up to three years should be considered for their suitability.

Programmes in New Zealand have accepted serious and persistent offenders successfully. In fact, studies in Australia have found that violent offenders in the restorative justice program were less likely to recidivate than offenders in a control group.<sup>38</sup> Further studies in Pennsylvania also found that violent offenders who took part in the restorative justice process were less likely to re-offend than violent offenders processed by the juvenile court.<sup>39</sup>

Support can be lent to the theory that restorative justice programmes should be targeted at particular types of offenders. Some offenders may differ emotionally or psychologically from other offenders as evidenced by their acts. The restorative justice process may provide such offenders with a less hostile setting in which to address attitudes and behaviour associated with their conduct. Restorative justice programmes may be more successful at addressing low self esteem, poor family bonding and weak social attachments that often lead juveniles to participate in this behaviour. The face to face interaction with the victim and the community members has been shown to lead to reduced recidivism while also providing a structured forum where these offenders and their families can receive appropriate education and other support services.

It is clear that restorative justice works better in some instances than others. The nature of the offence is certainly not the only factor in determining the success or otherwise of this type of intervention.<sup>40</sup>

Prior offending was found to be a good predictor of the likelihood of re-offending, whereas the type of offence did not significantly influence the probability of re-offending. This shows the importance of effectively targeting the

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36 It should be noted however that under the terms of the funding agreement for the expansion of the existing adult restorative schemes on a pilot basis which is currently underway that efforts are being made to engage with higher risk offenders and those charged with more serious offences.

37 See "Perceptions of Restorative Justice in Ireland: The Challenges of the Way Forward", Shane McCarthy, Irish Probation Journal, Volume 8, September 2011.

38 It is noteworthy however in these studies no differences in re-offending rates were found for property offenders in Court or restorative justice conferences.

39 Restorative Justice Practice: An examination of Program completion and recidivism, Kimberly de Beus and Nancy Rodriguez, Journal of Criminal Justice 35 (2007) 337-347. 339.

40 See Restorative Justice Practice: An examination of Program completion and recidivism, Kimberly de Beus and Nancy Rodriguez, Journal of Criminal Justice 35 (2007) 337-347. Race is a significant factor (Ibid 342). Race/Ethnicity effects showed that Black and Hispanic/Latino juveniles were less likely to complete these programmes than White juveniles. Attendance at school is another consideration and whether or not the offender has prior convictions (Ibid 342) (Juveniles with prior convictions are less likely to complete these programmes) as is the relative wealth of the community in which the offender resides. (Ibid 343) Juveniles who participated in the restorative justice programme and resided in communities where less than 11% of the residents lived below the poverty line had the lowest rate of recidivism. Juveniles residing in impoverished neighbourhoods may not have the same educational experiences, extracurricular activities and social opportunities that juveniles from more economically advantaged neighbourhoods experience. Communities characterised by low poverty rates are more likely to possess the resources and opportunities needed for deterring offenders from re-offending. Paradoxically, juveniles from communities where social disorganisation is prevalent appeared to respond positively to communal efforts as evidenced by the lower rates of recidivism.

correct participants based on their offending history and record. It has, however, not been shown that completing the restorative justice programme (as opposed to taking part in the programme) reduces recidivism. It is possible that exposure to a restorative process (e.g. community panel) provides offenders with the motivation to change and the services they need to reduce recidivism, regardless of whether they complete the terms of the programme.<sup>41</sup>

Crime Victim Surveys in the United Kingdom have consistently show that there is an uneven distribution of victimisation risks with some areas having substantially higher risks of victimisation than others and there is no reason to believe that the situation in Ireland is any different. These surveys have consistently shown that high crime rate areas are also high offender rate areas. Personal crime as disclosed in these Crime Victim Surveys largely consists of offences committed by poor people against poor people.<sup>42</sup> The realisation that the people who have offended are also members of some community and, potentially if not actually, participants in networks of mutual support and interdependency that can, with encouragement, contribute to crime reduction.<sup>43</sup> The system must not be exclusionary or repressive and active participation of lay people is essential if crime prevention is to work. The involvement of lay people from the community creates a web of “benign general deterrence,” which is much more effective than the formal criminal justice system. Closer engagement between the justice system and local communities is vital for the effective operation of these systems.

In America, <sup>44</sup> restorative justice programmes, which are generally managed by the Probation Department, have as a prerequisite that juveniles who take part in the programme must acknowledge responsibility for the illegal act, participate in unpaid community service and/or an approved counselling, education, rehabilitation or supervision programmes and pay restitution to the victim. Many countries follow America’s example of confining Restorative Justice to juvenile offenders. However, in Ireland, the system applies in some instances to both juvenile and adult offenders.

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41 Restorative Justice Practice: An examination of Program completion and recidivism, Kimberly de Beus and Nancy Rodriguez, *Journal of Criminal Justice* 35 (2007) 337-347 pg 345.

42 Probation and Social Justice David Smith and Maurice Vanstone *British Journal of Social Work* (2002) 32, 815-830 pg 820.

43 Restorative Justice Practice: An examination of Program completion and recidivism, Kimberly de Beus and Nancy Rodriguez, *Journal of Criminal Justice* 35 (2007) 337-347. 343 Juveniles who completed a restorative justice programme were 0.57 times less likely to re-offend than juveniles who did not complete the programmes.

44 The example cited is Maricopa County Juvenile Probation Department diversion programme, Community Justice Committees, which are based on the principles of restorative justice.

## Restorative Justice for Youths in Ireland

Restorative Justice is practiced in a number of ways in the Irish Youth Justice System. The main legislation covering children and the Criminal Justice system is the Children Act, 2001. This Act focuses on diversion from the criminal justice system, rehabilitation and preventing criminal behaviour. The use of detention for a child is to be a last resort used only when all other alternatives have been explored and then deemed to be unsuitable. Despite the fact that the provisions of the 2001 Act facilitate the use of restorative justice, there is no explicit reference to restorative justice per se.<sup>45</sup>

Youth Justice in Ireland encompasses the Garda Diversion Programme, restorative cautioning and conferencing and Court referred Probation Service conferences.<sup>46</sup> Following the introduction of Part 4 of the Children Act, 2001 the Juvenile Liaison Officer Scheme, which had been in place since 1963, was replaced by the Garda Diversion Programme, to deal with children under the age of 18 who commit offences.<sup>47</sup> The purpose of the programme is to divert any child (a person under 18 years of age at the date of the offence) who takes responsibility for the offending behaviour from the traditional criminal justice system, by way of a caution.<sup>48</sup> It is also necessary that the child/juvenile has not been cautioned previously or, if cautioned previously it would be deemed appropriate to administer a further caution. Consent is a vital component in these schemes and it is a prerequisite that the parents, guardians or persons acting in loco parentis agree to the terms of the caution.

The Garda Juvenile Liaison Officer (JLO) is trained in mediation and facilitation skills and will frequently arrange a restorative justice type meeting, which he will preside over, between the victim and the offender at which the offender will be given the opportunity to take some action that will attempt in some way to right the wrong done by the commission of the offence.<sup>49</sup> In 2007, some 21,941 children were considered for the programme in respect of 27,853 incidents with 16,753 children admitted to the diversion programme.<sup>50</sup>

### 45 The principles of The Children Act 2001 include:

- Any child who accepts responsibility for his or her offending behaviour should be diverted from criminal proceedings where appropriate.
- Due Regard must be given to the interests of the victim.
- Children have rights and freedoms before the law and a right to be heard and to participate in any proceedings affecting them.
- It is desirable to preserve and strengthen the relationship between children and their parents to foster the ability of families to develop their own means of dealing with offending.
- It is desirable to allow children to reside in their own homes.
- Detention should be imposed as a last resort.

### 46 The Probation Service have developed a further Restorative Justice Youth Scheme in Moyross, Limerick which is the only Restorative Justice scheme in the country for youths which is not operated by the Gardai.

### 47 Section 18 of the Act provides that any child who has committed criminal acts and accepts responsibility for the criminal behaviour will be considered for admission to a diversion programme, unless the interests of society would not be served by the diversion.

### 48 The caution may be either informal or formal and a formal caution will result in the child being placed under the supervision of a Garda Juvenile Liaison Officer (JLO) for a period of 12 months.

### 49 This action may take the form of an apology, compensation or a specific undertaking and the offender may agree a plan designed to help him or her avoid re-offending.

### 50 The following breakdown shows how the cases were dealt with:

- 16,753 children were admitted to the diversion programme.
- 3,208 were considered not suitable for the programme.
- 790 were awaiting a decision at year end.
- 1,190 required no further action to be taken. For further detail see National Commission on Restorative Justice, Final Report June 2009, pg 44.

Of the 16,753 children admitted to the programme, 12,485 had their cases dealt with by way of informal caution whilst 4,268 had their cases dealt with by way of formal caution.<sup>51</sup>

The presence of the victim at a formal caution or family conference is provided for in the Children Act, 2001<sup>52</sup> and it is here that the concept of restorative justice is introduced. The victim may be present for the formal cautioning of an offender by a member of An Garda Síochána under the Garda Juvenile Diversion Programme. This form of cautioning allows for a discussion during which the juvenile may have to confront the effects of his or her behaviour and may be invited to apologise and make some form of reparation to the victim.

If a child has been formally cautioned and is being supervised by a JLO a conference may be convened.<sup>53</sup> The conference participants have a remit to examine a child's circumstances, the reasons for offending and to discuss how the child might, with family support and community involvement be diverted from crime through the implementation of an action plan.<sup>54</sup> These conferences also have other restorative justice aims and goals.<sup>55</sup>

The Court can also direct a Probation Service Conference. These conferences only take place where there are criminal charges pending against the juvenile. It is again necessary for the offender to admit to their offending behaviour and for the Court to also consider it desirable for an action plan to be implemented in the case. This conference is organized by the Probation Service and generally involves the offender and members of his or her family, the victim and other participants.<sup>56</sup> If these conferences are unsuccessful the criminal proceedings in Court are re-activated.<sup>57</sup>

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51 National Commission on Restorative Justice, Final Report June 2009, pg 44.

52 Sections 26 & 29 respectively.

53 Section 29 Children Act, 2001.

54 This conference may be convened only on the decision of the Director of the Garda National Juvenile Office and the conference facilitator must be a member of An Garda Síochána.

55 **The purposes of these restorative conferences include:**

- establishing why the child became involved in the behaviour that gave rise to their admission to the programme;
- reviewing the child's behaviour since admission to the programme;
- mediating between the offender and the victim;
- upholding the concerns of the victim and having due regard to the victim's interests.

56 These conferences are provided for in Section 78 of the Children Act, 2001.

57 There are four stages involved in this conference. (1) Introductions are made, format is agreed and the process of information sharing begins. (2) The victim explains the effect of the incident and how the criminal act has affected him or her. The young person is facilitated in accounting for the criminal behaviour. (3) The young person and family members meet privately to draft an action plan to make amends to the victim and help the young person avoid future criminal actions. (4) The draft action plan is brought back to the conference for discussion and agreement and for submission to the Court for approval. For further see National Commission on Restorative Justice, Final Report June 2009, pg 45.



## Adult Restorative Schemes

The main restorative justice scheme available to adult offenders in Ireland is the Adult cautioning scheme operated by An Garda Síochána. The parameters of the scheme are very similar to those which apply to the caution system operated by the Gardai as part of the Garda Diversion Programme. This scheme, which operates on a non-statutory basis, applies to adults against whom there is evidence of the commission of a criminal offence. The scheme adopts a diversionary approach, where prosecution of the offence is not considered necessary in the public interest.<sup>58</sup> It is also worth noting that whilst minor assaults and Criminal Damage are occasionally dealt with by means of an adult caution in the vast majority of instances the adult caution is administered in respect of what many refer to as “victimless crimes”.<sup>59</sup>

The other restorative justice programmes operating in Ireland in relation to adults are extremely limited in number and geographical application. In the areas where these restorative justice schemes are in operation offenders are referred to the relevant restorative justice programme by the local District Court.<sup>60</sup> However as these projects only operate in two areas, referrals are obviously limited to a specific geographical area.<sup>61</sup> When the District Court refers an offender to a restorative justice programme a contract requiring the offender to address issues relating to the offending behaviour and to make reparation is drawn up. The Court finalises the case depending on how the contract has been honoured.

## The Nenagh Community Reparation Project

Nenagh is a town of 7,500 people in North Tipperary which regards itself as having an enviable community spirit and a good reputation for the involvement of its citizens in voluntary activities.<sup>62</sup> The Nenagh Community Reparation Project started as a pilot programme in restorative justice programme in June 1999 and was set up in an attempt to harness the moral resources and local knowledge of the community in identifying and prioritizing the concerns surrounding problems of crime, disorder and crime prevention within the community. The project is a partnership of community, Gardai, the Probation Service and other relevant stakeholders working together to address the underlying factors leading to serious problems and crime. By working together the aim is that the offender will be reformed and reintegrated back into the community in a spirit which seeks healing rather than retribution. This project does not regard itself as an alternative to the traditional justice system but as an additional option available to the Court to address offending behaviour within the community.<sup>63</sup>

58 In considering whether or not to administer a caution a number of matters are considered by the Garda involved including the public interest and the views of the victim (although the consent/acquiescence of the victim are not necessary to enable such a sanction to be applied).

59 In 2008 there were 6,246 offences dealt with under the Adult Cautioning Scheme. Of these 262 related to minor assaults and 472 related to Criminal Damage. The balance of 5,512 offences consisted of 4,484 Public Order offences and 1,028 cases of being Drunk and Disorderly.

60 While it is true that restorative justice provision under the Garda Diversion Programme does not involve the judiciary, the other restorative justice applications in the criminal justice system do.

61 The two Restorative Justice Programmes currently operating in Ireland are The Nenagh Community Reparation Programme and the Restorative Justice Services (RJS) which operates a scheme in the Tallaght area. The Nenagh Community Reparation Project is adjacent to the recently established pilot Restorative Justice Project in Limerick.

62 Nenagh Community Reparation Programme Presentation to the National Commission on Restorative Justice 19<sup>th</sup> July 2007.

63 The Nenagh Community Reparation Project carried out an extensive evaluation in 2004 which included feedback from key stakeholders outside of the project management which included the Judiciary, Gardai and solicitors. All of the feedback received was positive and it was illustrated that 84% of first time offenders who participated in the project had not re-offended. Nenagh Community Reparation Project, Evaluation 2004.

The Nenagh Community Reparation Project deals with a wide range of offences such as public order offences, assaults, criminal damage, drug offences and other problematic behaviour within the community. Many of the offences arise from poor self control and being under the influence of drugs or alcohol. Offenders are referred to the Project by the local District Court, following establishment of their guilt. An essential part of this process is that the offender makes an informed decision to take part in the Reparation programme.

The process consists of three parts.

- (a) The offender is asked to give an account of the offence, followed by a member of the Gardai who will give the facts of the case as presented at Court. If the offence involves an identifiable victim they will also give their account of how they were affected by the offence.
- (b) There follows a discussion with questions and possible ideas on how to resolve the matter, with particular emphasis on perceived behaviour issues such as poor self control and/or addiction problems.
- (c) The offender and the victim, if present, participate in setting up a contract of Reparation which must be doable and related to the offence. This contract requires the offender to address the issues which contributed to his/her offending behaviour and also make reparation to the victim and/or the community.

This contract is then presented to the Court and the case is adjourned to allow time for the conditions of the contract to be completed. The Court finally disposes of the case when the contract is satisfactorily completed.

## Restorative Justice Services Tallaght

Restorative Justice Services Tallaght is the other adult restorative justice programme operating in this jurisdiction. It was established in 2000, is funded by the Probation Service and is managed by a partnership of stakeholders within the criminal justice system including Tallaght District Court, An Garda Síochána and the Probation Service as well as victim support and community sector volunteers.

The RJS offers two separate restorative justice programmes, a victim offender mediation programme and also an offender reparation programme. With these two programmes all cases are court-referred at pre-sanction stage, at the discretion of the District Court Judge and the Court remains in charge of the process at all times. An Garda Síochána, The Probation Service, legal representatives and victim support groups may request the Court to consider the appropriateness of reparation or mediation in a particular case.<sup>64</sup>

The victim offender mediation model is a significant part of the work of the RJS. It is victim focused and also seeks to make offenders more aware and understanding of the impact of their offending behaviour. The cases which this programme deals with include relatively serious offences in the areas of criminal damage, theft, assault and public order. The intended outcome is that the offender apologises, makes reparation and takes steps to help avoid future offending. This programme has had a practical difficulty in that the statistics clearly evidence an informed choice of many victims not to participate in these programmes.<sup>65</sup>

64 National Commission on Restorative Justice Final Report June 2009 pg 46.

65 See National Commission on Restorative Justice Final Report June 2009. Pg 47 shows that of 51 referrals in the period 2004-2007, the completion rate was only 45%, largely as a result of the choice of victims not to engage in this process. This reflects an international trend and is comparatively a good participation rate. In the Thames Valley police-led restorative justice scheme, just 16% of victims participated. Of those that did not, 52% stated that they did not wish to do so, 30% wished to participate but were unable to do so and 15% say they were not invited to participate. A similar scheme operating in Northern Ireland found that victims only participated in 20% of cases. "Restorative Justice & Criminal Justice: International Developments in Theory & Practice" David O'Mahony & Jonathan Doak, pg 113.

The Offender Reparation Programme has been in operation by the RJS since 2004. This programme concentrates on getting offenders to accept responsibility for their behaviour, to look at the effects on others and on the wider community, to address the consequences of their actions, to make positive changes to their lifestyles and to make reparation to the community. This programme focuses on public order offences and lower level assaults and criminal damage.<sup>66</sup>

## **The National Roll-Out Scheme and The Potential Effects of the Introduction of a Comprehensive Restorative Justice Scheme in Ireland**

As indicated earlier, the two adult Restorative Justice Programmes currently operating in Ireland operate on a non-statutory basis; for a number of years both of these projects have operated only in Nenagh and Tallaght and as such referrals have been confined both geographically and in terms of the numbers which could be facilitated by each project.

This situation has however recently changed. Both projects have been expanded in terms of the geographical area which they cover and also in the numbers of people who are going through their programmes. The Restorative Justice Scheme project has been expanded to include the criminal justice courts in Dublin whereas the Nenagh Community Reparation Project has been expanded to include District Courts in North and South Tipperary and is continuing to expand into the Mid-West Region. The rationale for the expansion of these two pilot projects is to examine the potential for a national roll out of this scheme and both Minister Alan Shatter and his predecessor Dermot Ahern have indicated that the national roll out of this scheme is imminent.

An estimate of the potential effect a comprehensive restorative justice process could have on the functioning of the justice and penal systems is illustrated by the belief that about half the people who are received into prison annually are potentially divertible.<sup>67</sup>

Whilst Restorative Justice is not on a formal footing in Irish Criminal Courts, many of its principles are taken into consideration at sentencing.<sup>68</sup> It has been my experience that one of the major deciding factors in sentencing is whether or not the offender has compensated the victim for any loss suffered. On many occasions I have seen Judges enquire as to whether or not an apology for the offending behaviour was offered.<sup>69</sup> The timing of the apology can also

66 Alcohol consumption was a notable factor in many cases and 85% of offenders undertook some form of alcohol awareness programme arising from the intervention. Over 95% of those referred to the Offender Reparation Programme were male. National Commission on Restorative Justice Final Report June 2009 pg 47.

67 The British Home Office prison population study found that one third of the prison population on a given day were capable of being diverted, however as this was a prison population survey and given also (1) that it is the short sentence men who are the most divertible and (2) that short sentence men make up a smaller proportion of the prison population than they do of prison receptions it follows that the correct proportion of men who could be divertible is closer to half of prison receptions. The main criteria used in this survey were: no serious offences against the person; no crime ever for considerable gain; no large sums earned from crime over the length of a criminal career, no obvious competence in planning the crime. This survey Home Office Research Unit (1978) "A Survey of the South East Prison Population" Home Office Research Bulletin No. 5 pp 12-24 is quoted extensively in A.E Bottoms and William McWilliams "Non-Treatment Paradigm for Probation Practice."

In the Irish context The National Commission on Restorative Justice predicts that as many as ten thousand criminal cases a year could be diverted from the criminal courts into Restorative Justice programmes. See National Commission on Restorative Justice Final Report June 2009 pg 106.

68 Both the adult pilot programmes at Nenagh and Tallaght District Courts were established without recourse to any specific legislation.

69 [See DPP v. Foley [2009] IECCA 47 where it was confirmed that whether or not an apology had been tendered to the victim of a crime was an appropriate matter to consider when finalising the sentence to be imposed.

have a significant bearing on sentencing with close scrutiny being given to whether the apology was offered before the issuing of the summons or whether it was done on legal advice to lessen the likelihood of a custodial sentence. This ad hoc, informal, approach to restorative justice, in my view, obscures the need for the implementation of a comprehensive restorative justice system on a nationwide basis.

In the absence of the establishment of a nationwide restorative justice scheme, supported with appropriate legislation, there will always be barriers to restorative justice taking its legitimate role in the judicial system. As there is currently no legislation, it is impossible for practitioners to advise their clients as to whether such a programme is exceeding its authority. It is impossible to ensure consistency if a scheme is operated on such an ad hoc basis. In my opinion, if a judicial system has neither clear authority nor consistency, independent overview will be almost impossible and problems will inevitably arise.

There is an amazing lack of knowledge amongst legal practitioners with regard to this entire area of law and this represents a huge challenge to the effective establishment of a Restorative Justice system<sup>70</sup>. This lack of knowledge amongst legal practitioners prevents the development of interdisciplinary discourse which is vital to ensure best practice in the area. A huge apathy amongst practitioners towards changing the current system is also apparent. The fact that these schemes are demonstrably effective makes the lack of knowledge of the existence of these schemes all the more regrettable.

Politicians frequently allow themselves to be swayed by calls for “toughness” and “zero tolerance” as they stand in fear of simplistic headlines and articles in newspapers.<sup>71</sup> This is reflected in the reluctance at Ministerial level to properly implement Restorative Justice.<sup>72</sup>

The Judiciary has a tendency to retain control of cases and to apply its own principles to decide the appropriate result.<sup>73</sup> The system as currently structured with the workload which District Court Judges are subjected to<sup>74</sup> prevents extended judicial scrutiny of persons who have committed offences and prevents reviews of cases where Judges can

70 See “Perceptions of Restorative Justice in Ireland: The Challenges of the Way Forward”, Shane McCarthy, Irish Probation Journal, Volume 8, September 2011 which reports on a survey indicating that 75% of solicitors practising in criminal defence work were not aware of the main features of the concept of restorative justice.

71 There is an onus on politicians to stand up against this facile over simplification of the crime issue because, despite the hysteric headlines of the newspapers, the majority of the public, including victims, are not as vindictive as commonly assumed. In the recent White Paper Discussion Paper on Crime the absence of a call for a hard line approach to crime by any respondent was noticeable.

72 Following the Irish General election in 1997 the outgoing Minister of Justice, Nora Owen, in her welcome to the new government stated “It is time we dealt with the crime issue in a more universal and non-divisive manner. There was much divisiveness and headline grabbing in the last two and a half years with some members saying “I am tougher than you”. This is not good enough and is not the way to get answers to our crime problem... It is not enough just to build prisons and introduce tough legislation”. Dail Debates 26<sup>th</sup> June 1997 as quoted in “The Politics of Intolerance – Irish Style” Ian O’Donnell and Eoin O’Sullivan British Journal of Criminology (2003) 43, 41-62 at pg 52. The Fine Gael party did not attempt to out tough the government on returning to the opposition benches and instead issued policy documents focusing on crime prevention and Restorative Justice in 1998 (Fine Gael “Alternatives to Prison: Fine Gael proposals for a Positive and Effective Approach to Crime” February 1998 as quoted in “Challenging the Punitive Obsession” Ian O’Donnell May 1<sup>st</sup>, 1998 lecture to Irish Penal Reform Trust). Despite the matter being the subject of on-going political debate in the interim there have been no attempts to progress this concept with the exception of the establishment of the National Commission on Restorative Justice in March 2007.

73 For example an average of only 17 cases per annum are referred by the District Court to the Nenagh Community Reparation Project. The throughput of these schemes is increasing as is illustrated by the fact that the Nenagh Community Reparation Project disposed of 40 cases in 2011.

74 In 2009 The District Court dealt with 521,058 criminal offences and 199,836 offenders as well as vast amount of civil cases, family law cases and licensing matters etc.

take an active interest in the progress of someone who they are to sentence over a period of time.<sup>75</sup>

However, the appearance of a conflict between politicians, the judiciary and the legal professions should be avoided. A further value to the community is evident in the public spirited projects organized by the restorative justice schemes such as engagement with community projects.<sup>76</sup>

A positive feature which could facilitate the introduction of this system of law is the attitude of victims who are very often not primarily concerned about money or even punishment<sup>77</sup> and many wish to use the Restorative Justice system to motivate the offender to make better use of their lives.<sup>78</sup> Restorative Justice is much more satisfying to victims than retributive criminal justice and the introduction of a comprehensive Restorative Justice system would be justified for that reason alone even if it made no difference to the reconviction rate.<sup>79</sup>

The National Commission on Restorative Justice predicts that as many as ten thousand criminal cases a year could be diverted from the criminal courts into Restorative Justice programmes. Solicitors will have a necessary role in ensuring that the position of the offender is safe-guarded and that the reparation proposed is not disproportionate or excessive in the circumstances. Solicitors will also have a role in ensuring that once these schemes are established on a legislative basis that their clients are fully aware of the powers and limits of these schemes. It will also become important that a Solicitor is in a position to reflect on the circumstances of each individual client with a view to considering the potential for a restorative intervention and is in an informed position to propose such an intervention to the Court.

### Challenges facing the national Roll-Out of this Scheme

Reference has already been made to the lack of knowledge amongst legal practitioners with regard to this area of law and the fact that a small scale survey of solicitors practising in criminal defence work found that 75% of those surveyed were not aware of the main features of the concept of restorative justice. There is an urgent need to address this lack of knowledge amongst legal practitioners prior to the nationwide rolling out of this system – it is a system which appears to work in other jurisdictions and is a system which is worthy of real consideration for its incorporation into the bedrock of Irish criminal justice. Even from a practical point of view it is likely to become too integral to the Irish Criminal Justice System for practitioners to ignore.

75 The Drugs Court and the Intensive Probation Supervision Schemes are examples of two schemes where there is extended judicial scrutiny and where Judges can observe the progress of an offender before sentencing. The workload of District Court Judges prevents this practice in the vast majority of cases they deal with.

76 The Nenagh Restorative Justice Project has organised involvement of their participants in local projects such as local clean up projects for the tidy towns committee and the development of a local community garden project.

77 "For victims, the notion of punishment was secondary to meeting the young person and receiving an explanation for their actions. A significant number of victims (79%) attended because they wanted to help the young person" "Towards a Restorative Society a problem-solving response to harm". Martin Wright pg 19 when quoting from a study of Restorative Justice in Northern Ireland. I have attached at Appendix C hereto a Victim Impact Statement as prepared by a client of mine, Conor Lynch, following a vicious assault perpetrated on him. This statement is noticeable for the fact that it is apparent that what is required by this particular victim is reparation more than punishment however the fact that Conor can make this written statement to the Court does not provide for the dialogue which is a central feature of restorative encounters.

78 "Towards a Restorative Society a problem-solving response to harm". Martin Wright pg 20.

79 Restorative Justice Practice: An examination of Program completion and recidivism, Kimberly de Beus and Nancy Rodriguez, Journal of Criminal Justice 35 (2007) 337-347. 338. Analysis of thirty five different studies has found significantly higher levels of satisfaction among victim and offenders participants than other justice system alternatives. In addition the majority of victims participating in restorative justice conferences were willing to forgive offenders for their violation.

## Conclusion

This paper has explored in some detail the representation of Restorative Justice (RJ) in the modern Irish criminal justice system. It defined the meaning of restorative justice, outlined in detail its presence in Ireland and examined the practical impact that restorative justice projects have had on the communities where they are situated. The article identified existing restorative justice programmes in the country<sup>80</sup> and pointed to their success,<sup>81</sup> concluding that their potential impact on offending is not fully realized in Ireland.<sup>82</sup> In addition, the article highlighted expansion opportunities that are resource dependant within existing Restorative Justice programmes.<sup>83</sup>

This article advises caution when undertaking comparative analysis on the Irish experience of Restorative Justice, as the figures are simply not sufficiently large to allow for proper statistical analysis. Furthermore, cross comparison of recidivism figures for participants in these schemes against the prison population is not advisable, because criteria of suitability applied across the two populations are not comparable. In particular, selection criteria applied to applicants for Restorative Justice programmes are more specific than those applied to the prison population e.g. motivation, seriousness of offence, etc.

Evaluation of existing Restorative Justice projects is ongoing, the objective being the creation of a model framework based on the experience and needs of these projects.<sup>84</sup> The Department of Justice have announced that the evaluations that have been undertaken to date are all satisfactory and a national roll-out of Restorative Justice is imminent.<sup>85</sup>

Appropriate legislation will be required to establish the scheme on a nationwide statutory basis. Enlisting the support of the judiciary and providing them with appropriate education and training will be key to the successful implementation of any new legislation.<sup>86</sup> Ongoing monitoring and evaluation of Restorative Justice programmes is critical to the achievement of a successful, more cost effective response to offending.

80 In the period 1997 – 2007 the Nenagh Community Reparation Programme dealt with a total of 105 referrals (on average 17 per annum). The Tallaght RJS Victim – Offender Mediation Programme dealt with a total of 51 cases in the period 2004 – 2007 (on average 17 per annum). The Tallaght RJS Offender Reparation Programme dealt with 81 referrals in 2007. However the recent expansion of these schemes has lead to a throughput of approximately 180 cases in 2011 being 140 (approximately) for Tallaght RJS and 40 for the Nenagh Community Reparation Project.

81 Of the 105 cases dealt with by the Nenagh Community Reparation Programme between 1999 and 2007 contracts of reparation were completed in 86% of the cases. More importantly only one in four of these offenders were found to have re-offended in a review of PULSE records by Gardai in 2009.

82 In 2009 the District Courts in Ireland dealt with 64,748 Public Order/Assault cases, 17,620 drug cases and 31,711 theft cases (as well as 406,979 other cases). To further break down the figures, the District Court in 2009 dealt with 199,836 offenders whilst the combined restorative justice programmes dealt with 115 offenders.

83 A guiding value of the Probation Service is that “intervention to restrain further offending is more effective when undertaken by way of reparation, restoration, renewal and resettlement than by simple retribution.” See Probation and Welfare Service 2001 Advancing our Aims: Probation and Welfare Service Strategy Statement 2001-2003.

84 The geographical location of the two existing projects lends itself to the expansion of these schemes. Nenagh is 25 miles from Limerick City and would be able to service an increased number of referrals from this source whereas Tallaght is less than seven miles from the Courts complex in Dublin City Centre and could accommodate an increased number of referrals from this source.

85 See speech of Minister of State, Ms. Kathleen Lynch T.D., Seanad Éireann – Wednesday 20<sup>th</sup> of March 2013 wherein she stated that: “The Probation Service is currently drafting an integrated Restorative Justice Strategy. This strategy will set out a series of actions which the Service will drive forward in collaboration with its partners, to bring about greater availability and integration of restorative practices at various stages of the criminal justice process in terms of adult offenders.”

86 This point has been acknowledged by the Department of Justice and Defence. See speech of Minister of State, Ms. Kathleen Lynch T.D., Seanad Éireann – Wednesday 20<sup>th</sup> of March 2013 wherein she stated that: “In order for restorative justice practices to be more widely used., the Probation Service will build awareness and confidence among criminal justice professionals and the general public, providing them with the understanding that a restorative justice intervention is a viable sanction which can provide benefits for all stakeholders.”



# THE CHALLENGES OF IMPLEMENTING THE RESTORATIVE JUSTICE MECHANISMS IN THE CHILDREN ACT 2001

**Kevin Sweeney**

*Uniform Sergeant, An Garda Síochána.*

*Email: michael.k.sweeney@garda.ie*

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## Abstract:

As it becomes more evident that incarceration is failing to achieve its objectives, the greater the demand for alternatives such as Restorative Justice. While Restorative Justice has, as one of its core objectives, the reintegration of the offender back into his community, it faces a number of challenges in its implementation, some of which may decide its ultimate effectiveness or its failure. Another core objective is the prevention of reoffending which it aims to achieve by keeping young offenders away from association with hardened offenders in prison. But this is not the first time that the political establishment have attempted to introduce an alternative to incarceration. By the end of the 19<sup>th</sup> Century, in recognition of the ineffectiveness of prison, alternatives were legislated for. These efforts while, like Restorative Justice, potentially radical for their time, not only ultimately failed to have a significant impact on their core objective of preventing recidivism, but also eventually led to the scandals of abuse in the Industrial School system.

The reasons for failure principally resulted from a failure of leadership and direction, and the subjugation of the proposals into mainstream criminal justice system, where they simply became an extension of the existing system. In Ireland, the introduction of the Children Act 2001, the first serious attempt since 1908 at dealing with juvenile antisocial behaviour, made provision for the statutory introduction of elements of Restorative Justice such as Family Conferencing and mediation, it also placed the Juvenile Liaison Scheme on a statutory footing. This scheme, run independently by An Garda Síochána, had been in operation for almost forty years at that stage. So, is Restorative Justice as envisaged for Ireland truly a paradigm shift or is it something that is merely a repackaging of old policies with a new veneer of the latest hot solution?

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## Keywords:

Restorative Justice, children, juvenile justice, recidivism.

## Introduction

Prison is a failed social policy, states David Garland (2001). The success of a criminal justice system is measured by its recidivism rates, and “the failure to reduce recidivism has become a symbol of the larger failure of the penal system” (Radzinowicz, 1980 p.1036), while Zimbardo (2007) also argues about the “necessity for ending the ‘social experiment’ of prisons because, as demonstrated by the high rates of recidivism, the experiment has failed” (p.247). Prisons however, continue to maintain an omnipotent position in contemporary Western criminal justice systems, where they impose an increasing burden on taxpayers, while being stretched to breaking point (Marsh, Fox, & Hedderman, 2009; Wright, 2010). Ireland is no exception, as there has also been a move towards the ‘just deserts’ model, in common with other western countries (Kilcommins & al, 2004; McNeill, 2005; Walsh, 2007). While adopting tougher policies on criminality, Western Governments in an effort to provide sustainability of their prison systems, have moved to management models that are control oriented and actuarial (Robinson, 2002).

As a result, there is a demand for an alternative approach to dealing with criminals. Instead of incarceration, there is a need for a model of justice that is more effective, not just in financial cost terms, but in achieving its goal of balancing the needs of society for justice with the individual’s needs and rights. One approach that is gaining momentum as an alternative to retributive justice is Restorative Justice (RJ) (Braithwaite, 2000a, 2000b, 2006, 2007; Zedner, 1994; Howard Zehr, 1990, 1997; H Zehr & Mika, 2003), whereby the offender and victim may meet together, with the assistance of a facilitator or mediator, and the offender offers some type of reparation to the victim, in an effort to make good the harm. Braithwaite (2007) suggests that RJ helps to heal the victims of crime, not just in the narrow sense but broadly in a community sense as well. All those affected can have an opportunity to discuss the incident’s effects and prevent its reoccurrence. Critically, the acceptance of responsibility by the offender is the start of the healing process (Braithwaite, 2000a; Johnston, 2008). Bazemore suggests that the theory and practice of Restorative Justice should be connected to mechanisms for achieving informal social control and informal social support as forms of community social capital in the socialization of young people (Bazemore 2001; Wheeldon 2009; Norton 2007).

But, Restorative Justice lacks a clear definition and it therefore allows itself to be subsumed into mainstream criminal justice systems (Stahlkopf, 2009; Ward, 2008; Wheeldon, 2009; Zedner, 1994), instead of competing as an autonomous, radical, alternative system. In Ireland, the introduction of The Children Act 2001 saw Restorative Justice being placed on a statutory footing for the first time. For adults, only two centres, currently in Nenagh and Tallaght, operate for adult offenders but government plans envisage a further six nationwide centres by 2013 (O’Donovan, 2011). Nevertheless, even this limited paradigm shift can be portrayed as an advancement of victim’s rights as well as a move towards a comprehensive program to deal with juvenile crime. Restorative Justice may be viewed as a useful vehicle to implement policies that may be perceived to serve all stakeholders in the criminal justice system. Victims achieve a central place, prison is seen as a last resort option and an effort is made to socialize juveniles.

But, this is not a new or novel suggestion. I suggest that the policy that is now being implemented in Ireland as Restorative Justice is similar in its desired outcomes to previous efforts, such as the Gladstone Prison Report of 1895, to eliminate recidivism by reducing the numbers of recruits to the criminal ranks. Punishment has been, and continues to be, at best, an ad hoc pragmatic policy beset with conflicting ideologies, with a large divergence between reality and rhetoric. The importance of early intervention to alter the potential criminal life course of young people who are especially vulnerable to criminal influence has long been recognised, and ongoing research continues to highlight the issues involved (Farrington, 2002; Murray, Irving, Farrington, Colman, & Bloxsom, 2010; Welsh & Farrington, 2007).

In the past, efforts to address these issues led to quite progressive legislation, for the time, but the legislation failed to achieve the results aspired to, and in some cases created a far greater malady. The historical parallels between

19th century thinking and modern efforts suggest that even the best intentions do not necessarily translate into the intended results. The reasons for failure are myriad but I propose discussing some of these challenges involved in the implementation of the Restorative Justice concept in Ireland, by drawing on research from countries also implementing similar initiatives. While the Restorative Justice initiative offers the potential to successfully reach potential offenders and spare them incarceration while reintegrating them into their community, it will require more than goodwill and good intentions to achieve any measure of success in preventing them reoffending.

## Historical Context

Historically, criminal law in England was noted for the large number of capital offences it maintained (Radzinowicz, 1945). The Victorian penal system was constructed around the notion of strict individualism, reflecting the classical approach to wrongdoing, with severe punishments as the only means of reforming wayward souls. However, harsh prison conditions meant that the appetite for giving long sentences amongst the judiciary diminished as the 19<sup>th</sup> century progressed (Weiner, 1990). Individual reformers and judges generated a process of incremental changes, which slowly modified and changed the criminal justice system in an attempt to improve it (Beattie, 1991; Carroll-Burke, 2000; Devereaux, 1999). As the century progressed there was a gradual move from moralism to causalism. After 1895 some offenders were defined according to medical diagnosis of a condition along with an individualised treatment, as criminals came to be viewed as patients. The central problem of identifying and targeting 'a habitual criminal' remained, however, even as some, such as, Sir Edmund Du Gane Chairman of the Prison Commission for instance, proposed keeping locked up any man that showed habitual criminal tendencies until he was forty years old (Radzinowicz, 1980). Even habitual drunkards received a name change to inebriates, reflecting the prevailing zeitgeist (Garland, 1981, 1985; Kilcommins, 2003; R. Smith, 1983; Weiner, 1990).

The introduction of the 1879 Summary Jurisdiction Act was one of a number of attempts to keep first offenders out of prison, as it was known that the effect of imprisonment was association with hardened criminals. The Gladstone Report (1895) recognized the influence of social conditions particularly those leading to the "proper upbringing of youths" (Weiner 1990). Gladstone recognized that achieving changes in adults would be difficult but greater success might be achieved with juvenile offenders. If juvenile offenders could be prevented from associating with lifelong criminals in prisons, then they could be prevented from becoming such criminals themselves. By cutting off the supply to the cycle of habitual criminals, recidivism could be prevented (Radzinowicz, 1980).

As a result, greater emphasis was placed on an alternative type of institution to replace the prison for juvenile offenders, in an attempt to break the cycle of association and recidivism. There already existed Reformatory schools for petty offenders and industrial schools for neglected or abandoned children, deemed at risk of becoming criminals, which were administered by private charity organisations from 1852 onwards. In Ireland, reformatory schools were first established by the Reformatory Schools (Ireland) Act, 1858. There were 50 industrial schools in Ireland by 1875, and by 1898, there were a total of 71 Industrial schools, of the 61 schools in the 26 counties, 56 schools were for Catholics and five for Protestants. The focus of these schools was directed towards providing vocational training in trades, in order to facilitate the integration of the pupils into society at a future stage (Garland, 1985; S. Ryan & al, 2009).

Partly as a result of the work of psychologists such as Stanley Hall in 1904, juvenile criminality was seen as a natural and temporary stage in development, and this deviance was even seen as having positive characteristics. It was regarded as an outward sign of activity and adventure, and in 1908 the Boy Scouts were formed to productively channel these energies, while also in that year the Children Act, 1908, popularly known as the Children's Charter was enacted. Part IV of this act provided the constitutional basis for reformatories and industrial schools.

Borstals were created under the Prevention of Crime Act, 1908, for more serious juvenile offenders as an alternative to sending them to adult prisons. These were seen as an intermediate step between reformatory schools and prison (Weiner 1990; Radzinowicz and Hood 1980). Further attempts to keep first time offenders out of prison included the introduction of the Probation of Offenders Act of 1907 and the greater use of fines as a punishment (Weiner 1990; Garland 1981). The 1908 legislation gave the courts the legal power for the first time to intervene in families where a child was considered at risk and remove the child to a 'safe' environment.

As we are now aware, these institutions seriously malfunctioned.<sup>1</sup> The Ryan Report (2009) outlines the degradation and torment that occurred at these institutions of The Reformatory and Industrial Schools. The scale of the mistreatment and its duration in the Irish context sets the schools apart in historical annals, and the resulting closure of these institutions in relatively recent years with the subsequent investigations reveal the horror the inmates suffered. While originally introduced with good intentions, failure to monitor conditions, conflicting philosophies, and poor oversight with an abdication of responsibility allowed these institutions to descend into nightmarish torture centres. The broad context of the risk of youth crime has long been appreciated but no long-term effective solution yet realised.

## At Risk of Offending

Merton's (1938) work on social structure and anomie in America, as consumerism began its ascent, identified the competitive nature and associated desire to win at all costs in America with various strategies used to attain those goals. He linked a society's aspirations for materialistic goals with many unfavourable outcomes, as the easiest route chosen to achieving those goals can often be the strategy of rebellion. In echoes of that work, a broad perspective on risk has been highlighted by research by Richard Wilkinson, which shows the effect that social inequality can have on a range of diverse outcomes including health and rates of imprisonment. Wilkinson shows that inequality as measured by relative income in society leads to poorer outcomes across this range. Ireland is midpoint in this range (Fig 1)<sup>2</sup>. This inequality causes people to strive to give meaning to their lives and to establish status amongst their peers (Pickett, Mokherjee, & Wilkinson, 2005; Pickett & Wilkinson, 2007; Wilkinson, 1997; Wilkinson & Pickett, 2009, 2010). Wilkinson contends that the psychosocial effects of this social inequality can lead to people responding to threats to their social status, particularly how others judge them. This social stress, he contends, leads to adverse behavioural outcomes. Psychological research confirms that the most stressful tasks people face, those that can raise the stress hormones most, are those tasks that have a socially evaluated threat (Dickerson & Kemeny, 2004). This suggests that children born into families where parents are struggling with inequality will also take that burden upon themselves; indeed Wilkinson suggests social mobility (poor fathers having rich sons; rich fathers having poor sons) is poorest in more unequal countries.

The National Youth Justice Strategy 2008–2010 (IYJS 2008 p.45) states that the "family environment is where most children receive instruction and develop a sense of right and wrong, where parents protect against risks, nurture

- 1 Zimbardo (2007) demonstrated a parallel in the malfunctioning of these institutions with the Stanford Prison Experiment, which witnessed a similar escalation in violence and brutality against inmates by what appeared to be normal, well-adjusted fellow students. An alternative concept offered to free will in evildoers is the presence in all of us of a potential to do evil. This potential is released in response to certain situational forces acting on us. These forces are most salient in novel settings. Dehumanization is a strong factor in this process as is the power of formal rules used to subjugate the victims (see also Bauman, 2000; Bazerman, Loewenstein, & Moore, 2002; Milgram, 1997; Ross & Anderson, 2008).
- 2 See Appendix for chart. Wilkinson also cites lack of trust as a consequence of inequality, but there appears to be little correlation between the results of Transparency International's Perception Corruption Index, (available at [www.transparency.org](http://www.transparency.org)) with Wilkinson's table of inequality for developed countries.

physical, emotional and social development, and promote life chance opportunities". Unfortunately, not every child receives loving care in a nurturing environment, as Durkheim (1893 p.334) suggests "some people can be unaware of all the obligations laid upon them by their condition as social beings".

Research on crime risk factors (Bonta & Wormith, 2007; Farrington, 2002) has identified a number of proximate risk factors as specific causative factors in juvenile crime, especially if children fail to receive values or receive alternative value systems. David Farrington states that "offending is often part of syndrome of antisocial behaviour that arises in childhood and persists into adulthood" (Farrington, 2000; 2002 p.603; Hawkins et al., 2008; Murray et al., 2010; van der Laan, Blom, & Kleemans, 2009). The effect of pressure imposed by the peer group is a consistent factor in much of criminal behaviour (Horgan, 2005; D. J. Smith, 2002; Stein, 2010; Zimbardo, 2007). The reality is that some young people face potentially greater risks than others do. Sinead Freeman (2008) noted that young offenders "had little structure or stability" (p.94) with family conflict, parental involvement in crime and regular consumption of drugs and alcohol. She found little evidence of forward planning or goal setting. Similarly, Mairead Seymour (2008) in her research, found that youths who had left school early and consequently were attending the FAS/ Youth Reach Programme enjoyed the activity but found attending regularly difficult because they routinely engage in unstructured activities. As a consequence they lacked the ability to set even short term goals to attend a potentially valuable and personally enjoyable course.

Redmond (2009), however, cautions that association of factors does not mean causation and there is a danger that the risk factor prevention paradigm can become a self-fulfilling exercise (McAra & McVie, 2010). Explanations for behaviours that are based on uncertain models should be tempered with caution, as the causal factors that are used in explanation might not exist in reality (Tversky & Kahneman, 2008). Unfortunately with both criminologists and political policy makers there is a tendency to evaluate facts through an ideological lens, the incongruence between incompatible new evidence and their worldview being explained to their own satisfaction by limited alterations that are minimal in scope and local in character, rather than a revision of their entire schema or model (ibid, p.128).

## Children Act 2001

The primacy and importance of the 1908 legislation can be understood when one observes that it continued to be the primary legislation for vulnerable children in Ireland until the Child Care Act, 1991, amended it. The Children Act 2001 then replaced the 1991 Act, but did not come into force fully until 2007. The 2001 Act did not attempt to introduce Restorative Justice as a replacement for the criminal justice system; instead it was inserted as another tier in a further attempt to divert potential offenders before they enter the mainstream Criminal Justice System. Upon arrest, a consenting young person who admits the offence is referred to the juvenile diversion programme. The decision, if appropriate, will be taken to caution, formally or informally. The procedure at the formal caution will involve the offender being invited to apologise to the victim and offering reparation as a key element of Restorative Justice. (S.18-26, *2001 Act*) Subsequent to the formal caution, a decision may be taken to hold a family conference by the Gardai. The victim will be invited to attend, as well as any other relevant agencies (S.29). Should the case proceed to Court, it also has the power to direct a family conference, instructing the probation service to convene one (S.78). The Act also introduces a range of ten community sanctions, as an alternative to custody; the Probation Service oversees these community sanctions (S.115).

In many respects, the restorative elements introduced in the Children Act are simply the statutory legislating of the pre-existing policy of the Garda Juvenile Diversion Program, which had been in operation since 1963. This program processes on average of 20,000 young people a year. In 2009, there were 18,519 young people between the ages of 12

and 18 years referred to the diversion program. This was a reduction of 14% in numbers from 2008. Of these, seventy six percent were admitted to the diversion program, with 10,059 receiving informal cautions and 3,988 formal cautions. In 2009, there were only 416 (euphemistically termed) Restorative Events (Garda 2009). The total number of children referred to the programme was 17,986 which is a decrease of 533 or 2.9% from the 2009. 12,899 (72%) children referred were admitted to the Diversion Programme. In 2010, 792 referrals were dealt with using Restorative Justice.<sup>3</sup>

The additional development of a Garda Youth Diversion Program is an extension of the initiative and an attempt to address the important element of community interaction and integration. These innovative programmes have been working since 1991 in an effort to compensate for some of the missing structure in young peoples lives with the purpose of engaging in the process of learning and development that will enable them to examine their own offending and make positive lifestyle choices (L. Ryan & al, p.4). Currently there are one hundred programs in existence catering for a total of 3600 youths. The projects are run independently but receive state funding by application through the Garda community relations section (Redmond, 2009).<sup>4</sup>

The Ryan guidelines for the Garda Youth Diversion Program state that the primary objective is dealing with young persons who are offenders, but also suggest a second target group of juveniles who have come to the attention of Gardai or community workers, as possible future offenders, should also be included. The guidelines also suggest involving other juveniles for strategic purposes, to create a balance in the group or to provide a positive role model if it is possible to do so while acknowledging the importance of the first two target groups (No.8 Ryan).

## Challenges Facing Implementation

While important innovative measures have been put in place, the sanction of the prison sentence remains. In 2009 out of the 3,222 offenders dealt with by the Children Court, 272 offenders received detention (Courts Service 2009). As noted by Healy (2005), in the absence of legislative frameworks Irish judges have previously been known to innovate themselves. Therefore, the success of any legislation will be significantly dependant on their cooperation and their creativity, and the active involvement of the legal profession. But, despite moves to expand RJ to adults, beyond the centres in Nenagh and Tallaght, many lawyers working in criminal justice are still unaware of the RJ initiative or its aims (McCarthy, 2011).

Concern has been raised that a net widening effect (O'Mahony and Doak 2004; Cohen 1985; Garland 2001) will be created by the inclusion of young people in the youth diversion program that have not formally come to notice of the Gardai. But, they do provide an opportunity for young people to engage in constructive activity under the guidance of experienced and competent youth workers, providing a focus on effective intervention in offenders and potential offenders lives (McGagh & al, 2009; D. Smith & Vanstone, 2002). Constantly changing social and cultural values need interpretation and explanation to young people, and if parents fail to provide that explanation (McGagh & al, 2009) then some positive role model is essential. It is difficult to support a policy of integration without accepting that it is necessary for offenders and non offenders to be able to mix freely in not only a social non-threatening environment but also while engaging in productive activity. The participation of offenders and non-offenders in the same activities

3 Annual Report of the Committee Appointed to Monitor the Effectiveness of the Diversion Programme 2010.

4 In 2011, the 100 Youth Diversion Projects were placed under new administrative arrangements which take financial responsibility away from the Gardai and onto local community based organisations (Garda report 2011). During this year a Youth Case Management system continued to be introduced country wide. This involves a garda taking responsibility for one juvenile and actively managing that case and any incidents associated with it (Irish Examiner May 13, 2010).



can create a greater positive influence than a program designed solely for offenders. Relationships and positive associations are the key to long-term success but many of these programs may take a number of years to achieve any meaningful results (Hawkins et al., 2008).

The support of the family is of paramount importance to the success of the intervention, as frequently a dysfunctional family background is a primary factor in the original offending. The difficulty is that it is only through the cooperation and active involvement of the family towards the productive effort to prevent future offending that there is any hope of success. Where families are complicit in the offending there is realistically, little possibility of positive outcomes (Stahlkopf 2009; Redmond 2009).

In Ireland, the programs are delivered by wide and diverse groups and there is a long tradition in youth work whereby most staff members are volunteers (Powell, 2010). The relationships these volunteers form with young people will ultimately determine the success of the programmes (Stahlkopf, 2009). As the providers have different ethos and backgrounds in providing youths with services, the professional training and monitoring of workers to ensure a coherent and focused strategy will be essential. There is also a danger that imposing such a centralised strategy will stifle innovation and enthusiasm amongst disparate organizations and their volunteers. The effort and commitment necessary to obtain the level of expertise necessary to deal competently and consistently with young offenders may go beyond the community spirit of voluntary unpaid work that has heretofore worked only with willing and enthusiastic youngsters, as opposed to those forced to attend. The core group of Youth Work volunteers has been the driving force behind the development of youth programmes in Ireland, but there is a danger that considering them the solution to juvenile crime in its entirety will create a tension and a role that many may be unwilling to participate in (Powell 2010).

That is not to equate professionalism with paid employment. The question about the professionalization of youth work is a concerning factor. Professionalization can unfortunately begin to mean bureaucracy and as the government moves to become the key financier of youth work in Ireland, accountability and value for money may become benchmarks for providers to meet. Guideline 9 of the RYAN Guidelines recommends that all project activities should be based on core programme principles, with all objectives and activities measurable. Therefore the operation of the programmes will require considerable and consistent funding as well as bureaucracy (McNeill, 2005). Moreover, the program will lose credibility if it becomes associated too strongly with the criminal justice system.

There is a similar project running in Britain called Youth Inclusion Programs, engaging approximately 73% of high-risk children, but at less than 10 hours per week. Nevertheless, they show a significant reduction in the number of arrests in children who had engaged from the beginning. However, school attendance continued to remain poor for participants. Newburn also notes, that the audit commission in 1996 stated, "agencies dealing with youth offenders have different views about what they are trying to achieve" (Newburn, 2002 p.1031).

One of the central tenets of RJ is the focus on the needs of the victim (Braithwaite, 2000a, 2007; Johnston, 2008; Howard Zehr, 1997); however, there is a danger that the Family Conferences can become welfare orientated with the emphasis on rehabilitation for the offender. There is research evidence showing that some conferences are provided in two sections, the restorative section that the victim takes part in and the rehabilitation section that the victim is excluded from. This exclusion occurs because the professionals in attendance have concerns over privacy issues, the very issues that sometimes may set the context of understanding for the victim (Zernova, 2009). Where Social Work professionals mediate at the conferences, there was a reluctance to attach responsibility for behaviour to the offender (Daly, 2002; Zernova, 2009). If such a trend were set in Ireland, then conferences would

resemble more a HSE Conference with the welfare of the child paramount and the victim merely incidental and it can actually aggravate the injury initially caused, with victims feeling worse after the conference (Daly, 2002; Norton, 2007). Some victims at conferences have even offered work in an effort to assist in reintegration, and many agreed to participate because they believed it was assisting the young person (McNeill 2005), but many also felt uncomfortable with the passive approach adopted by the mediators (Johnston, 2008; Zedner, 1994; Zernova, 2009). The danger to the victim of involvement remains consistent with involvement in any other aspect of criminal justice. Their cooperation is essential in establishing a crime but they may not achieve the closure they desire in any sphere. The benefits of participation are more tangible in RJ but many victims still choose not to engage in the RJ process (Newburn 2002; Stahlkopf 2009). As yet in Ireland there is no research into why victims decline to take part but it may be reasonable to assume that fear plays an important part with some, while others may still feel anger towards the offender. Victims who do participate felt a greater sense of security after meeting the heretofore-anonymous offender, though not all thought the apology genuine. Daly (2002) suggests only 30% thought the apology genuine, but in other jurisdictions including Northern Ireland, most of participants claimed to have received an apology that they were satisfied with, compared to only 17% who received an apology of those who went through traditional court processes. But, even with genuine apologies, there is no guarantee of future better behaviour (Norton 2007).

For young people, the peer group support is vitally important to self-image. As in the family, a subculture of criminality in the peer group will make any efforts to modify behaviour difficult (Baron & Hartnagel, 1998; Bernburg & Thorlindsson, 1999). This delinquent subculture can temporarily insulate members of the group from sources of distress they might otherwise feel. However, this oppositional disposition also provokes educational and employment problems that may later interact with the remains of this subculture to ultimately produce distress (Hagan, 1997). The availability of a routine acceptability of alcohol or drugs in the lives of the group would make the avoidance of potential conflict situations difficult (Redmond 2009). In essence, the conference with the aspirations and plans made are dependent on an entire lifestyle change for many young offenders. The advantage the community setting has, over prison, is that the positive aspects such as education, either school or skills training can continue within the familiar environment. Ultimately the young person must value the programme and consider it beneficial (Stahlkopf 2009). No intervention will be effective unless the young person wishes to change (McNeill 2005; Johnston 2008).

The striving for the reintegration of offender into the community, presupposes that all communities are homogenous units (Johnston 2008). A modern society can have a wide variety of both cultural and religious sub units. Certainly, many proponents of RJ have been criticized for showing almost “religious fervour” in support of the initiative. The dilemma of attempting to build a sense of community while also satisfying the needs for justice can create a conflicting situation where offender’s human rights may be violated (Ward, 2008). Issues of special concern, involve reintegrative shaming (Braithwaite 2000). The incident of the “I am a thief” T-shirt is the familiar example quoted of excessive practice (Johnston 2008; Braithwaite 2002). The protection of human rights is a fundamental principle; in some situations, pressure may be applied to coerce an admission when the alternative is appearing before a court and when the expectation of success depends on apologies (McGrattan, 2010; Stahlkopf, 2009). Many conflict situations are not straight forward between parties and they may not always have a clear demarcation between offender and victim. McGrattan (2010) provides some insight, and highlights areas of potential concern, in the active involvement of paramilitaries in RJ in Northern Ireland. This again emphasises the profound need for rigorous oversight to prevent innovative practices developing into abuse of power situations (Braithwaite 2002).

## Conclusion

The principle behind restorative justice is of bringing the offender back into the community-fold to re-engage with it and share its values. Perhaps this effect of engaging and empowerment alleviates the effect of inequality that Richard Wilkinson identified as a precursor to negative outcomes. In the past, efforts to formulate an alternative punishment strategy have resulted in policies that were but shadows of their intended purposes. There is a balance to be struck between the extremes of a half-hearted, insipid initiative and a strategy that departs from legal principles and safeguards. Failure by stakeholders to reach a consensus on the desired objectives and aims causes conflict in the implementation of strategies, which results in an overall failure of the project. This result has manifested itself previously in failures to make proper use of the available legislation and failures of leadership and direction.

The major advantage of the current criminal justice system is the fact that justice is standardised in every court in the jurisdiction. The desire to innovate and to implement novel solutions or sanctions was the reason that standardisation was first introduced. Though not an absolute Restorative Justice model or a paradigm shift, Ireland's adoption of an integrated system combining Restorative Justice in the existing Criminal Justice system allows oversight by the judiciary, preventing excessive practices and protecting offenders' rights as well as providing the necessary sanctions to focus minds. The rehabilitation and restorative models are compatible if not mutually supportive (Zernova 2009; Braithwaite 2002; Daly 2002; Wheeldon 2009). But, the expectations of RJ cannot exceed reality and a slow incremental development that achieves quantifiable goals is a more desirable outcome than a rushed alternative system that creates a backlash and becomes discredited.

How is success to be measured? If a policy of choosing individuals on the basis of prospective success in RJ programmes exists, then it will greatly bias outcomes. Many of these may not be re-offenders under any circumstances. Therefore, while their inclusion will increase the success rates of the programmes, subsequent evaluations need to address this selection bias. Nevertheless, perhaps an experimental advantage from such a practice would be the subsequent random assignment of chosen individuals to one of two groups; one to undergo restorative justice while the other receives simply a caution. Subsequent follow up may show statistical difference in recidivism rates, as measured by arrests or alternatively by Garda PULSE incidents, as opposed to convictions, which not all offenders receive for various reasons. The current low numbers involved in RJ in Ireland is an inhibiting factor for research, however, as it makes statistical analyses difficult.

The lack of ongoing research is a consistent problem in the Irish Criminal Justice System. It is a futile exercise to develop innovative programs but then fail to evaluate them, to have no ability to establish whether they contribute towards successful crime reduction and offender reintegration and whether best practice is being achieved. Time will tell if this initiative has any more influence on recidivism than previous initiatives. But do we want to wait another hundred years to find out?

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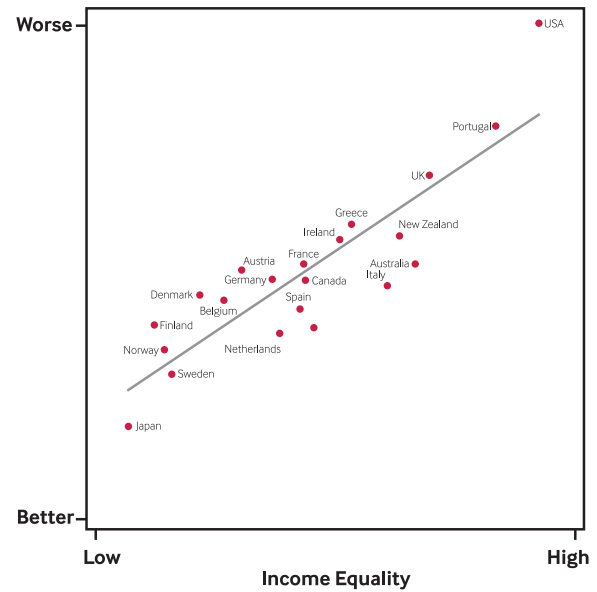
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## Appendix

Fig.1 Wilkinson & Pickett, The Spirit Level

- Index of:
- ▶ Life expectancy
  - ▶ Math & Literacy
  - ▶ Infant mortality
  - ▶ Homicides
  - ▶ Imprisonment
  - ▶ Teenage births
  - ▶ Trust
  - ▶ Obesity
  - ▶ Mental illness - incl. drug & alcohol addiction
  - ▶ Social mobility



Graph of Inequality from Wilkinson & Pickett, The Spirit Level

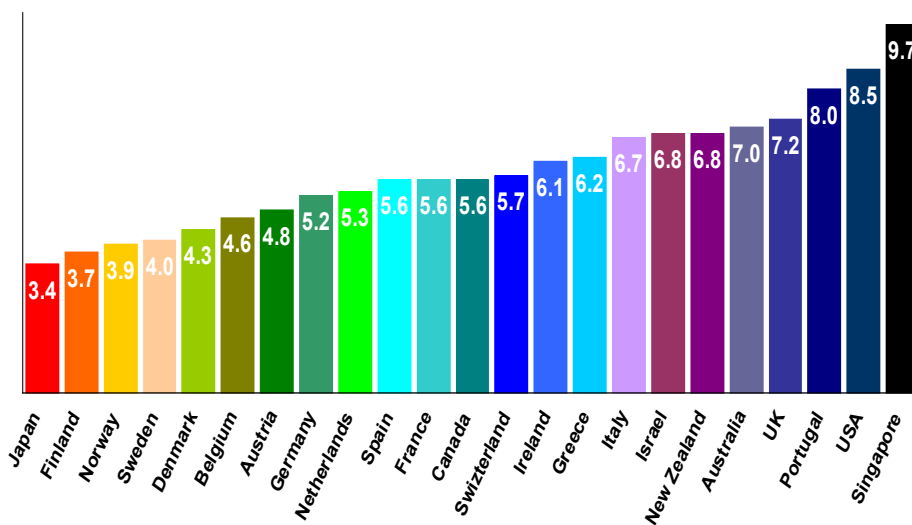
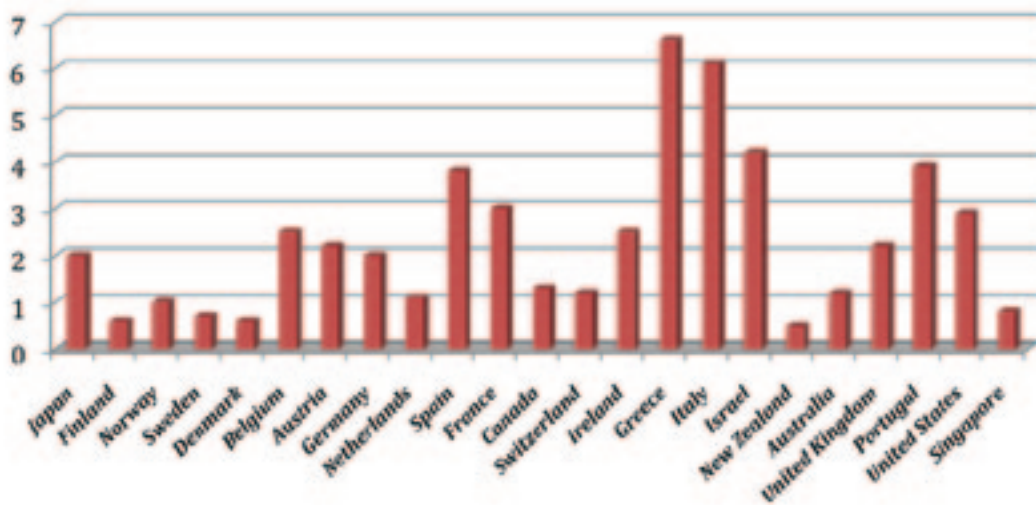




Table of Same Countries from Transparency International Corruption Perceptions 2011 Index.



**Note:** Countries scores have been inverted to enable direct comparison to Wilkinson's table. Higher scores from Transparency indicate a more trustworthy country, whereas above graph shows higher countries as least trustworthy i.e Greece, is most corrupt country in group, while Singapore is one of least. New Zealand is rated the most trustworthy country in 2011 Index.

(<http://cpi.transparency.org/cpi2011/interactive/>)

# Articles

## GENERAL



# MAKING THE CASE FOR REFORM OF THE SOCIAL WELFARE APPEALS SYSTEM

**Saoirse Brady**

*Free Legal Advice Centres (FLAC).*

*Email: [Saoirse.Brady@flac.ie](mailto:Saoirse.Brady@flac.ie)*

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## **Abstract:**

This article examines the social welfare appeals system from a human rights perspective. The author considers whether it is sufficiently independent given that it remains a section of the Department of Social Protection. The article also looks at whether appellants are afforded equality of arms in the appeals process specifically focusing on Article 6 of the European Convention on Human Rights and whether legal aid should be available for representation at social welfare appeals. It also looks at the right of appellants to equal access to information including previous decisions of Appeals Officers which are currently not made publicly available.

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## **Keywords:**

Social welfare appeals, independent tribunal, equality of arms, fair procedures, effective remedy.

## Introduction

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Social welfare law reform has always been a cornerstone of the work of FLAC (Free Legal Advice Centres) and other law centres working on access to justice or public interest law issues. In October 2012, FLAC published a report entitled *Not Fair Enough: Making the case for reform of the social welfare appeals system*, (FLAC 2012) calling for the reform of the social welfare appeals system. In times of recession, when around 50 per cent of the population benefits from a welfare payment (DSP 2012:11), it is more important than ever to have an independent and robust appeals mechanism to make certain that individuals can assert their entitlement to social welfare assistance in a fair and timely way.

The Social Welfare Appeals Office is a quasi-judicial tribunal and its operation is governed by both primary and secondary legislation; Part 10 of the Social Welfare (Consolidation) Act 2005 and the Social Welfare (Appeals) Regulations 1998. However, it is not a statutorily independent body although Appeals Officers are appointed by the Minister for Social Protection under the legislation and remain employees of her department.

While the current social welfare appeals system was never designed to deal with the huge volume of appeals now before it – almost 53,000 appeals in 2012 (Gleeson 2013) – many of FLAC's concerns relate to the appeals infrastructure itself and the problems it poses for appellants who are not afforded some of the most basic rights necessary to ensure equality of arms. However, the steep rise in appeals has resulted in more delays with an oral hearing taking 39.5 weeks on average and a summary decision taking 27.8 weeks. There are also fundamental problems at the core of the initial decision-making process as almost a quarter of all appeals (22 per cent) are revised by the original decision-maker once an appeal is lodged (Gleeson 2013). In an environment where there are constant reminders of the need to reduce the amount of expenditure in relation to the social welfare budget, it is important that resources are put into the initial decision-making stages.

## Independence

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The Commission on Social Welfare's report in 1986 recommended the establishment of a separate office with an independent chairperson. However, despite these proposals, in 1991 the Appeals Office was set up as a section of the parent department rather than an autonomous entity.

Article 6 of the European Convention on Human Rights (ECHR), incorporated into Irish law through the ECHR Act 2003, ensures the right to a fair hearing. It requires that any tribunal should be independent, particularly from the Executive. However, the Minister for Social Protection appoints civil servants from her own department to act as Appeals Officers without any public appointment process.<sup>1</sup> The way in which Appeals Officers are appointed lacks transparency and falls short of the standard required under the ECHR. They are not appointed for any particular length of time and there are no terms for their removal.<sup>2</sup>

The European Court of Human Rights, in its examination of what constitutes an independent tribunal, has not explicitly excluded public or civil servants from serving as tribunal members, but it has set out a number of safeguards to ensure independence.<sup>3</sup> One of the factors it has taken into account is whether the adjudicator may have a connection to

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1 See s.304 of the Social Welfare (Consolidation) Act 2005.

2 *Belilos v Switzerland* (1988) 10 E.H.H.R. 466.

3 *Dauti v Albania* (2009) App. No. 19206/05.

either one of the parties to an appeal; in this instance the Appeals Officer is deciding a case where one of his or her colleagues is a party to the appeal.<sup>4</sup> After working in the Appeals Office, an Appeals Officer may be transferred to another section of the Department of Social Protection which could not happen if the office was completely independent. Such a transfer within the Department could be seen to undermine the idea of complete independence and separation as in any independent body, an adjudicator should not be open to any external pressures including removal at any time. In their book on *Administrative Law in Ireland* Gerard Hogan and David Gwynn Morgan expressed concern at this situation:

*The system is administered by civil servants working in the Department of Social Welfare whose independence is not guaranteed by law and who, perhaps, are influenced by departmental policy considerations. (Hogan & Morgan 2010:308)*

In 2005, Northside Community Law Centre published a report on the social welfare appeals process and recommended the establishment of an independent appeals mechanism which is not only structurally independent from its parent department but which is also perceived to be independent. (NCLC 2005: 102) In his annual report for the same year, then Chief Appeals Officer Brian Flynn also emphasised the need for the perception of independence as

*[t] hose using the appeals service must have confidence in its independence and its ability to carry out its role independently. If that confidence is lacking, the role of the appeals service is diminished and weakened (SWAO 2006:13)*

However, the current Chief Appeals Officer Geraldine Gleeson believes there is no need to place the Appeals Office on a statutory basis. (FLAC 2012:29)

## Representation

While quasi-judicial tribunals are designed to be user-friendly, in reality when people are dealing with complex issues of law or require assistance, the appeals system does not provide for equality of arms or a balance between the two parties to a social welfare appeal. Civil legal aid is not available for representation before most tribunals.<sup>5</sup> Despite the fact that a person should be able to avail of legal aid for information or advice prior to an appeal, the Legal Aid Board's (LAB) own annual reports do not record any advice work in this area of law. (LAB 2009:14; 2010:14; 2011:19; 2012: 16) In contrast to this situation, in England and Wales civil legal aid had been routinely available in social welfare cases to help appellants prepare their cases until the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 which came into effect in April 2013. This piece of legislation completely removes social welfare benefits cases from the remit of legal aid which is expected to cause difficulties for those trying to access their rights and entitlements without assistance. Lord Willy Bach, former UK Minister for Legal Aid and a vocal campaigner against the LASPO Act, set out the rationale for retaining legal aid in social welfare cases:

*This legal advice, if given early, can often sort out the legal problem, change lives for the better, and help avoid the enormous cost to both the individuals and families involved as well as the State itself when matters are allowed to get out of hand. (Legal Voice 2013)*

4 See *Ettl v. Austria* (1988) and *Sramek v. Austria* (1985) and UK House of Lords' decision in *Begum (FC) v. London Borough of Tower Hamlets* (2003).

5 The only exception is the Refugee Appeals Tribunal - see s.27 of Civil Legal Aid Act 1995 and see the decision in *Corcoran v. Minister for Social Welfare* [1991] 2 I.R. 175.

Research in England and Wales has found that putting resources into providing information and advice in advance of an appeal saved the State money in the longer-term. (Liberty 2011: 16; CAB 2012: 19) If a similar approach was adapted in the Irish context, then perhaps fewer appeals would be necessary as issues could be resolved at an earlier stage.

In FLAC's report *Not Fair Enough* (2012), advocates were asked if they felt that legal aid should be made available for social welfare appeals and the majority who responded (24 out of 32) felt that it should be (FLAC 2012: 63). Of these 24 advocates, 16 felt that legal advice should be always or regularly be given prior to an appeal. Most respondents felt that representation was necessary only occasionally as it would depend on the circumstances of each case. The Chief Appeals Officer commented that the provision of legal aid in certain cases was a "policy matter for the Minister and Government". (FLAC 2012: 64)

The fact is that people do seek assistance with basic social welfare queries. The Citizens Information Board (CIB) reported that in the first half of 2012, 46 per cent of the total queries – 242,227 queries – received by its services related to social welfare. (CIB 2012: 11) There are no separate figures for the number of queries related solely to appealing a refusal.

Representation could also prove useful for Appeals Officers themselves. The Chief Appeals Officer recognised that

*...competent representation may well assist some clients where they don't fully understand the issues involved because of low levels of education or literacy problems or where they are very concerned about an issue... (FLAC 2012: 41)*

In a 2010 study commissioned by Law Centre (NI) on tribunal reform in Northern Ireland, the authors interviewed users of three different tribunals including the Appeal Tribunal (social security) as well as tribunal members. There was a consensus amongst interviewees that representation was helpful as long as it was of an adequate standard, "Good quality representation was seen as simplifying and expediting the proceedings, which was regarded as beneficial for all parties". (LCNI 2010: 35)

Appellants are represented and assisted in making appeals by a variety of different actors including Citizens Information Officers, lawyers, Non-Governmental Organisations and lay advocates. However, the Social Welfare Appeals Office does not maintain statistics on the number of people represented at appeal either through written submissions or at oral hearing. This figure could prove useful in assessing the need for representation and whether it might have an impact on the outcome of appeals.

## Access to Information

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One of the ways in which equality of arms or a fair balance between the parties is achieved is for both sides to an appeal to have equal access to information. One of FLAC's main concerns is that appellants do not have the same access to relevant information in a number of ways.

Firstly, appellants are not automatically sent a copy of their social welfare file when submitting an appeal unless it is requested. Some appellants have requested their file under Freedom of Information legislation but in 2011 there were only 178 such requests out of a total of 31,241 appeals received by the Appeals Office that year. (SWAO 2012: 17) While an appellant may have some of this information already, a copy of the Deciding Officer's submission is not sent to the appellant despite the fact that it is only drafted after an appeal is lodged and is sent on to the Appeals Officer for

his or her consideration. The appellant does not see the submission which may inform the Appeals Officer's decision and has no chance to comment on the content or observations contained within.

Secondly, appellants are also restricted in accessing potentially relevant information in the form of previous decisions as these are not published or made available to the appellant or his or her representative prior to the appeal. While the Appeals Office publishes a number of case studies in its annual report which are replicated on its website, it does not have a searchable database of decisions available to appellants.

In 2011, FLAC represented a refugee in the case of *Jama v Minister for Social Protection*.<sup>6</sup> Ms Jama was seeking access to previous decisions which might be relevant to her appeal for back-payment of Child Benefit. The Appeals Office refused on the basis that at that time it did not have a searchable database of decisions. It maintained that anonymising previous decisions of Appeals Officers would prove too costly to the State, an argument accepted by Judge Hedigan. The Department also argued that appeal decisions did not establish a precedent as they were "more in the nature of an administrative application which results in a bare determination recording the decision made" rather than a judicial decision. This point was also upheld by Judge Hedigan in his judgment. In its submissions, FLAC had relied on a Supreme Court decision, *Atanasov v. Refugee Appeals Tribunal*,<sup>7</sup> in which the court held that an appellant was entitled to access previous decisions to ensure that fair procedures were followed and there was consistency in decision-making. The court considered whether there was "equality of arms" or a fair balance between the parties when there was a lack of knowledge on the part of the appellant in relation to previous decisions of Tribunal members. It found that the lack of access to decisions did not comply with the principles of natural justice. The situation in the *Jama* case was quite similar to that in the *Atanasov* case, as both involved access to decisions by a quasi-judicial body. While a distinction was drawn between the matters being appealed to the Refugee Appeals Tribunal and the Social Welfare Appeals Office, the fact remains that they are both quasi-judicial bodies which issue legally binding decisions. The Department must implement the decision of an Appeals Officer unless it seeks a review under s.317 of the Social Welfare (Consolidation) Act 2005. It must be made clear that FLAC (as well as other colleagues working in the field) is not calling for the publication of all decisions; only those which clarify or establish a point of law or policy. Publication of all important decisions would help to ensure consistency in decision-making, lead to greater transparency in the process as well as guarantee equality between the parties.

Furthermore, while Judge Hedigan considered the cost to the Department in his decision to disallow Ms Jama's case, his colleague Judge Hogan took a different stance in relation to ensuring fair procedures even when there may be a cost to the State. In *Lyons & Anor v Financial Services Ombudsman*<sup>8</sup>, Judge Hogan stated that the right to an oral hearing to guarantee fair procedures must be observed despite the "many inconvenient consequences (including, perhaps, considerable resource implications at a time of austerity) for the Ombudsman's office".

6 [2011] IEHC 379.

7 [2006] IESC 53.

8 [2011] IEHC 454.



## Seanad Motion on Appeals Process

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In November 2012, a group of Independent Senators put down a motion in the Seanad calling for reform of the system.<sup>9</sup> Senator Katherine Zappone on behalf of the Independent Senators, presented a very reasoned motion, seconded by Senator Fiach Mac Conghail. While many members of both sides of the House stated support, the motion was still voted down by many of those who saw merit in the opportunity it presented to the Minister for Social Protection to pursue her reform agenda.

Minister Burton welcomed FLAC's report "as a valuable analysis of the social welfare appeals system through a human rights lens" and stated [i]t is important, particularly in straitened times like this, to stand back, reflect and ensure that the drive for efficiency does not compromise the quality or fairness of the services that are delivered".<sup>10</sup> However, she did not concede any of the issues raised, or practical steps proposed which were based on FLAC's research and analysis. Instead the Government put forward a lengthy counter-motion which refused to acknowledge the inherent problems within the system and failed to take account of the defects within the system which were highlighted by Senators of all persuasions. These included the lack of fair procedures, lengthy delays, lack of actual and perceived independence and people being referred to charities or being left at risk of destitution amongst others. While it is acknowledged that reductions have been made in relation to the length of time that a person has to wait for an oral hearing - from 52.5 weeks in 2011 to 39.5 weeks in 2012 - these delays have still been described as "significant and unacceptable" by the Chief Appeals Officer herself (Gleeson 2013).

The Independents' motion called for a number of very practical steps to reform the system which included furnishing the appellant with a copy of his or her social welfare file, including an option to request an oral hearing on the appeals form and simplifying and making more accessible the application forms. These reasonable steps would not cost a huge amount to implement but would enhance the way in which the system operates and rebalance the scales for the appellant who at the moment are often at an unfair disadvantage.

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9 Seanad Eireann, Debates, 7th November 2012, 260-289.

10 Seanad Eireann, Debates, 7th November 2012, 260-289.

## Conclusion

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Given the continued rise in the number of appeals and the long delays experienced by appellants, particularly those seeking sickness-related payments, the appeals system must be reformed to ensure that people can access their entitlements within a reasonable timeframe. FLAC's research has found that it does not comply with the standard of fair procedures required under Article 6 of the European Convention on Human Rights. Given the long delays people face it cannot be deemed to provide an effective remedy. FLAC recommends a number of changes including placing the Appeals Office on a statutorily independent footing, carrying out an audit of its procedures to ensure the best use of limited resources as well as publishing important decisions of Appeals Officers to ensure equality of arms as well as consistency in decision-making.

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# Case Studies



# RESTORATIVE PRACTICES IN ACTION: TALLAGHT WEST – A CASE STUDY

**Claire Casey, Dr. Sinéad McNally, Marian Quinn**

*Childhood Development Initiative.*

*Email: [claire@twcdi.ie](mailto:claire@twcdi.ie)*

**Aine O’Keeffe**

*Foróige Tallaght.*

## Introduction

This article aims to share learning about the use of Restorative Practices in an Irish community setting. It will begin by offering a definition of Restorative Practices and an outline of relevant research in this area. It will go on to describe the origins and content of the Restorative Practices Programme implemented by the Childhood Development Initiative in Tallaght West since 2010; and to share some of the findings of the independent evaluation carried out by the Child and Family Research Centre at the National University of Ireland, Galway, between 2011 and 2012. A case study of how restorative practices have assisted in resolving conflict in a community setting is then presented. The article concludes with some of the main learning by stakeholders to the Tallaght West Restorative Practices Programme and an outline of plans for the immediate future.

## Context

The aim of restorative practices is to develop community and to manage conflict and tensions by repairing harm and building relationships (IIRP UK, 2011). The International Institute of Restorative Practices<sup>1</sup> defines Restorative Practices (RP) as ‘a social science that studies how to build social capital and achieve social discipline through participatory learning and decision-making’ (Watchel, 2012). RP has its roots in restorative justice ideas and practices (Shaw, 2007) which in turn originated in the criminal justice arena and is based on a belief that crime is a violation of people and interpersonal relationships (Zehr and Mika, 1997). Such violation harms the victim, offender and others, and therefore creates problems that need to be addressed and resolved (Ibid).

However, while restorative justice deals mostly with providing an effective response to crime or wrongdoing, RP also includes preventative practices such as building positive relationships and a sense of community (Watchel, 2012). RP places a strong emphasis on having a relational approach to problem solving: Drewery et al. (2010) highlight that RP is not only aimed at resolving conflict but ‘is about maintaining the basic values of a diverse and civil society, including generosity, care, and respect for difference’. Other key aspects of Restorative Practice include an emphasis on the importance of dialogue and fair process, demonstrating and maintaining respect for each other, and developing social collaboration and supports (Macready, 2009).

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<sup>1</sup> <http://www.iirp.edu/>

As such, RP can challenge deeply held beliefs about how best to approach wrongdoing or harm, causing discomfort for professionals and practitioners used to more traditional approaches to discipline and authority (Blood & Thorsborne, 2005). A shift in thinking and practice with regard to adopting a restorative approach is difficult to achieve, as it requires cultural change. Most studies on the effectiveness of RP in reducing problem behaviours and improving outcomes come from school studies where RP have been deeply embedded and fully integrated into school policy. Schools offer an opportunity to fully embed a restorative approach at all levels and are particularly successful when strong leadership is in place (Drewery et al., 2010). Along with strong leadership, the successful adoption of RP throughout an organisation, such as a school, requires gaining commitment from key stakeholders in an organisation, developing a shared vision, developing effective restorative mechanisms and systems, ensuring a whole-organisational approach, and building positive, professional relationships (Ibid).

A notable alternative to school studies is found in the evaluation of a community RP programme run in Dún Laoghaire/Rathdown (Wilson, 2011). In this formative evaluation, Wilson (2011) found beneficial effects of training strategies implemented by the programme which included a number of staff in various organisations engaging well with restorative practices and concepts. The programme was found to be positive in giving people a voice and encouraging greater inter-agency working (Ibid). Given the scarcity of research on non-school settings, a case study outlining the experiences of implementing restorative practice in a local youth service, as part of the Childhood Development Initiative's (CDI) RP Programme, is presented in the following section. Preliminary findings from an independent evaluation of the CDI RP programme (Fives et al., forthcoming 2013) will also be highlighted.

## **Background to the Tallaght West Restorative Practices Programme**

The Childhood Development Initiative (CDI) began as a planning initiative in 2003 to support better outcomes for children in Tallaght West. A consortium of 23 members representing community leaders, residents, and professionals working in Tallaght West developed the outcomes-focused 10 year strategy, *A Place for Children* (CDI, 2005). Based on this long term strategy, a detailed implementation plan was agreed for 2007-2011, against which a major investment of 15 million euro was made<sup>2</sup>.

The need for an initiative aimed at improving community safety was identified in research and consultation conducted by the Dartington Social Research Unit (CDI, 2004) which found that safety in the community, particularly in relation to children's safety, was a shared concern among residents. Consequently this became a key focus of the CDI strategy, with the Community Safety Initiative adopting a new approach to building and enhancing a sense of belonging to the community. Residents, the Gardaí, the local authority and other stakeholders worked on developing and implementing activities to identify and address the most common factors that negatively impacted on the community's experience of safety. Restorative Practices became a key element of this approach.

The Community Safety Initiative (CSI) was developed as part of CDI's overall strategy to improve outcomes for children and families in Tallaght West. The aim of the CSI is to work with the community to develop and implement a programme designed to identify and address the factors that negatively impact on the community's sense of and experience of safety. The objectives of the CSI are:

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2 Co-funded by the Department of Children and Youth Affairs (through the Prevention and Early Intervention Programme) and The Atlantic Philanthropies.



- ▶ Improved safety and pro-social behaviour across Tallaght West;
- ▶ Improved community awareness of and participation in local activities and services; and
- ▶ Wide community engagement in maintaining a safe environment.

CDI's Community Safety Initiative got underway in 2006 with a comprehensive consultation and research process with the community and key stakeholders about how safety in the community could be improved. The process included consultations with, and surveys of, community groups, service providers, residents, young people and children. The report (Cahill, Guerin, & Murphy, 2008) highlighted three key action themes for the CSI to focus on: young people (including facilities, services and pro-social activities); physical environment; and community engagement. Work began in 2008 to engage with residents in a number of small pilot sites (approximately 100 households each) about priority safety needs in their neighbourhood. Over the next two years, various activities<sup>3</sup> were undertaken on pilot sites and in Tallaght West generally to develop community engagement with the CSI, to build relationships between residents and service providers and to address a number of safety issues identified through local surveys.

In 2010, CDI became aware of RP from the work of the Hull Centre for Restorative Practices<sup>4</sup> who presented at a conference organised by the Irish Youth Justice Service<sup>5</sup>. It was explained that the restorative way is a solution focused approach which supports everyone to build healthy relationships, to look at where we are accountable, and to take responsibility for our actions. Evidence was presented relating to a range of organisations in Hull that had taken on a restorative approach to their work that indicated extremely positive results in very short time frames. For example, after only one year, the nine schools where restorative practices were initially piloted reported a:

- ▶ 79% reduction in class disruption;
- ▶ 92% reduction in exclusions from breaks;
- ▶ 81% reduction in days lost from fixed term exclusions;
- ▶ 79% reduction in reported verbal abuse to staff;
- ▶ 80% reduction in pupil to pupil physical abuse;
- ▶ 82% reduction in incidents at lunch; and a
- ▶ 92% reduction in reports to the Principal or other senior staff.<sup>6</sup>

CDI recognised RP as an approach with the potential to greatly assist the work of the CSI by equipping people with a set of highly effective skills for building strong relationships and resolving conflict in a healthy manner. It was agreed by the CSI Steering Committee to develop a Restorative Practice Programme of training and support which would support Tallaght West to become a restorative community. A series of meetings were held with the CDI team and key stakeholders<sup>7</sup> to promote the concepts of RP and achieve buy-in to the idea of working to develop a restorative community.

3 Examples of community engagement activities included community clean-up's, Family Fun Days, Children's Good Behaviour Awards, football tournaments, and volley ball leagues.

4 <http://www.hullcentreforrestorativepractice.co.uk>

5 <http://www.iyjs.ie>

6 Irish Youth Justice Service, 2010.

7 These included members of the Local Authority, Gardaí, Youth Service, Health Service Executive, Schools, Community Organisations and Residents.

## Overview of the RP Programme in Tallaght West

The RP Programme in Tallaght West got underway in 2010 when an RP Programme Management Committee was established to oversee the roll out of training, the development of supports and the independent evaluation of the work.

The anticipated outcomes of the RP Programme were:

- ▶ Improved collaboration between agencies and groups working with children and young people;
- ▶ Improved relationships between residents and the providers of services to children and young people;
- ▶ Increased use of a common language among services providers from different agencies;
- ▶ Increased satisfactory resolution of neighbourhood disputes in Community Safety Initiative (CSI) Pilot Sites;
- ▶ Reduced anti-social behaviour and crime in CSI Pilot Sites;
- ▶ Improved pupil attendance within participating schools;
- ▶ Reduced disciplinary issues within participating schools; and
- ▶ Improved staff morale within participating schools.

Training was delivered by the UK Office of the International Institute for Restorative Practices<sup>8</sup> on a monthly basis and was targeted at all of the agencies with responsibility for children and young people<sup>9</sup> as well as at parents and young people themselves. Between July 2010 and February 2013, more than 800 people from Tallaght West and other communities received training (including 90 young people and 80 parents) and 15 people living or working in TW were accredited as RP trainers as part of building capacity to sustain the programme in Tallaght and Ireland.

In keeping with its commitment to being evidence-informed and to identifying 'what works' in order to influence policy and practice, CDI commissioned the Child and Family Research Centre<sup>10</sup> at the National University of Ireland, Galway, to undertake an independent evaluation of the CDI RP Programme (Fives et al., forthcoming 2013). The research was carried out between 2011 and 2012 and the evaluation report will be published later this year. The findings of this report will contribute an Irish perspective to the international research on the implementation of, and outcomes arising from, RP in a community setting. Preliminary findings indicate that the training has been of benefit in a number of ways to those who have participated:

- ▶ 87% of trainees reported being better able to deal with conflict as a result of taking a restorative approach;
- ▶ Trainees reported an overall reduction by 43% of disputes in the workplace, home and community;
- ▶ Trainees reported that RP had helped to significantly improve relationships with users of their services (up 61%), their work colleagues (up 47%) and their family members (up 47%); and
- ▶ To a lesser extent, RP was found to help improve relationships with neighbours (up 14%) (Fives et al., forthcoming 2013).

The researchers also found that the RP Programme had contributed to improved collaboration between agencies and organisations, and that the programme has had positive impacts in a range of work settings and at home (Fives et al., forthcoming 2013). For example, people's capacity to manage and resolve conflict was found to have increased in both arenas as a result of their participation in the RP training programme.

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8 <http://uk.iirp.edu>

9 These agencies included schools, early year's services, youth services, educational welfare staff, local authority staff, probation services, community centres, community Gardaí, adult education services, etc.

10 <http://www.childandfamilyresearch.ie>

## Case Study: RP in Action

In keeping with the research literature on restorative practices, the greatest gains have been found to occur in agencies that have taken on RP as a way of working and have sought to embed this approach throughout the organisation. Once such agency is Foróige Tallaght, a local youth service which provides a wide range of supports for young people living in Tallaght.

Foróige Tallaght work with all young people aged 10-25 years through their general services and also with vulnerable young people who require additional support through a full range of targeted services. General services such as clubs, special interest groups, volunteer-led youth cafés, feeder clubs and youth fora, enable young people to involve themselves consciously and actively in their own development and encourage young people to take responsibility for and be part of shaping the world around them while developing their talents, skills and character. Targeted services such as Garda Youth Diversion Projects, Teen Health Initiatives and Drug Use Prevention Projects, help young people to deal with issues associated with poverty, marginalisation and social exclusion, such as under-achievement at school, early school leaving, youth crime, substance misuse and family difficulties in a safe friendly environment.

Foróige Tallaght became a member of the RP Management Committee when it was established and supported its frontline Youth Workers to undertake RP training as part of their continuing professional development. Youth Workers found the RP skills that they developed to be very useful in managing the clubs, groups and targeted interventions that they were working with and many have made the use of restorative circles, conferences and communications “business as usual” for their on-going work. Foróige Tallaght also supported three of their Youth Workers in becoming accredited as RP Trainers through CDI’s RP Programme. These Trainers are proving a very valuable resource as they have particular skills in providing the training to young people and fellow Youth Workers, thus supporting a sustainable approach within the organisation.

A very concrete example of where RP supported the work of both Foróige Tallaght and CDI occurred in June 2012 at a community resource centre in Tallaght West where Foróige Tallaght operate a number of youth clubs and targeted programmes/interventions. In June 2011 CDI began work with an Estate Management Group based in the community centre to develop a Community Safety Initiative (CSI) within the centre’s catchment area. The Estate Management Group identified a small neighbourhood of relatively new housing as the priority for a CSI as this was a neighbourhood that was experiencing high levels of anti-social behaviour (ASB). Work began with a local survey which identified the priority safety issues for residents and also identified the small group of young people who were principally responsible for incidents of ASB that were causing residents to feel very unsafe in their own homes and neighbourhood.

The CSI group undertook a series of actions to respond to the issues identified by residents including a variety of interventions with the young people and some small security-related investments (e.g. one CCTV camera, locks for refuse bins). Over the space of 12 months, the young people were challenged to examine their own behaviour (their families received visits from the Gardaí and the Council’s Anti-Social Behaviour officers) and were supported to get involved with alternative pro-social activities and groups. Foróige Tallaght had engaged 6 young people aged 10-12 years of age, who were referred by the Garda Junior Liaison Officers and Community Gardaí in 2011. A number of the young people were amongst the group of identified through the CSI as being involved in anti-social behaviour in the community. When these young people were accessing their local community centre, problems arose with what centre staff found to be disruptive behaviour and following a number of incidents the young people were on the verge of being excluded from the premises.

At the suggestion of Foróige Tallaght Youth Workers, the young people and centre staff agreed to participate in a restorative conference about the incidents involving the young people and this was organised and facilitated by two of the RP Trainers (who were independent of all of the groups within the community centre). The conference was attended by all of the young people involved and some of their supporters (family or friends), by all of the staff of the community centre and some of the voluntary Board of Management. The restorative process gave everyone a chance to say what had happened from their point of view and, as importantly, to hear how what had happened impacted everyone else. In this instance, the young people got to hear how their behaviour had impacted centre staff and the centre staff got to hear what had prompted the young people to behave in the way that they had.

The group as a whole came to a set of agreements about both how the young people would behave while in the community centre and about how they would be treated by centre staff. These agreements made it possible for the young people to begin using their community centre and the agreements have been held to by everybody ever since. Residents of the CSI neighbourhood have reported a positive sea-change in their experience of safety in their homes and community and the community centre has reported an increase in the use of its services by young people in the area.

Foróige Tallaght staff continue to use RP approaches in their day-to-day engagement with young people across Tallaght. Staff find the tools effective in supporting good communication, in establishing the expectations of young people and adults and in resolving problems within and across the communities in which they provide services.

## Conclusion

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CDI began its RP Programme with an overall vision of equipping those working or interacting with children and young people with the skills to build strong relationships and to effectively and easily support the resolution of conflict when it arises. Both the independent evaluation and CDI's experience to date confirm that consistent use of a restorative approach will do both of these things and more. CDI and Foróige Tallaght have found that young people have taken to RP with enthusiasm and are some of the biggest advocates for its use across the community. CDI and Foróige Tallaght have also found that RP helps strengthen all relationships, and has been of particular use to service providers in both managing their relationships with service users (young people and adults) and in more effectively managing conflict within the workplace. The skills and approach encompassed by RP have been found to be readily transferable and, once they become an integral element of practice and part of the organisational culture, they appear to filter through to all relationships and types of engagement.

CDI is now working towards launching Tallaght West as Ireland's first Restorative Community and on the longer-term sustainability of this very effective approach to community safety work. The learning from the independent evaluation of CDI's RP Programme will also be widely shared in the next few months<sup>11</sup>.

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11 (Please see <http://www.twcdi.ie/our-programmes/restorative-practice> for developments in this area).

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# MEDIATION NORTHSIDE - PIONEERS IN COMMUNITY MEDIATION

*A Conversation with Valerie Gaughran, Manager, Mediation Northside*

## Andrea Mulligan

*Editor, Irish Review of Community Economic Development Law and Policy.*

*Email: editor@nclc.ie*

### Extending the Reach of Mediation

In 2004 Colin Daly, (now Judge Colin Daly) the Managing Solicitor of Northside Community Law Centre, observed that there was a need for alternative dispute resolution among the Centre's client community. Many people were reluctant to get involved with lawyers, some because they feared the potential expense, others because they just didn't want the hassle and stress of litigation. Daly decided that one way to address this need was through the provision of mediation services. Initially he arranged for six people to be trained in mediation, and the following year he began the search for someone to manage the mediation programme. The person he found was Valerie Gaughran, who remains the manager today. Though Gaughran had no experience of mediation, she had plenty of experience in running businesses. A hairdresser by trade, she had opened three salons by the age of 21, so she was no stranger to the challenges of managing people and satisfying client needs. After some intense mediation training, Gaughran took on the task of building Mediation Northside.

From the outset the purpose of Mediation Northside to satisfy community need. Extensive dialogue and consultation with community stakeholders demonstrated that there was substantial dissatisfaction with mediation in its traditional arena of marital and relationship breakdown. Many of those who had tried it found it unhelpful. The reasons given were that the amount of time allotted was never enough to deal with the points of conflict that existed between the parties, and the matters covered were not sufficiently comprehensive. The consultation also revealed that a need existed in the community for mediation services beyond the field of family law. Many responders were experiencing conflict in other areas, for which traditional legal remedies were inadequate or unsuitable.

In response to these needs, Mediation Northside set out to provide mediation services across a range of subject areas. This was an unconventional approach: in those days it was generally believed that mediation was for family matters alone. Mediation for community issues was entirely novel, and regarded by some as a virtual impossibility. This has not been the experience of Mediation Northside. Since its earliest days the Programme offered mediation on community issues such as boundary disputes and antisocial behavior.

Over the years the programme has expanded to include further types of mediation. It now provides Elder Mediation, which helps families put together care plans for elderly relatives. Another novel service is Grandparent Visitation Mediation. This is designed to deal with situations where grandparents have lost access to their grandchildren as a result of inter-parental conflict. Visitation agreements mitigate the impact of relationship breakdown on grandparents and grandchildren. One of Mediation Northside's most important projects in recent years has been its Debt Mediation service. Uptake in this service has increased steadily as the economic crisis has worsened.

In 2012 Mediation Northside, in partnership with South Dublin Mediation and Ballymun Mediation, established a pilot scheme of Court Referred Mediation in the Dublin Circuit and District Civil Courts. The purpose of the scheme is to encourage lay litigants to engage in mediation when engaging in litigation for certain remedies. The scheme covers issues relating to boundary disputes, private prosecutions for breach of the peace, complaints about noise or nuisance and disputes between adult family members on questions of property. Cases may be referred to mediation by staff in the Circuit and District Civil Court Office and by the County Registrar.

## The Mediation Northside Model

Mediation Northside has no catchment area. Its clients come from all over Ireland, and where possible mediation sessions take place near to the clients' homes. It now has a panel of approximately 250 mediators based throughout the country who work on a voluntary basis. Mediators undergo a rigorous training process after their formal accreditation that involves substantial practical experience, training and reflective learning. They spend 10 hours observing cases before working for 60 hours on cases alongside an experienced mediator. Volunteer mediators are expected to work on three Mediation Northside cases per year.

Clients can contact Mediation Northside by phone or in person. Often clients are referred to mediation by social workers, members of the Gardaí or by healthcare professionals. In the initial interview the client is asked for all relevant details of the dispute. They are then given a choice between contacting the other party themselves, or having Mediation Northside make contact. Gaughran comments that by far the hardest part of any mediation is persuading the second party to engage. There are two models of mediation. For family disputes clients are allowed six two-hour sessions, while community disputes are allotted one or two two-hour slots as well as a one-hour private meeting with each party. Mediation Northside provides the first mediation session within 20 working days of the first point of contact.

Mediation Northside operates on a co-mediation model. This means that at all mediation sessions there are two mediators present. The purpose of co-mediation is to ensure fairness and to prevent any perception of bias on the part of the mediators. In addition, Mediation Northside aims to ensure that all mediation sessions are facilitated by one male and one female mediator or observer.

In each mediation session clients conclude an interim agreement, which by the end of the process is a full mediation agreement. This is written out in document form and approved by Mediation Northside. Clients choose between receiving it by post or by email. Mediation Northside estimates that a full agreement is reached in 83% of cases. After two or three months the clients are contacted to check up on their progress. Alongside mediation, clients are offered the opportunity to attend conflict coaching. This can consist of up to ten sessions, and aims both to teach people to tackle specific conflicts, and to deal with disputes in general. Uptake rates for this service are high, and Gaughran feels it is especially important for those that approach Mediation Northside for help, but find that the other party refuses to engage in mediation.

Mediators are recruited by Mediation Northside five times a year. Though they are expected to have a qualification in mediation, no practical experience is required. Gaughran notes that not everyone is suited to being a mediator, and says that you'll know very early on in a training course whether or not it is for you. For her, the essential qualities of a good mediator are the capacity to be a good listener, and the ability to know when to stay quiet. Empathy is key, but excessive empathy is a problem because mediators must remain objective and somewhat detached.

A feature of Mediation Northside that makes it especially attractive to other organisations is that it is self-funded. Fundraisers such as marathons and fashion shows, and donations by service users fund the programme's activities.

## **The Future of Mediation Northside**

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The success of Mediation Northside has inspired similar projects across the country, run on the same model. Currently Gaughran is in the process of helping to roll out a mediation project in Letterkenny, Co. Donegal. Within the Mediation Northside programme, the next innovation is Child-Inclusive Mediation. This is a form of family mediation that aims to incorporate the voice and views of the child in the resolution of family breakdown. Gaughran seems excited at the prospect of this new challenge, and her optimism is well placed. In its short history Mediation Northside can point to many successes. It provides an illustration of the increasing importance of mediation as a form of alternative dispute resolution.

# Book Reviews



# BOOK REVIEW\*:

## COMMUNITY ECONOMIC DEVELOPMENT LAW - A TEXT FOR ENGAGED LEARNING

By Susan D. Bennett, Brenda Blom Bratton, Louise A. Howells and Deborah Kenn.  
Carolina Academic Press, August 13th 2012, ISBN: 1594608180.

Community Economic Development law (herein 'CED') has assumed a pre-eminence as a public interest lawyering strategy in the United States. CED lawyering has been described as a strategy for redressing urban poverty through legal intervention and the creation of economic justice initiatives.<sup>1</sup> CED lawyering therefore purports to provide a mechanism for facilitating, building and empowering communities by the use of a plethora of interdisciplinary approaches directed at improving of the socio-economic viability and personal development of such communities. Ultimately CED aims to alleviate entrenched poverty in communities while creating sustainable and economic change within low income communities through a 'mixed-recipe of legal, social policy and community development tools.'<sup>2</sup> Adopting a CED approach thus requires practitioners to engage with an eclectic mix of skills ranging from familiar lawyering skills such as drafting contracts, initiating litigation and engaging in transactional work for poorer clients through to the less commonly identified lawyering skills such as community lawyering, community planning and community justice skills.<sup>3</sup>

Given the varied nature of these approaches, compiling a comprehensive textbook which provides sufficient detail but which is simultaneous approachable is a difficult task. *A Text for Engaged Learning* is not only comprehensive in its approach to the specific issues that community development clinicians face on a daily basis, but it does so while providing a flexible set of materials in a way which cultivates a context for engaged learning within stand-alone community development classes while also acting as a reference book for community development clinics.

Despite being substantively and contextually geared towards American law students who are directly engaged in community development clinics, *A Text for Engaged Learning* offers an innovative methodological framework for developing and enhancing CED lawyering skills in a community context. From this general perspective the present review will briefly examine two interesting areas dealt with in the text, which new students and established Irish practitioners can directly draw upon in developing CED law in an Irish community context. The first area of examination involves the innovative methodological techniques, with particular reference to the culture of 'engaged learning' utilised in the text, which encourages students to approach the substantive material presented in the text as would be problem solving community based practitioners.

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1 Maria Nestor The Research of CED Lawyering in Ireland (2011) 1 Ir Rev CED Law & Pol 6.

2 *Ibid.* 6.

3 Bennett, Blom, Howells and Kenn, Community Economic Development A Text for Engaged Learning (Academic Press, 2012) Chapter 1 at 33.

First it is important to explore how the authors develop an innovative methodological approach to the teaching of CED techniques which cultivates a unique context for 'engaged learning', one in which students are invited to approach the substantive material as would be problem-solving community based practitioners. The second area of discussion is mainly concerned with examining the effect of incorporating the systematic goals of CED lawyering, presented in the text as 'goals of representation', into the Irish community law clinics and examining the potential influence this could have on perspective students of CED but also Irish community development practitioners.

This will lead to the suggestion that community development practitioners in an Irish context should aim, following the lead of this text, to look beyond the conflicting goals engendered by a mix-model of public interest lawyering and endorse a more nuanced organizational approach of community representation as suggested in this book.

## Engaged learning

First this book is to be commended for encouraging an active approach to the substantive material. This book seeks to engage the reader, or more aptly the user, by encouraging them to approach the various scenarios presented in the text from the position of a problem solving community-based practitioner. The prologue of *An Text for Engaged Learning* invites us to enter the community of Ourfuture City, from the Old World immigrants who built a now vanished industrial prosperity and of its neighbourhood, Milkweed Park, whose new immigrants and long time residents confront a variety of stresses including financial isolation, racial segregation and economic disinvestment.

The authors expertly navigate us through the structural transformations, urban renewal policy shifts and the economic decline of Milkweed Park.<sup>4</sup> To the untrained eye Milkweed Park's detailed history, demographics, physical and economic structures could mirror the development of any of the communities in large urban centres in the United States with which the Irish diaspora, along with other ethnic minorities alluded to in the text, have become synonymous with over the last three hundred years. The authors appear to strike the correct balance between specificity and generic characteristics of urban America communities to make Ourfuture City not only realistic but readily identifiable. In addition the authors add an important layer of 'dramatis personae' who seek to interact in the community. These range from families and residents with complex character profiles to community based organisations and governing or educational institutions within the city itself.

While this detailed chronology may initially appear to be a superfluous exercise, it is this very detail which succeeds in highlighting a major premise of this text, namely that CED must be framed in a context which encourages an active engagement with the issues posed in the textbook. In addition the book intersperses the substantive chapters of this book, commonly encountered problems in CED advocacy with exercises and problems presented by particular clients from Milkweed Park. These problems serve as a basis both for classroom discussion and also in preparing for client representation.

By emphasising the context of client's needs, the authors encourage students to view community clients as complex actors with complicated relationships. On this basis those clients who present issues at a community clinic should be viewed as more than a sum of their legal problems, as individuals who live in specific and often nuanced political, social and economic environments. By encouraging students to take deeper cognisance of the specific historical contexts in which community development occurs, the author forces them to grapple with the various contradictions they may face in practise.

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4 *Ibid.* Prologue The Chronicle of Milkweed Park.

## Goals of representation

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The authors characterise the great debate underpinning public interest lawyering strategy as a dichotomous struggle between place-based redevelopment and person-based redevelopment approaches to CED.<sup>5</sup> Person-based redevelopment, similar to a service based approach to public interest lawyering, is largely focused with providing CED services on an individual basis in the hope that this would drive re-development in the community as a whole.<sup>6</sup> Place based re-development alternatively appears to be strategic in nature, suggesting that that CED interventions should be aimed at formulating wider development strategies which aim to alter the systematic and environmental barriers which limit the economic development of particular communities.

Instead the authors contend that the goal of representation must be developed through a comprehensive combination of both strategies, ultimately counselling community development law clinics to blend the strategies of development with those orientated at human services.<sup>7</sup> These transformative goals are ultimately orientated towards the utilitarian goal of revitalising the infrastructural interests of the community as a whole, but within the context of encouraging individual development. This, as the authors point out, creates two underlying systematic issues for CED lawyers. First, following the strategic interest of a disadvantaged community may often mean displacing the short term interest of your own individual client and the interest they may represent in the long run. CED lawyers are thus challenged in this text to work with individual clients to create successful mechanisms that will lead to success for the community which may ultimately be reflective of the initial goals of the client but is ultimately in their interest. Second, the authors suggest that as CED lawyers are often required to work outside of a strictly transactional context it may be impossible to solve the wider problems presented by a community client without recourse to wider political changes. Thus work in the political arena may indeed be vitally important to the success or failure of CED strategy.

## Conclusion: The Implications of CED strategy in an Irish context?

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The strategies suggested by the authors of *A Text for Engaged Learning* do not urge the abandonment of the service model but seek to advocate an approach to CED in which the lawyer is urged to act strategically and always with the interest of the community in mind. This is an interesting strategic proposal for those engaged in dealing with certain clients in the various community law centres in Ireland. Also by urging CED lawyers to assume the role as political actors and advocates this gives strength to the proposal that those concerned in developing CED strategy should be engaged in the political process, something an increasing number of public interest law advocacy groups have become comfortable with in recent years. This fear of political advocacy can at times appear alien to lawyers in more traditional transactional approaches to law. *A Text for Engaged Learning* offers an excellent framework for meeting the needs of those interested in studying CED law in an Irish context, but it also offers an innovative blueprint for those involved in CED planning, advocacy and lawyering.

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5 *Ibid.* 33.

6 *Ibid.* 35.

7 *Ibid.* 34.



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**Northside Community  
Law & Mediation Centre**  
Local Service – National Resource

**Northside Civic Centre,  
Coolock, Dublin 17**

Tel: (01) 847 7804  
Fax: (01) 847 7563  
Email: [info@nclc.ie](mailto:info@nclc.ie)  
Web: [www.nclc.ie](http://www.nclc.ie)