



An tSeirbhís Phromhaidh
The Probation Service

PROBATION SERVICE

INDIVIDUALISING JUSTICE: Pre-Sentence Reports in the Irish Criminal Justice System

NIAMH MAGUIRE and NICOLA CARR



Probation Service Research Report 6 July 2017

FOREWORD

Courts request pre-sanction reports (PSRs), prepared by Probation Officers, in many cases, as part of the sentencing process. These assessment reports provide background information on the defendant and the circumstances of their offending. They also include an assessment of risk of re-offending, and, where relevant, an assessment of risk of causing serious harm, as well as proposals regarding what might be helpful to the management of a community sanction and the rehabilitation of the offender. The practice regarding assessment reports provided by the Probation Service to the Courts has evolved over many years, and such assessments play an important role in the criminal justice system. Each year, the Probation Service provides on average 10,000 such reports to District and Circuit Courts throughout Ireland. To date there has been limited research on the use of pre-sanction reports (PSRs) in Ireland and what impact they have on sentencing. This study, commissioned by the Probation Service, is a welcome initiative in beginning to address that knowledge gap.

This research is a small-scale study conducted in one Court area. The in-depth nature of the research, entailing observations of interviews conducted by Probation Officers with offenders, analysis of pre-sanction reports and follow-up interviews with Judges and Probation Officers, provides a unique qualitative insight into the use of PSRs in Ireland. It also provides a template for replication of this research more widely. Among other findings, the research shows that the process of preparing a PSR can be the first step towards positively engaging people who have been involved in offending. There is also a broad correspondence between PSR recommendations and sentence outcomes, and Judges interviewed were generally positive about the quality of PSRs they received. The study also points to a number of specific areas, including the practice referred to as ‘adjourned supervision,’ that merit further exploration.

The Probation Service would like to express thanks and appreciation to Dr. Nicola Carr and Dr. Niamh Maguire, for their hard work and commitment in completing the study. I also want to thank the Probation Service staff and managers who participated in the study as well as the members of the Judiciary, Court staff and the subjects of the PSRs themselves, without whose co-operation and openness, the study could not have been completed. Research and evaluation make an important contribution in developing and improving services. The Probation Service is committed to implementing best quality service practice and interventions supported and informed by evidence and evaluation. This research study, while small in scale, is a valuable step in examining the role and function of PSRs, in sentencing, in Courts in Ireland and provides important insights and observations. It also makes a contribution to this developing field of study in Europe. We look forward to supporting and co-operating with further research and evaluation studies, particularly involving probation and other community sanctions.



Vivian Geiran,
Director, Probation Service

July 2017

ACKNOWLEDGEMENTS

We would like to thank all of the people who facilitated and took part in this research. Particularly the clients who agreed to us observing their pre-sentence report interviews and the probation officers whose practice we observed. Because of the nature of the research we had contact with probation officers over an extended period, and we are very grateful to all of them for their unfailing assistance throughout the study. We are also grateful to the judges who gave of their time to take part in interviews.

This research would not have been possible without the facilitation of the Probation Service. In particular, we would like to acknowledge the support of Gerry McNally, Emer Hanna and Cathal O'Sullivan. We would also like to acknowledge the support of Her Honour Judge Rosemary Horgan, President of the District Court and The Honourable Mr Justice Raymond Groarke, President of the Circuit Court.

Finally we would like to thank Jean-Anne Kennedy, WIT for her assistance with proof-reading.

Dr Niamh Maguire and Dr Nicola Carr

November 2016

Niamh Maguire is a Lecturer in Criminology at Waterford Institute of Technology. Niamh researches and publishes on a range of topics including sentencing and penal decision-making, probation, community sanctions, and offender supervision,. She is co-editor of *The Enforcement of Offender Supervision in Europe: Understanding Breach Processes* published by Routledge (forthcoming in 2017).

Nicola Carr is an Associate Professor in Criminology in the University of Nottingham. She has researched and written widely in the areas of probation and community sanctions and measures. She is the editor of the *Probation Journal* and co-convenor of the European Society of Criminology's Working Group on Community Sanctions and Measures.

Print edition: **ISSN 2565-5345**

Electronic edition: **ISSN 2565-5353**

FOREWORD	3
ACKNOWLEDGEMENTS.....	4
CHAPTER 1: INTRODUCTION	7
Background to the study	7
CHAPTER 2: CONTEXTUALISING PRE-SENTENCE REPORTS IN IRELAND	11
The Irish Sentencing System	11
Pre-sentence reports and the sentencing process	16
Community Sanctions and Measures	16
Legal Basis for Community Supervision.....	17
Table 1 Supervision Orders made during years (2012-2014).....	19
Trends in use of Community Supervision in the Republic of Ireland	22
Figure 1: Probation Order, Community Service, Supervision during deferment of Penalty and Total Committed to Prison under Sentence 2001-2014	24
Practice Orientations and Pre-Sentence Reports	25
Probation Service Guidance on Pre-Sentence Reports	26
<i>Service Practice for the Preparation and Presentation of Pre-Sanction Reports (1999)</i>	26
<i>Revised Content of Reports (2005)</i>	27
<i>Probation Service Policy and Procedures for the Preparation of Pre-Sanction Reports for Courts (2014)</i>	29
PSRs and Pattern of Use of Community Sanctions	30
Table 2 – Numbers of Types of Reports Requested by the Courts (2007-2014).....	31
Table 3: Community Supervision Orders without a Prior Report and Total Community Supervision Orders	32
CONCLUSION	33
CHAPTER 3: METHODOLOGY.....	35
Research Access and Ethics	35
Case Selection.....	36
Study Limitations	39
Conclusion	39
CHAPTER 4: FINDINGS: PROCESS, PRODUCTION, PERSPECTIVES	41
Introduction	41
Analysis of Pre-Sentence Reports	41
Sources of information included in the reports	42
Table 4: Range of information drawn upon in the reports.	44
Further offending	48
Information from other sources.....	49
Interviews with defendants	49
Establishing a Relationship and Assessing Capacity to Change	51
Location of Interviews.....	53
LSI-R and Risk Assessment	55
Construction of the Subject	59
Individual Responsibility and Navigating Risk	59
Report Recommendations.....	61
Making a recommendation to Court	61
Table 5: Overview of Report Recommendations	63
Delays in case processing	67
Case Study: CC01.....	68
Case Study: DC03	69
CONCLUSION	71
CHAPTER 5: PROBATION OFFICER PERSPECTIVES.....	72

Introduction	72
Distance between the report-writer and the Court	72
Adapting and Individualising Reports to Judges	73
Probation Officers' Perceptions of Judicial Understanding of Risk Assessment Tools	75
Signalling in Reports – Saying Something, without Saying it	76
Correspondence between Report Recommendations and Sentences	76
Deferment of Sentence and Adjourned Supervision	78
CONCLUSION	80
CHAPTER 6: JUDICIAL PERSPECTIVES ON PRE-SENTENCE REPORTS.....	811
Introduction	811
Purpose of Reports	811
Assistance to Sentencers.....	811
Information on Background	833
Individualising Sentences	855
Rehabilitation	877
Futility of Prison	89
Rationales for requesting reports	911
Before imposing a prison sentence.....	922
Before imposing a community sentence.....	933
Borderline between custodial and non-custodial sentences?	934
Managing Court Chaos	966
Quality of Reports.....	988
Characteristics of a Good Report	988
Recommendations and quality	1000
Characteristics of a bad report.....	1022
Improvements in the quality of reports over time	1055
Risk Assessment.....	1066
Importance of risk assessment to decision-making	1066
Risk Assessments, knowledge, and trust	1066
Judicial assessments of risk still important	1077
Judicial suggestions for changes to reports	1088
Professional Boundaries.....	1099
CONCLUSION	11010
CHAPTER 7: CONCLUSION-KEY THEMES AND RECOMMENDATIONS.....	1111
Purpose of Reports and Process of Communication	1111
Process of Engagement: A form of intervention?.....	1122
The Role of Risk Assessment in Reports	1122
Delays in case processing	1133
“Striking Out”: Not Recording Convictions	1144
Variation in Use of Reports by Judiciary.....	1144
Recommendations	1155
Report Content, Structures and Processes	1155
Ensuring Timely Delivery of Reports	1166
Information Sharing between the Probation Service and the Judiciary	1166
Deferred Sentences and Striking Out.....	1166
Measures and Sanctions involving Non-Conviction	1177
REFERENCES	11919

CHAPTER 1: INTRODUCTION

Background to the study

Pre-sentence or pre-sanction reports (PSRs) provide judges with information on the personal circumstances, background and attitude of a defendant, an assessment of risk of reoffending, and typically include sentence recommendations¹. Yet despite their potential to contribute to the sentencing process in Ireland, we know relatively little about how PSRs are constructed in practice, when and in what circumstances they are requested, how probation officers construct and 'craft' their report, how judges view or interpret the contents of the report, and perhaps most significantly, the impact that such reports have on sentencing practice.

Previous sentencing research has shown that social and moral reasoning, in the form of information about the character, personality and circumstances of an individual, can be highly influential in sentencing, especially when judges are choosing between custodial and non-custodial penalties (Tombs and Jagger, 2006; Millie et al., 2007; Maguire, 2008; Tata et al., 2008; Beyens and Scheirs, 2010; Phoenix, 2010). While legal factors are also important, research shows that judicial interpretations of the offender's character and attitude, as well as their interpretations of certain aspects of an individual's personal and social circumstances, including employment and relationship status, are influential in terms of their decision to impose either a custodial or non-custodial penalty (Tombs and Jagger, 2006; Millie et al., 2007; Maguire, 2008, 2010, 2011). The type of information provided in pre-sentence reports is also the type of information that is influential in sentencing, however, to date there has been no research in the Irish context exploring the relationship between pre-sentence reports and sentencing.

Similarly, the contribution that probation officers make to sentencing, through the provision of PSRs, is relatively unexplored (Carr and Maguire, 2012). Traditionally the role of the probation officer in the criminal justice system was considered to be more welfare than control oriented (Healy, 2015; Carr, 2016). Given this practice perspective and the history of the development of probation (i.e. as an alternative to custody) (McNally, 2007; 2009), probation officers would be expected to recommend the use of non-custodial over custodial sanctions. Similarly, pre-sentence reports would

¹ The term 'pre-sentence' or 'pre-sanction' report refers to a report requested by a court prior to the imposition of a sentence/sanction. We use the term pre-sentence report throughout this report.

be expected to focus on the social aspects of the defendant's situation and to contain information which would assist consideration of the appropriateness of a community based sanction.

More recently it has been argued that more emphasis has been placed on control elements in probation practice in response to policy changes that have foregrounded public protection (Fitzgibbon et al., 2010). In Ireland, this is illustrated by the introduction of risk assessment tools in 2004 and by the increasing importance that the Probation Service places on the need to protect the community and provide for public safety (Richardson, 2008; Bracken, 2010; Healy, 2015). An important question is the extent to which pre-sentence reports now prioritise risk assessment over other forms of information and if this is the case, the influence that this may have on judicial sentencing practices.

Pre-sentence reports also represent a key point of exchange between two distinct professional groups within the criminal justice system. Probation officers and judges have very different professional backgrounds and training and are likely to view issues from different perspectives. Previous research has explored pre-sentence reports as a form of communication between report writers and judges (Tata et al., 2008; Beyens and Scheirs, 2010; Wandall, 2010). This research is similarly focused on pre-sentence reports as a form of communication between report writers and judges and an important question which we explore is the extent to which the processes of communication embodied in the reports align with the specific aims and objectives of those writing the reports and with the expectations of those receiving and interpreting the reports.

Policy Context

In Ireland over the last three decades a succession of policy reports have emphasised the need to resort to prison less and have advocated the greater use of community sanctions (Maguire, 2014; Carr, 2016). However, over the last decade and a half, the number of people being supervised in the community has increased alongside a growth in the numbers committed to prison under sentence. The simultaneous growth of community sentences and prison sentences in Ireland is consistent with trends elsewhere in Europe, and it may suggest that there is a net-widening effect (Aebi et al., 2015), i.e. that courts are using community sanctions to a greater degree, but not necessarily as direct alternatives to custody.

Over the last decade, Ireland has also experienced constraints on public funds resulting in considerable resource implications (DoJE, 2012). Coinciding with this there has been a transformation of the remit and workload of the Probation Service (Healy, 2015). New legislative developments have expanded the role of the Probation Service to include supervision of sex offenders and full and part-suspended sentences. Recent developments initiated by the Probation Service include the introduction of same-day community service reports and a pilot of same-day pre-sentence reports in the Criminal Courts of Justice (CCJ) (DoJE, 2012).

Although there has been a growth in the numbers of people being supervised in the community, the number of PSRs requested by the courts in Ireland has declined slightly over the last decade. We also know that there is significant geographical variation in the volume of reports prepared across the country that cannot be explained by population factors alone (Probation Service, 2014a). The volume of reports produced each year and the considerable variation in their use across the country suggests that this is a subject that warrants research.

Within this policy context, the present study focuses on the use of pre-sentence reports by the courts and in particular their impact on sentencing. Given the specific policy contexts outlined above, understanding the role played by pre-sentence reports may have important implications for understanding the nature of sentencing in Ireland, particularly in relation to how community sentences and prison are currently used by the courts. Research into the use of pre-sentence reports can provide insights into decision-making within the criminal justice system and the potential influences in sentencing.

This Report

This report is based on a small-scale empirical study on the use of PSRs in a metropolitan court area in the Republic of Ireland. The main objective of this research was to investigate the role of pre-sentence reports in *sentencing* with a particular emphasis on understanding the *process of communication* involved from the perspectives of probation officers who create the reports, and the judges who request and receive them. To achieve these objectives the research had the following aims:

- To investigate the circumstances in which pre-sentence reports are used by judges;

- To explore the construction of pre-sentence reports by probation officers and their interpretation by judges;
- To explore the correspondence between pre-sentence reports and judicial sentencing decisions in specific cases.

The multi-modal research involved an analysis of PSR report requests in a specific time-period, observation of PSR interviews conducted by probation officers with defendants, analysis of pre-sentence reports, and follow-up interviews with report authors and judges. The research was funded by the Department of Justice and Equality and supported by the Probation Service.

This report comprises of seven chapters. Chapter One introduces the overall context of the study, providing an overview of the main literature and policy contexts in which the study was conducted. Chapter Two situates the study in the specific contexts of the Irish sentencing system and current guidance on the use of pre-sentence reports in Ireland. It also examines the legal basis of supervisory sanctions as well as recent data on patterns of use of community sanctions. Chapter Three outlines the main objectives of the research and describes the study methodology. The main findings of the research are presented in Chapters Four, Five and Six. In Chapter Seven we conclude by presenting a number of key themes and recommendations.

CHAPTER 2: CONTEXTUALISING PRE-SENTENCE REPORTS IN IRELAND

The Irish Sentencing System

Perhaps the most characteristic feature of the Irish sentencing system is the breadth of discretion typically exercised by judges. In the vast majority of cases, judges are free to individualise sentences to the particular circumstances of each case. Owing to the breadth of judicial sentencing discretion, the lack of sentencing reform and the lack of guidance available to sentencers, the Irish sentencing system has been described as one of the most unstructured in the common law world (O'Malley, 2000, 2006, 2013).

While many countries embarked on a programme of sentencing reform in the 1970s and 1980s, sentencing reform only reached Ireland a decade later and most of the Law Reform Commission's (LRC) (1993, 1996) recommendations contained in its *Consultation Paper on Sentencing* and its *Report on Sentencing* were largely ignored (Maguire, 2010). One of the major recommendations in the *Report on Sentencing* (LRC, 1996) was the proposed introduction of a hybrid "just deserts" sentencing framework, which would have prioritised the gravity of the offence over any other consideration and would thus have fundamentally altered the individualised approach to sentencing currently practiced. Over the intervening period, successive Irish governments have continued to pursue a policy of non-intervention in the formulation of sentencing policy leading, or perhaps owing, to a perception of judicial 'ownership' of sentencing (Maguire, 2016). Indeed with the exception of the introduction of a number of presumptive and mandatory minimum sentences for drugs offences and organised crime, it is fair to say that the system of sentencing in Ireland has not been altered in any fundamental way since independence in 1922 (Bacik, 2002; O'Malley, 2006; Maguire, 2016).

The neglect of sentencing reform should be understood within the general inertia that has been described as characteristic of penal policy in Ireland (Kilcommins et al., 2004; Rogan, 2011). This neglect is partly due to the fact that Ireland has been considered a low-crime country for much of its history and thus the 'problem' of crime has for the most part not featured as a prominent policy issue (Rottman, 1984). Other reasons for the neglect include the lack of information on the Irish criminal justice system, which prevented policy analysis (Rottman, 1984) and a long-running reluctance to depart from a policy of non-intervention in the formulation of sentencing policy (O'Malley, 2013;

Maguire, 2016). As a result of the legislature maintaining a 'hands-off' approach to sentencing reform, Ireland does not have a clear statutory framework of sentencing that sets out how custody and community sanctions should be used (Maguire, 2016).

Sentencing Framework

In comparison with neighbouring jurisdictions such as Northern Ireland and England and Wales, the legislative sentencing framework in the Republic of Ireland is limited. For example, in Northern Ireland the Criminal Justice (Northern Ireland) Order 1996 introduced a statutory framework that structured judicial sentencing discretion on the basis of proportionality. While partially amended by the Criminal Justice (Northern Ireland) Order 2008, this legislation provides that the seriousness of the offence is the most important factor influencing the type and severity of sentence. It also outlines custody and community thresholds based on crime seriousness to guide judicial use of these sanctions (Maguire, 2016).

In contrast, the legislative sentencing framework in the Republic of Ireland is more limited. Legislation typically sets out the maximum and in some cases the minimum, sentence that a court may impose in relation to particular crimes, but stops short of indicating a type or quantum of penalty or a range of suggested penalties (O'Malley, 2006). While sentencing legislation typically refers to the maximum fine and term of imprisonment that a judge may impose in specific cases, in reality, there are many other sentencing options that judges may choose including a compensation order, a financial penalty, a probation order, a community service order, a suspended sentence and a deferment of sentence order.

In the absence of a coherent legislative sentencing framework, Irish judges rely upon the judicially developed principle of *proportionality* to guide their use of custodial and non-custodial sanctions (O'Malley, 2006, 2013; Maguire, 2016). Justice Denham referred to the constitutional character of the principle of proportionality in sentencing in *People (DPP) v. M²*:

² [1994] 3 I.R. 306

“Sentences should be proportionate. Firstly, they should be proportionate to the crime. Thus, a grave offence is reflected by a severe sentence...However, sentences must also be proportionate to the personal circumstances of the appellant.Thus, having assessed what is the appropriate sentence for a particular crime it is the duty of the court to consider then the particular circumstances of the convicted person. It is within this ambit that mitigating factors fall to be considered”.³

The Irish principle departs from traditional proportionality-based principles in that it specifically requires that the sanction is *proportionate both to the gravity of the crime and to the personal circumstances of the offender* (O'Malley, 2006; Maguire, 2016). While this principle has been under development since at least the mid-1990s if not earlier, and although laudable in light of the absence of legislative guidance, the principle of proportionality can be criticised on the grounds that it is ineffective as a constraint on sentence severity as it provides no ceiling on the extent to which aggravating factors, particularly previous convictions, can increase the severity of the offence (Maguire, 2014, 2016).

Furthermore, while the principle is quite well developed, it still leaves considerable room for individual judges to adopt different approaches in relation to similar cases thus leading to inconsistent, though legally justified, sentencing outcomes (Law Reform Commission, 1993, 1996; Hamilton, 2005; Maguire, 2010). Although the principle of proportionality makes no reference to the aims of sentencing, the failure to introduce a sentencing framework which prioritises one particular aim means that judges may choose the sentencing aim they wish, and one of at least three different sentencing approaches including retribution, rehabilitation, and deterrence (O'Malley, 2006). Although no one particular aim has been prioritised by the legislature, Walsh J emphasised the importance of rehabilitation in the Supreme Court case of *The People (Attorney General) v O'Driscoll*:

“The objects of passing sentence are not merely to deter the particular criminal from committing a crime again but to induce him insofar as possible to turn from a criminal to an honest life and indeed the public interest would be best served if the criminal could be induced to take the latter course”.⁴

³ *People (DPP) v. M* [1994] 3 I.R. 306 at 317

⁴ *The People (Attorney General) v O'Driscoll* [1972] 1 Frewen 351at 359

Notwithstanding this, the courts have on a number of occasions also expressed support for deterrence⁵ and retribution.⁶ And while no one sentencing aim is prioritised, regardless of the aim adopted, the sentence arrived at in each case must comply with the principle of proportionality (O'Malley, 2006).

Previous research shows ample evidence of inconsistency in sentencing practices particularly in the District Court (Hamilton, 2005; Maguire, 2010). Previous research also shows that District Court judges rarely mentioned the proportionality principle when asked to explain their approach to sentencing and they typically engage in 'instinctual synthesis' whereby they consider all the different factors and impose sentence without indicating the precise weight attached to any particular factors (Maguire, 2010). Thus despite the importance of proportionality as a form of principled guidance, in practice, District Court judges do not necessarily adhere to it (Maguire, 2010).

Indeed current sentencing laws actively encourage judges to individualise their sentences and treat each case on its own merits. As discussed above, a proportionate sentence must be proportionate not only to the crime but also to the personal circumstances of the person being sentenced. As Walsh J explained in *The People (Attorney General) v Poyning*⁷, the choice of sentencing aim depends upon the circumstances of the case in question and judges may have regard to the offender's background, antecedents and character, in deciding which aim to adopt:

"It follows that when two persons are convicted together of a crime or of a series of crimes in which they have been acting in concert, it may be (and very often is) right to discriminate between the two and to be lenient to the one and not to the other. The background, antecedents and character of the one and his whole bearing in court may indicate a chance of reform if leniency is extended; whereas it may seem that only a severe sentence is likely to serve the public interest in the case of the other, having regard both to the deterring effect and the inducement to turn from a criminal to an honest life."⁸

⁵ See for example *The People (DPP) v Preston*, Court of Criminal Appeal, unreported, 23 October, 1984, ex tempore

⁶ See for example *The People (AG) v Giles* [1974] IR 422

⁷ [1972] I.R. 402

⁸ *The People (Attorney General) v Poyning* [1972] I.R. 402 at 408

Thus a consideration of personal circumstances lies at the heart of Irish sentencing laws and Irish judges are constitutionally mandated to consider them. Indeed, previous sentencing research has confirmed that social and moral reasoning are highly influential in sentencing, particularly information about the character, personality, and circumstances of the defendant and especially when judges are choosing between custodial and non-custodial sentences. While legal factors are important, research shows that judicial interpretations of the character and attitude of the offender, and their perceptions about certain aspects of the offender's personal and social circumstances, including their employment and relationship status are influential in decisions about whether to impose a custodial or non-custodial penalty (Tombs and Jagger, 2006; Millie et al., 2007; Maguire, 2008, 2010, 2011).

Lack of Sentencing Guidance and Pre-Sentence Reports

As well as lacking a coherent legislative sentencing framework, the Republic of Ireland remains one of the only common law countries in the world that has not yet introduced any form of sentencing guidelines (Cahillane, 2013; O'Malley, 2013; Maguire, 2016). While there is a paucity of research that evaluates the impact of sentencing guidelines (Ashworth and Roberts, 2013), evidence from comparative sentencing research in Scotland and in England and Wales suggests that guidelines may lead to increased severity (Millie et al., 2007). In Ireland, the judiciary has, for a long time, declined to engage in the development of guideline judgments for fear of interfering with judicial sentencing discretion, which the Supreme Court in the *People (DPP) v Tiernan*⁹ deemed as essential for achieving justice in each case. However, in recent times the Court of Appeal affirmed the appropriateness of issuing detailed sentencing guidelines in *DPP v Ryan*¹⁰ and *DPP v Fitzgibbon*.¹¹

In light of the lack of sentencing guidance available to Irish judges, particularly those in the lower courts, and given the constitutionally mandated requirement for sentences to be proportionate to both the crime and the personal circumstances of the individual, a key question of some importance surrounds the extent to which judges rely upon pre-sentence reports as a form of guidance when

⁹ [1988] IR 250

¹⁰ [2014] IECCA 11

¹¹ [2014] IECCA 12

sentencing. Previous research on the views, attitudes and sentencing practices of District Court judges found that when asked about sentencing guidance judges rarely mentioned the principle of proportionality: instead they indicated that they often relied upon guidance contained in “probation reports” (Maguire, 2008; Maguire, 2010). Thus pre-sentence reports may represent an important source of information for some sentencing judges.

Pre-Sentence Reports and the Sentencing Process

The importance of the role played by pre-sentence reports has been highlighted in research in other jurisdictions (e.g. Tata et al., 2008; Beyens and Scheirs, 2010; Wandall, 2010). Overall the role of pre-sentence reports in sentencing underscores the individualised nature of a particular sentencing system and the willingness of judges to consider personal circumstances and not just offence seriousness when imposing sentence. Despite this, there is considerable variation in the official status of pre-sentence reports in different jurisdictions particularly regarding whether they are specifically required or optional. In Northern Ireland, both the 1996 and 2008 Orders provide that when considering its opinion about the custody and community sentence thresholds, the court must, save in exceptional circumstances, obtain a pre-sentence report. In England and Wales, under the provisions set out in the Criminal Justice Act (2003), a sentencer has a statutory duty to consider a PSR before passing a custodial sentence.

In the Republic of Ireland, judges use pre-sentence reports prepared by the Probation Service frequently even though there are no statutory requirements to do so¹². The lack of statutory requirements is somewhat surprising considering that, as outlined earlier, judges in Ireland are constitutionally required, when exercising their sentencing discretion, to consider whether the personal circumstances of the defendant should mitigate the severity of the proportionate sentence.

Community Sanctions and Measures

The Probation Service in the Republic of Ireland is a public sector agency under the aegis of the Department of Justice and Equality. Its main functions are to provide assessments on request to the court and to supervise people subject to community sanctions and measures. The Council of

¹² However, section 99 of the Children Act 2001 requires a judge to request a pre-sanction report before imposing a community sanction, detention or detention with supervision on a child.

Europe's (1992) definition of 'community sanctions and measures' illustrates the possible range of such sanctions and measures, encompassing both community sentences imposed by the court and post-custodial supervision:

The term "community sanctions and measures" refer to sanctions and measures which maintain the offender in the community and involve some restriction of his liberty through the imposition of conditions and/or obligations, and which are implemented by bodies designated in law for that purpose. The term designates any sanction imposed by a court or a judge, and any measure taken before or instead of a decision on a sanction as well as ways of enforcing a sentence of imprisonment outside a prison establishment. (Council of Europe 1992, Appendix para.1).

The primary legislation underpinning community sentences in the Republic of Ireland is the *Probation of Offenders Act, 1907*. Now more than a century old, this remains the main legal mechanism through which a person can be made subject to probation supervision in the form of a Probation Order. The role of the Probation Service has expanded over recent decades through the introduction of legislation providing for other forms of community sentences and supervision within the community following release from custody. The previous government promised comprehensive legislative reform, but the *Criminal Justice (Community Sanctions) Bill, 2014*, was not enacted and there is no reference to this legislation in the current Programme for Government (Department of the Taoiseach, 2016).

Legal Basis for Community Supervision

Section 1. (1) of the *Probation of Offenders Act (1907)* provides that where a person is charged before a court of summary jurisdiction and the charge is proved:

...but [the court] is of opinion that, having regard to the character, antecedents, age, health or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, without proceeding to conviction, make an order either-

- (i) dismissing the information or charge; or
- (ii) discharging the offender conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order.

Section 1. (2) of the Act contains a similar provision to Section 1. (1) in relation to indictable offences. Section 2 then provides that the court may impose a condition of supervision in relation to any recognisance entered into under the Act. In both summary and indictable cases, the court can order a person to enter into a recognisance, requiring them to be of good behaviour during which period (not exceeding three years), they can be required to be called for sentence if these terms are breached. Under the terms of the recognisance, the court can also order that the offender 'be under the supervision' of a named person for a specified period. For summary offences Section 1. (1) (II) allows the court to combine a conditional discharge without a conviction with a period of supervision as one of the conditions of the recognisance.

Under Section 2. (1) which is colloquially referred to as a Probation Order (Section 2.(1)), the court may require a person who enters into a recognisance under the act to undergo a period of supervision. Additional conditions can also be imposed – e.g. prohibiting contact with other 'thieves or other undesirable persons', prohibiting 'frequenting undesirable places' and abstention from 'intoxicating liquor'. In summary, supervision as a condition of a recognisance can be ordered in relation to a summary or an indictable offence *but it can only be combined with not recording a conviction in relation to summary offences under Section 1.(1) (II)*.

In terms of wider public understanding of a Probation Order, perhaps unsurprisingly, there is some lack of clarity. In the course of fieldwork for this study we observed judges in court refer to charges being 'dismissed under the Probation Act', and/or a person being 'given the Probation Act'. While the precise sentence will be no-doubt be specified in the court order, it was certainly less than clear in the wider court setting what sentence was imposed and/or if a conviction had in fact been recorded. In previous research on media coverage of probation and community sanctions in Ireland, this lack of clarity regarding specific orders and by extension the work of the Probation Service was also evident (Maguire and Carr, 2013).

This picture is further muddled by the practice of ‘adjourned supervision’, whereby courts adjourn sentence and require that a defendant submits to the supervision of the Probation Service in the interim. This practice, described as a ‘judicial innovation’ (Healy and O’Donnell, 2005), has no legislative basis¹³, yet it is used frequently. Information from the Probation Service shows that in 2014 there were 1,585 Orders for Supervision During Deferment of Penalty (i.e. Adjourned Supervision), constituting 22% of the supervisory caseload. By way of comparison, there were 1,716 Probation Orders under supervision in the same year (24% of the caseload).

Table 1 Supervision Orders made during years (2012-2014)

Supervision	2012	2013	2014
Orders for Supervision during year (Probation Orders)	1,742	1,640	1,716
Orders for Supervision During Deferment of Penalty	1,695	1,732	1,585
Community Service Orders	2,569	2,354	2,197
Fully Suspended Sentence with Supervision	599	753	798
Part Suspended Sentence Supervision Orders	389	440	586
Post Release Supervision Orders	43	40	40
Other Orders	131	126	170
Total Supervision Orders made during year	7,168	7,085	7,092

Data source: Probation Service (2014) *The Probation Service Annual Report (2014)*

By definition when a person is placed under adjourned supervision, the final outcome has yet to be decided. The length of periods of adjournment can vary; for example, during the course of this research, we were informed of cases where people were supervised on this basis for up to one year. When the case is returned to court for sentence, an update report is usually provided to the court outlining the progress of the person whilst under supervision. The full array of sentencing options

¹³ While deferred or adjourned sentences have no specific legislative basis it could be argued that they fall under Section 1.(1)(ii) of the Probation of Offenders Act 1907. Furthermore, the practice of deferral of sentence has a long and distinguished legal history in common law in this and other neighbouring jurisdictions.

remain open to the court including a dismissal of the case under the Section 1. (1) (ii) of the *Probation of Offenders Act 1907* (but only in relation to summary offences as outlined above), another form of community supervision or indeed a sentence of imprisonment.

The District Court also has the power to strike out a case following a period of adjourned supervision. The District Court's power to strike out cases *before a plea* is entered is contained in Orders 23 and 33 of the District Court Rules 1997. However, in addition to these powers the High Court in *DPP v District Judge Ryan*¹⁴ found that the District Court also has the jurisdiction to strike out a case *after a finding of guilt* has been made. In such circumstances, District Court judges may choose not to record a conviction following the imposition of a sentence provided that the legislature has not made the offence in question subject to a mandatory sentence.

The power to strike a case out after a finding of guilt can be combined with almost any sentence provided that mandatory sentencing provisions do not apply to the punishment of the offence in question. The main difference between a strike out and a dismissal under Section 1(1) of the *Probation of Offenders Act 1907*, is that with the former, there is no record whatsoever of the offence whereas a record of the dismissal is recorded and can be submitted as evidence of a lack of good character in future criminal cases against the defendant. Anecdotal evidence suggests District Court judges like to combine adjourned supervision with a strike out precisely to avoid this situation. Anecdotal evidence also suggests that another practice exists whereby a case may be 'dismissed on its merits', despite the facts being proven against the defendant, so that no criminal record is recorded.¹⁵ While the extent of this practice is unknown and its legality uncertain, it clearly merits further investigation.

¹⁴ [2011] IEHC 280: In this case the defendant had been convicted of a sexual assault (contrary to section 2 of the Criminal Law (Rape) (Amendment) Act 1990) and was sentenced to make a contribution to the court poor box. Having made the contribution to the poor box the District Court judge then struck out the charge against him. Kearns P interpreted Order 23 rule 1 of the DCRs as providing District Court judges with discretion as to whether or not to record a conviction.

¹⁵ A report in the Irish Times (06/12/13) describes a case in the Circuit Court in which a defendant who had admitted unauthorised possession of animal remedies, had the case against him 'dismissed on its merits'. The defendant was an elderly man who had adult children in Australia that he wishes to visit. The defendant's solicitor requested that the Probation Act not be applied as this might impact his travel arrangements. The Circuit Court judge acquiesced to the request to dismiss the case 'on its merits' after the defendant donated €3000 to a local animal charity and paid the court's costs. <http://www.irishtimes.com/news/ireland/irish-news/case-against-veterinary-inspector-dismissed-1.1618612>

The *Criminal Justice Act 2006* provides the third mechanism through which a person can be sentenced to community supervision. Under Section 99 of this Act where a person is sentenced to a term of imprisonment (other than a mandatory term), the court can make an order suspending the execution of the sentence in whole or in part, subject to a person entering into a recognisance which may include a condition that the person be subject to the supervision of the Probation Service. The time period for supervision is not specified in the legislation. These forms of supervision referred to as a 'Fully Suspended Sentence with Supervision' or a 'Part Suspended Sentence with Supervision', have grown in popularity in recent years. As the figures in **Table 1** above illustrate there were 798 'Fully Suspended Sentences with Supervision' issued in 2014, accounting for 11% of the total supervisory caseload. In the same time period, there were 586 Part Suspended Supervision Orders (8% of the total caseload).

Again with this form of sentence, there is an element of recourse to the court. For Fully Suspended Sentences, the fact that the prison element is suspended means that if further offending occurs within a specified period and/or a person fails to comply with the requirements of their order, the suspended sentence can be activated. A Part Suspended Sentence with Supervision means that the time spent in custody would be followed by a specified period of probation supervision post-release. In the course of fieldwork for this research, probation officers told us that if such a sentence were imposed, work would be undertaken with the person in custody as a matter of priority. In other words, in the context of resource constraints, prisoners sentenced to Part Suspended Sentences were prioritised by probation officers within the prison system for the purposes of sentence planning and resettlement.

A sentence of unpaid work in the community – the Community Service Order (CSO) - was introduced in Ireland by the *Criminal Justice (Community Service) Act 1983*. The community service order was conceptualised as an alternative to prison with a legislative requirement that a judge would have to consider a prison sentence to be appropriate in a particular case before they could consider imposing a CSO in lieu of imprisonment. In effect, this means that CSOs could not be used as stand-alone orders in their own right. In recent years a number of legislative changes have attempted to expand the circumstances in which community service orders can be used. The *Criminal Justice (Community Service) (Amendment) Act, 2011*, introduced a new duty on judges to consider imposing a community service order as an alternative to a prison sentence of 12 months or less. However, this

new provision merely required judges to consider a CSO and did not require them to actually impose one as an alternative. Indeed, the statistics on the use of CSOs in Ireland between 2012 and 2014 show that there has been a decline in their use over the period since this amendment. Under the *Fines (Payment and Recovery) Act 2014* a CSO can be used as a stand-alone order to enforce the non-payment of a court ordered fine but it is too soon yet to assess whether or not this will result in an actual increase in the use of CSOs in practice.

Before imposing a CSO, section 4 of the *Criminal Justice (Community Service) Act 1983* requires that a judge must be satisfied, after considering the offender's circumstances and a probation report, that the person in question is 'suitable' for such an order and consents to such. Since 2011 there has been a reduction in the number of Community Service Reports (CSRs) but an increase in the number of PSRs to consider Community Service. One of the benefits of requesting a CSR is that it is shorter and can be facilitated on a same day basis. However, it does not contain the depth of analysis contained in PSRs and this may explain the recent increase in requests combining a PSR with a consideration of suitability for CSO.

Trends in use of Community Supervision in the Republic of Ireland

Various reports on the penal system in Ireland over the years have argued that community supervision should be used to a greater degree as an alternative to custody (Carr, 2016). Most recently the *Strategic Review of Penal Policy (DoJE, 2014)*, observed that in order to reduce prison numbers, there must be appropriate non-custodial sanctions available to the Courts, and that:

These sanctions must be cost effective, credible and command public confidence in managing both those who pose a general risk of re-offending and those presenting a real risk of harm and danger to the public. (DoJE, 2014: 44)

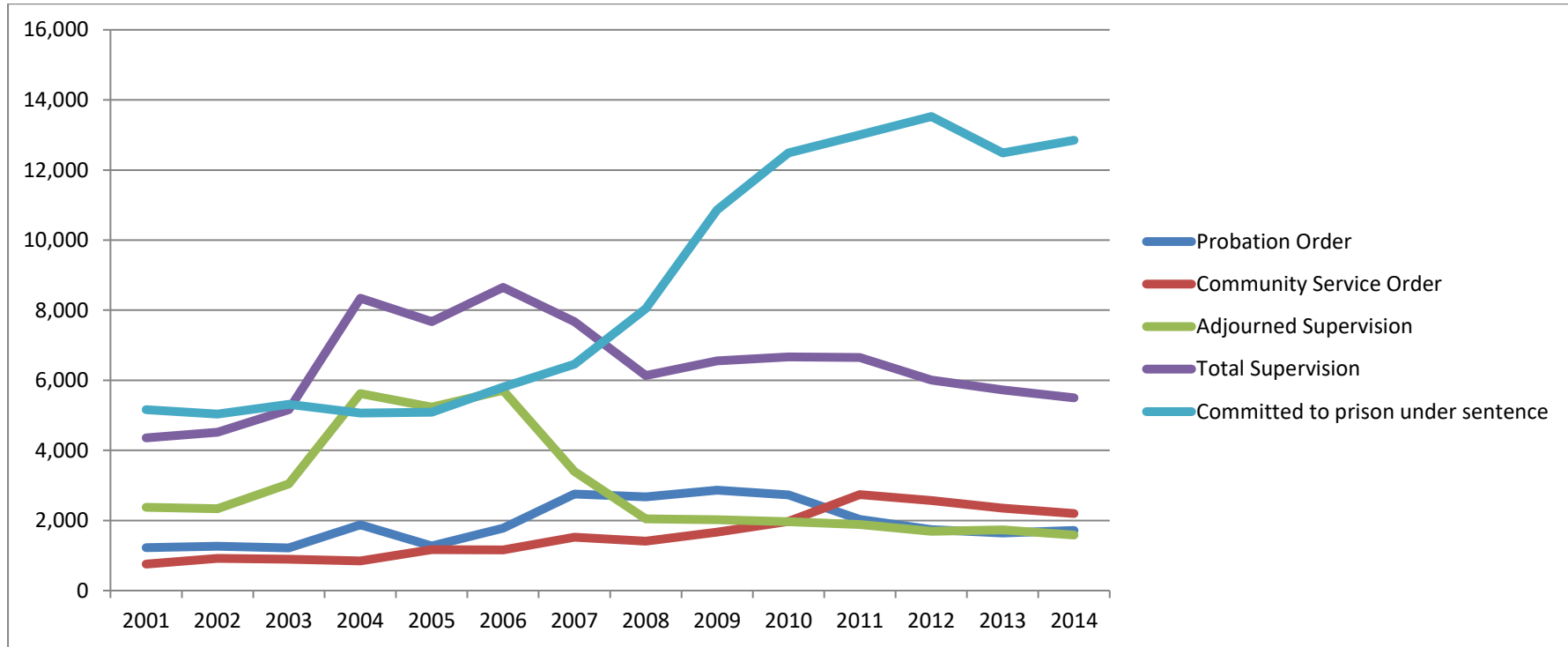
The extent to which greater use of community sentences serves to reduce prison numbers or produce a net-widening effect (i.e. resulting in greater numbers being subject to both forms of sanction), is a topic of some debate (Phelps, 2013; Aebi et al., 2015; Heard, 2015). Research

analysing the use of imprisonment and community sanctions in Europe using SPACE data¹⁶ shows that the numbers of people subject to both types of sentences increased in most countries across Europe in the years 1990 to 2010, and that this rise could not be explained by a corresponding rise in crime rates (Aebi et al., 2015). A further metric, the ratio between the numbers of people imprisoned and those subject to a community sentence, shows that there is considerable variation across countries between their prison and probation populations. In Ireland in 2010, for every 100 people detained in prison, there were 127 people subject to community supervision. By means of comparison, the ratio in England and Wales was 100:313, and in Northern Ireland, it was 100:193 (Aebi et al., 2015).

Compared to its nearest neighbours, Ireland uses proportionately less community sanctions, however, longitudinal data shows that there has been a rise in the use of community sanctions in over time. In 1980, less than 1,000 people were made subject to a community sentence, in 2014, this figure had risen to 5,498 (Healy, 2015; Carr, 2016). The rise in the use of community sentences can be at least partly explained by greater resourcing and the expansion of the legislative mandate of the Probation Service. **Figure 1** below shows the numbers of community sentences and prison sentences imposed between 2001 and 2014. Notable is the significant rise in the use of imprisonment over time but also the fluctuation in the use of community sentences, which reached a high point in 2006. The reason for the variation in the use of community sentences over more recent years has not been explained and it is an area that merits further analysis.

¹⁶ Council of Europe Annual Penal Statistics and Council of Europe Annual Penal Statistics on Persons Serving Non-Custodial Measures.

Figure 1: Probation Order, Community Service, Supervision during deferment of Penalty and Total Committed to Prison under Sentence 2001-2014



Sources: Probation and Welfare Service Review 2000-2003; Probation and Welfare Service Annual Reports 2004-2006; Probation Service Annual Reports 2007-2014; Irish Prison Service Annual Reports 2001-2014.

Practice Orientations and Pre-Sentence Reports

Probation has traditionally been viewed as a welfarist arm of the criminal justice system. This is best encapsulated in the description of the probation officer's role in the *Probation of Offenders Act, 1907* – to 'advise, assist and befriend'. Broader analyses of trends within criminal justice systems over the latter parts of the twentieth century have noted a hardening of criminal justice policy and attitudes towards offenders, sometimes characterised as an increasing 'punitiveness' (Hamilton, 2013), which has also led to changes in the orientation of probation practices (Garland, 2001). The extent to which these trends have been overstated and were evident beyond the Anglo-American sphere has been subject to some debate (Zedner, 2002; Kilcommmins et al, 2004). Analyses of the Irish criminal justice context have tended to conclude that dystopic accounts of the 'decline of the rehabilitative ideal' (Allen, 1981) have less traction for the precise reason that in a penal system characterised by policy neglect, a rehabilitative ideal had never fully taken hold (Rogan, 2011).

Nonetheless, some of the broader trends or 'adaptations' (Robinson et al., 2013), of community sanctions evident in other jurisdictions have been seen in Ireland in recent years. These include an increased focus on risk, evidence-based interventions, and an espoused public protection role. Perhaps underscoring this shift in orientation, the Probation Service dropped the word 'Welfare' from its official title in 2006, and in the same period, it introduced a standardised risk assessment tool- the Level of Service Inventory (Revised) LSI-R.

The LSI-R risk assessment tool was developed in Canada by Andrews and Bonta (2010) and is premised on the General Personality and Cognitive Social Learning (GPCSL) theory of offending behaviour (Wilson & Gutierrez, 2014). Simply put, this links the propensity to offend to:

...an individual's assessment of the costs and benefits associated with pro-social versus pro-criminal alternatives. Based on this theory, when an individual perceives that the benefits of criminal behaviour outweigh the costs (or outweigh the benefits

of a pro-social alternative), this behavior is more likely to occur... (Wilson & Gutierrez, 2014:198)

The LSI-R is structured around eight centrally identified risk/need factors: criminal history, pro-criminal attitudes, pro-criminal associates, anti-social behaviour pattern, employment/education, family/marital, substance abuse, and leisure/recreation (Andrews and Bonta, 2010). The aim of assessment is to identify areas of 'criminogenic need' (i.e. dynamic risk factors) that will enable an estimation of the risk of re-offending and where intervention should be targeted to reduce such risk. The application of the Risk-Needs-Responsivity (RNR) approach has been subject to some critique (Ward and Maruna, 2007). In relation to assessment, these critiques centre on two main areas – the predictive validity and utility of the tools (including their applicability to ethnic minorities and women) and the narrow scope of the risk factor lens.

Within Ireland, the LSI-R is used as an assessment tool in the course of preparing the Pre-Sentence Report. In many jurisdictions, there has been a process of increased standardisation and codification of information contained within reports (Cavadino, 1997; Hannah-Moffat and Maurutto, 2010). In general terms, this has included a more explicit focus on offending behaviour and offence seriousness. Research exploring the use of risk assessment tools and the practices of assessment of probation officers in Ireland has shown that there has been an increased focus on risk within reports, but that probation officers still tend to prioritise a welfare-oriented perspective and place a strong emphasis on their clinical judgement, viewing risk assessments as supplementary to this (Bracken, 2010; Fitzgibbon et al., 2010; Bourke, 2013; Quigley, 2014).

Probation Service Guidance on Pre-Sentence Reports

Service Practice for the Preparation and Presentation of Pre-Sanction Reports (1999)

The Probation Service produced the first guidance on the preparation and presentation of Pre-Sentence Reports in 1999. This guidance outlines the important role that the Service plays in the administration of justice through the provision of 'quality' and timely reports to

the court and firmly positions the report-writing role as affording an opportunity to 'promote the use of community sanctions' (PWS, 1999:5). The guidance emphasises that PSRs should provide information to the courts on risk of re-offending so that this can be linked to an appropriate sanction:

In making decisions about how to deal with an offender, courts need to be advised, in order to protect the public, of the risk of the person committing further crime and again victimising members of the community.

Pre-Sanction reports must present to the courts some answers to these questions and make them aware of the best available options to address the behaviour and needs of each individual, using, when at all possible, community-based sanctions. (PWS, 1999:2)

The practice guidance delineates the various sections of the report. The 'Introduction' should provide information on the basis of the report – i.e. the number of interviews with the offender, location of interviews, and other sources consulted for the purpose of preparing the report. The section on 'Offences' should address current and previous offences, the degree of acceptance or denial of the facts of the offence by the offender, and the response to previous supervision if applicable. The report should contain a specific focus on 'Victim Issues', detailing the offender's awareness of the impact on the victim, attitude towards the victim and attitude towards reparation. It should also include a section on 'Relevant Background Information', including personal and family information such as marital status, education and employment record, and any difficulties such as addictions or health problems. This section should also provide an account of the offender's risk of re-offending and motivation to address the issues that led to involvement with the criminal justice system. Finally, the 'Conclusion' of the report should provide a summary of factors which are considered to have been relevant to the offence, problem areas that need to be addressed, level of motivation, and the supports and interventions that can be made available to the offender in the community if a community sentence is imposed.

Revised Content of Reports (2005)

In 2005 the Probation Service introduced further practice guidance on PSRs (a 4-page appendix to the 1999 guidance). The updated guidance reflects the introduction of the LSI-R risk assessment tool and it outlines how the use of the tool and the information from the

risk assessment should be incorporated into the report. The 2005 guidance specifies that the 'Introduction' to the report should note the use of a risk assessment tool and that the section on 'Offences' should document the specific 'risk factors linked to offending' discerned from the application of the tool. The section on 'Relevant Background Information' should further elaborate how specific risk factors are linked to offending and highlight the areas that need to be addressed to reduce any risk of further offending. Finally, the 'Conclusion' of the report should include a summary of the main risk factors (static and dynamic), an overall assessment of risk level (low, medium or high), an assessment of harm or dangerousness where relevant, and the offender's motivation to address their 'criminogenic needs'. The revised guidance clearly links any proposed programme of intervention to the feasibility of addressing criminogenic needs and explicitly states:

If the view of the author is that a programme of supervision is unlikely to be in any way effective this should then be stated clearly and the report concluded at this point.

If on the other hand the author feels confident to make a proposal for a programme of supervision then a programme of interventions should be outlined in such a manner as makes it apparent that each measure is targeting a criminogenic need.

(Probation Service, 2005: 4)

While the earlier guidance had noted that a proposal to the court regarding a community sanction should be informed by both the level of motivation of the offender and where there are specified objectives to be achieved, the 2005 guidance firmly situates this consideration within a Risk-Needs-Responsivity (RNR) paradigm. Here, the specific purpose of community sanctions should be to address criminogenic needs, i.e. those dynamic risk factors linked with offending.

Probation Service Policy and Procedures for the Preparation of Pre-Sanction Reports for Courts (2014)

The Policy and Procedure for Pre-Sanction Reports was last updated in 2014. This iteration is the most substantial revision since guidance was first issued in 1999. The policy states:

Experience shows that the Court expects, and will be well disposed towards a properly researched and logically formulated plan for dealing with the offender, while taking into account the seriousness of the offence and the need to protect the community.

(Probation Service 2014:4)

The 2014 Guidance provides further elaboration of what is required in each section of the report. The introduction to the PSR should describe the basis of the report and any specific request made by the judge (e.g. that consideration be given to a specific sanction). The use of risk assessment tools is further foregrounded. The introduction of the report should reference the specific risk assessment tool used and the 'Offence Analysis' section should include:

A summary of the areas of dynamic risk factors and criminogenic needs necessitating attention. (Probation Service 2014:12)

The emphasis on risk is extended from a focus on 'risk of re-offending' mentioned in the 1999 guidance to also include the assessment of risk of serious harm. This reflects the introduction of the ROSH (Risk of Serious Harm) Assessment Tool into the Service. The guidance notes that while the ROSH should not be directly reported in the PSR, issues emanating from this assessment (e.g. patterns of serious violence), should be reflected in the offence analysis. If a high level of risk of serious harm is indicated, this should be reflected in the conclusion of the report:

If the current or previous offence(s) or behaviour pattern gives rise to concern regarding a potential risk of serious harm (Stage 4 of the PS/ROSH was indicated) this

should be stated here and evidenced through reference to those aspects of the harmful behaviour. (Probation Service, 2014:15)

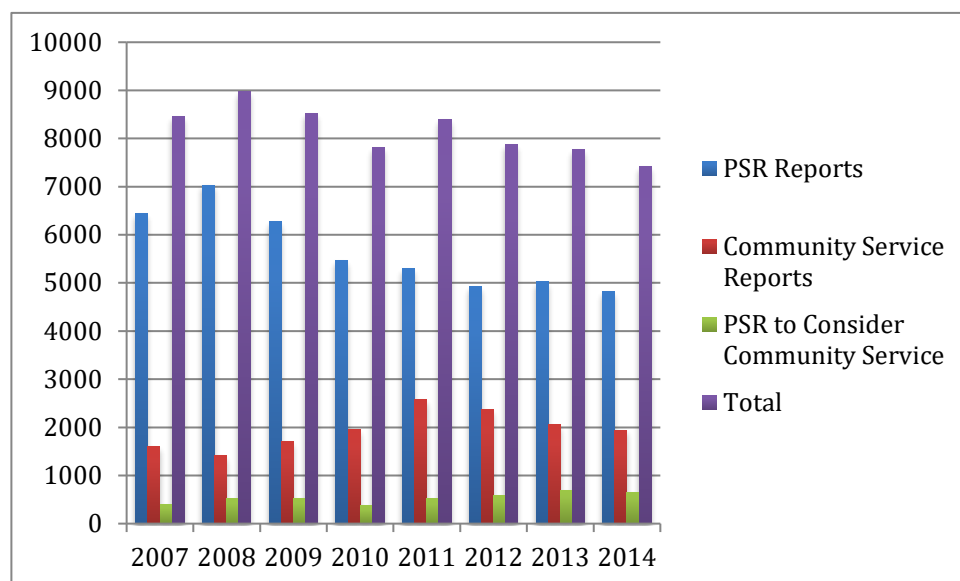
The 2014 practice guidance provides further direction on the link between the assessment of risk of re-offending and risk of harm and the report conclusion. It specifies that the recommendation to the court should contain details of the plan of work to be undertaken if the person is sentenced to a community sanction or to a sentence requiring post-release supervision.

PSRs and Pattern of Use of Community Sanctions

The Policy and Procedures for the Preparation of Pre-Sanction Reports for Courts (2014) notes that courts 'are encouraged to seek a PSR before making a supervised community sanction'. Data on requests for court reports and the pattern of use of community sanctions points to regional variation in the use of PSRs and community sanctions. Data in the Probation Service's Annual Report (2014: 65-67) is presented on a county basis and points to differences in the use of Pre-Sentence reports by Court areas and in the use of community sanctions. For example, Cavan, Cork, Limerick, and Dublin have the highest rates of referrals to Probation (i.e. requests for reports). Waterford, Cavan, Longford, and Cork have the highest rate of imposition of Probation Orders and Cavan, Limerick, Longford, and Louth have the highest rate of imposition of Community Service Orders (measured per 100,000 residents). Disparities in the rate of use of Probation are most stark when comparing referrals by counties. In Cavan, there are more than 300 people per 100, 000 referred to Probation. In Kerry, the rate is less than 100 per 100, 000. The reason for these differentials is not explained. It may relate to the history of Probation Service provision across the country and/or judicial confidence in community sanctions (Carr, 2016).

Courts typically request three varieties of report: 1) PSRs to consider a range of sentencing options; 2) PSRs where a judge asks for the inclusion of a Community Service assessment or 3) Community Service Reports (which look at the defendant's suitability for this sanction, and do not contain the level of detail provided in a PSR). **Table 2** below provides information on the numbers and types of reports requested between 2007-2014.

Table 2 – Numbers of Types of Reports Requested by the Courts (2007-2014)



Data source: Probation Service Annual Reports (2007-2014)

The data in this table illustrates that the numbers of PSRs requested by Courts across the country have fallen from a highpoint in 2008 (n= 7034) to (n=4817) in 2014. To some extent the decline in requests for PSRs is offset by other types of report, however, there were still approximately 1,500 fewer reports requested in 2014 than in 2008. The specific reasons for this decline are unclear. Potential reasons include a reduction in resources allocated to the provision of pre-sentence reports or a decrease in willingness to request pre-sentence reports.

While it is clearly a policy imperative that a PSR should precede the imposition of a supervised community sanction for the reasons set out in the policy guidance (i.e. linking the assessment to the sanction), the data shows that this does not always happen in practice.

Table 3 below shows the number of community sentences imposed without a prior report compared to overall orders imposed in the years 2010-2014. In 2014, almost 15% of orders were imposed without a prior report. It is possible in some cases that judges rely upon other recent reports provided for certain individuals rather than request new reports, particularly

in cases where a person has recently appeared before another court and that court requested a pre-sentence report.

Table 3: Community Supervision Orders without a Prior Report and Total Community Supervision Orders



Data source: Probation Service Annual Reports (2010-2014)

Various statutes empower the court to request an assessment from the Probation Service, but as previously outlined, with the exception of the Community Service Order, there is currently no legislative requirement that the court **must request** a report when considering sentencing an adult to a community sanction or a term of imprisonment.¹⁷ The situation is different for under 18s, the *Children Act 2001* specifies that the court must request a report from a probation officer where it is considering the imposition of a community sanction,

¹⁷ Probation of Offenders Act (1907) as amended; Misuse of Drugs Act (1977-1984); Sex Offenders Act (2001). However, there may be a requirement that courts request a report before they impose a community service order as the legislative provisions governing this (Criminal Justice (Community Service Order) Act 1983) requires that the defendant is suitable for such a sanction.

detention or supervision¹⁸. Under proposals to amend the legislation (*Criminal Justice (Community Sanctions) Bill (2014)*), the courts may request a PSR in any case where it has recorded a conviction, but it will be required to do so where it is considering a supervised community sanction or imprisonment (in the case of a person aged 18-21, who has not previously been sentenced to prison). Further to this, the *Criminal Justice (Community Sanctions) Bill (2014)* proposed a time limit of 28 days for a PSR to be prepared and furnished to the court.

CONCLUSION

Ireland is in a unique position in terms of the context in which pre-sentence reports exist. As noted Ireland has a highly unstructured sentencing system with very little guidance from either the legislature or from the superior courts. As a result, judges exercise high levels of discretion over the type of sentences they impose in individual cases and most are not only constitutionally mandated to consider the defendant's personal circumstances, but also positively disposed towards considering the individual circumstances of each case in order to achieve justice (Maguire, 2010).

The Probation Service provides Pre-Sentence Reports on request of the court. PSRs are produced according to practice guidance issued by the Service and address areas such as a person's background, offending behaviour and risk of re-offending. The introduction of a standardised risk assessment tool into probation practice in the early 2000s has seen an increased emphasis on risk within reports, yet research suggests that probation officers still foreground clinical assessment approaches. While the use of pre-sentence reports has increased over the last decade, recent years have seen a decline in such reports.

Available statistics suggests that there is great variation in the level of requests of PSRs across the country. We know little about why such variation exists or about the types of cases for which pre-sentence reports are requested by judges. We are unclear whether PSRs

¹⁸ Sect. 99 of the *Children Act 2001* refers. The exceptions to the presumption that the court must request a PSR is when the penalty is fixed by law or where the child was the subject of a probation officer's report prepared not more than two years previously.

are largely associated with the imposition of community sentences or requested by judges across a range of different sanctions. Furthermore, we know very little about what function probation officers believe PSRs fulfil or about how their views on function and purpose influence how they construct reports. Thus research on the use of pre-sentence reports in Ireland is long overdue. The following chapter outlines the aims and objectives of this study and describes the methodological approach adopted to achieve these aims.

CHAPTER 3: METHODOLOGY

The main aim of this research is to investigate the role of pre-sentence reports in *sentencing* with a particular emphasis on understanding the *process of communication* involved from the perspectives of probation officers who create the reports, and the judges who receive them. To achieve this aim the research has the following objectives:

- To investigate the circumstances in which pre-sentence reports are used by judges;
- To explore the construction of pre-sentence reports by probation officers and their interpretation by judges;
- To explore the correspondence between probation officers' pre-sentence reports and judicial sentencing decisions in specific cases.

In order to achieve these objectives a multi-modal research methodology suitable for capturing processes, practices and meanings was deployed (Silverman, 1985; Bryman, 1988). Following previous studies, which have explored PSRs from the point of construction to their use in sentencing (e.g. Tata et al., 2008; Beyens and Schiers, 2010), we used a variety of methods aimed at capturing this process:

- Observation of probation practice;
- Content analysis of pre-sentence reports; and
- Semi-structured interviews with key actors including probation officers and judges.

Research Access and Ethics

The Probation Service funded the research and provided access to the probation element of the study sample. This included case selection, recruitment of participants and access to reports. The research was supported by an Advisory Research Group within the Probation Service, comprising of senior probation officers with responsibility for the Assessment Teams, the lead for Training and the Deputy Director with responsibility for research. Separately we contacted the Presidents of the Circuit and District Courts and sought permission to contact judges to inform them about the study and to invite them to participate. All elements of the

project were subject to independent ethical review by a Research Ethics Committee at Waterford Institute of Technology.

Case Selection

The main aim of the research was to study the role played by PSRs in sentencing. Most report requests come from the District Courts but given the focus of this study we were particularly interested in 'cusp' cases, i.e. those cases where custody was being considered. We, therefore, sought to sample across District and Circuit Court cases. Because of the small-scale nature of the study, we targeted a sample of 15 cases, which would be purposively selected on the basis of the following characteristics: requesting court, judge, offence type and defendant characteristics (e.g. gender, age). Practically, this involved us looking at the spread of requests received into the Assessment Teams in the study area at the beginning of 2014. At the time of the fieldwork, there were two assessment teams, one that dealt primarily with District Court cases and the other primarily with Circuit Court cases.

For each potential case identified, information on the project was provided to the probation officer who was allocated the case. Probation officers were free to choose whether they wished to participate in the study, and their written informed consent was sought. Most probation officers expressed a willingness to be involved in the research. After consent was sought from the probation officer who was allocated the case, information on the study was provided to the defendant. Typically, this involved the probation officer meeting with the defendant prior to the PSR interview to provide information on the study and to clearly explain that participation in the study was voluntary. It was made clear that whether or not the defendant chose to take part in the study this would not impact on their report in any way. If the defendant expressed an interest in hearing more about the study, the researcher met with them to provide further information, which was also provided in written form in a Participation Information Sheet. If a defendant agreed to participate in the study, they signed a consent form to indicate that they understood the nature of the study and that they understood that they were free to withdraw at any time without any negative consequences.

A total of 18 potential participants were identified in the case selection process. This was based on the purposive sampling criteria, and also on practicalities such as the researchers' availability. From this sample pool, three candidates did not attend for interview for their PSR, and therefore could not be contacted about the research. One candidate was remanded into custody, but when the researcher and the probation officer arrived at the prison to meet with the defendant, we were informed that he had already been released. Following an initial meeting with the probation officer, five candidates indicated that they did not want to participate in the research. ***The final sample, therefore, included 9 cases (four before the Circuit Court and five before the District Court).***

In each case in the sample, a researcher attended at least one of the PSR interviews to observe the interview process. The number of interviews ranged from 2 to 4 per defendant and in total we observed 21 interviews. The researcher did not participate in the interview in any way. The purpose of the observations was to explore the way in which the interviews were conducted, including their structure, types of questions asked, and whether risk assessments featured in the interview process. We completed field-notes during each observation and we used these to inform our subsequent interviews with probation officers and our analysis. On each occasion that we observed an interview we sought consent from the client and made it clear that even if they had previously agreed to participate in the research, they were free to withdraw their consent at any time.

We also requested permission from the defendant and the report-writer to access the completed PSRs. We received copies of all of the PSRs and in two cases, we also received copies of update reports to the court. Following completion of the PSR, we arranged to interview probation officers. Using a semi-structured interview format, we explored key areas such as their practice in relation to information gathering, the structure of interviews, their use of the LSI-R tool and their recommendations to the court. All of the participating probation officers took part in interviews.

The original research design had envisaged interviewing defendants who were the subjects of the reports to gauge their views of the report process and the report proposals. We agreed

that these interviews should not take place until matters had been finalised in the court (i.e. the sentence had been passed). However, due to the length of time that the cases took to process (ranging from 56 days to 300 days between report request and final sentence outcome), it proved very difficult to follow-up with people after such long periods of time. Efforts were made to contact participants but in some instances, people had moved or did not turn up for scheduled appointments. We therefore only managed to interview one report subject, and because of risks of identifiability we do not include this interview in the overall analysis presented here.

The final part of the research involved interviews with the judiciary. All judges serving in the District and Circuit Courts of the study area were contacted by letter and provided with information on the study. Contact details for the researchers were provided and judges were invited to make contact if they wished to participate. This yielded a small number of responses. At this stage, some judges indicated that they did not wish to participate in the research. Further follow up letters were sent to judges at a later date, and this was followed up with phone-calls to their offices. We were particularly interested in interviewing judges who had requested the reports that were included in our sample. However, given the low-response rate, we decided that it would be useful to interview any judge who was willing to participate in the research. ***The final sample includes five judges only one of which sentenced a case in our sample of nine cases.***

Written transcripts of all of the interviews were prepared. The transcripts and PSR reports were coded thematically. The formal analytical task started by closely reading all of the transcripts and reports, with a focus on the development of key themes. This exercise informed the establishment of a comprehensive coding scheme comprising a range of categories. While some of the categories had been identified in the planning and research design phase, others were devised in the context of emergent themes (Seale, 1999). A number of themes and sub-themes were agreed and subsequently, each transcript was coded under each of these themes, using the NVivo qualitative software package. The content of each code was then further analysed and used in the writing-up of this report.

Each 'case' has been assigned initials to indicate whether it is a Circuit Court (CC) or District Court (DC) case; this is then followed by a number – e.g. DC01. This designation is used to indicate the relevant Pre-Sentence Report (PSR, DC01) and the corresponding probation officer (Probation Officer, DC01). As the judges interviewed did not correspond to particular reports, they are designated on a straightforward numerical basis e.g.: J01, J02 etc.

Study Limitations

This is a small-scale exploratory study focused in one metropolitan court area. We know that patterns of PSR requests and the use of community sanctions vary throughout the country. Court practices and cultures also vary throughout the country and as such the findings may not be generalisable. The analysis of each of the cases is presented in-depth and we believe that this provides a richness of data. The original intention had been to gain a more rounded view of each case from the perspective of the various 'actors' involved. For the reasons outlined, we were unable to follow up with defendants. The low rate of participation of judges in the research is also disappointing, and our data suggests that those who did participate are positively pre-disposed towards using PSRs and community sanctions. Accessing the views of judges who are less inclined to use PSRs would obviously add to the overall picture, and this is clearly an area that merits further research attention.

Conclusion

The multi-modal approach to data collection was matched to the aims and objectives of the research question, namely to explore the manner in which pre-sentence reports are used as a means of communication between the report-writer and the courts. Probation officers construct PSRs according to a prescribed format and by drawing on a range of information, including interviews with the report subject. The methods adopted in this study included observations of interviews with defendants conducted by probation officers for the purpose of preparing the PSR, analysis of the reports subsequently produced, and follow-up interviews with the report authors about the process of report production. We also carried out interviews with a small number of judges about their general understanding and experiences of using PSRs. As noted, there are a number of limitations to this study, not least the sample size, however, this is the first in-depth study on PSRs of this nature conducted in Ireland and the information gathered from multiple perspectives provides an in-depth insight into the manner in which PSRs are constructed and used by the courts. The

following chapters document our findings.

CHAPTER 4: FINDINGS: PROCESS, PRODUCTION, PERSPECTIVES

Introduction

This section of the report covers the findings from the study. It begins with a descriptive overview of the PSRs in the sample, including information on the length of the reports, sources of information used, and overall focus. We include information on the report recommendations alongside data from interviews with probation officers explaining their processes of information gathering, interviewing, and report production. Subsequent chapters will focus on the perspectives of probation officers and the judiciary on PSRs as a mode of communication.

Analysis of Pre-Sentence Reports

Our total sample of cases included nine PSRs and two update reports (five were District Court cases and four were Circuit Court cases). The reports in our sample ranged in length from 6.5 pages to 3.25 pages. In two cases, further update reports were also provided to the court after a period of adjournment. These were typically short (no more than two pages) and mainly provided a summary of the defendant's engagement with services during the period of adjournment. The majority of the reports contained a standard front-sheet providing information on the requesting court and date of the court appearance; the name, address, date of birth and age of the report subject; offences, charge sheet/bill number, and details of the prosecuting Garda and Garda Station. Two reports deviated from this format (one Circuit Court report (CC04) did not provide full details on the offence on the front sheet and one report for the Drug Court (DC04) did not follow this format.

In terms of overall structure, the PSRs followed a standard format. All contained a section on Offence Analysis and/or Offending Behaviour, a section on the defendant's background and where relevant, additional information on substance misuse and addiction. Each report had a concluding section with a recommendation. While all of the reports broadly covered the same territory, there was some variation in the use of sub-headings. For example, some

reports contained separate sub-headings for the 'Offence Analysis' and 'Offending History and Risk Assessment' sections of the report. Some included information on 'Previous Involvement with the Probation Service' in the body of the report, while others treated this under a separate heading. In some instances most of the information on the defendant was contained under the section on 'Personal Circumstances', while in others there were separate sub-headings for 'Education and Employment', 'Alcohol and Drug Use', 'Health and Mental Health'. In some reports 'Victim Issues' or 'Victim Awareness' was covered under a separate sub-heading, while in others it was incorporated into the Offence Analysis or Offending Behaviour section.

Overall the information in PSRs was presented clearly and followed a logical sequence. However, in some reports there were a number of typos, detracting from the overall presentation of the report. In one report, the defendant's name was spelt incorrectly, in another, there is a discrepancy in the age of the defendant in the body of the report, and in a different report, two sentences were incomplete. While typos and discrepancies of this nature are relatively minor, there is a concern that they may impact negatively on how the overall quality of the report is perceived by the court (an issue explored further in the chapter on judicial perspectives).

Sources of Information Included in the Reports

Previous research has identified that the sources of information used in reports and the verifiability of this information is important in perceptions of quality of pre-sentence reports (Gelsthorpe and Raynor, 1995; Cavadino, 1997; Downing and Lynch, 1997; Bourke, 2013). Probation officers used a range of information sources in the reports analysed. All of the PSRs provided an account of the sources of information used in the introductory section of the report. These included:

- Interviews with the defendant;
- LSI-R assessment tool;
- Book of Evidence /Précis of Evidence;
- Criminal Records;
- Information from the prosecuting Garda;

- Information from the Probation Service file (where a person was previously known to the service;
- Information from other agencies (e.g. drug treatment services, restorative justice service; Social Services);
- Information from medical practitioners (e.g. GP, Psychiatrists).

Table 4: Range of information drawn upon in the reports.

	No. of Interviews	LSI-R	Book of Evidence	Précis of Evidence	Criminal Record	Prosecuting Garda	Probation Service File	Drug Treatment Service	Medical (GP, Psychiatry)	Social Services	Other
CC01	3	?	?		?	n/a	?	?			?
CC02	4	?	?		?						
CC04	3	?	?		?	?			?		?
CC05	3	?	?		?	n/a	?			?	?
DC01	2	?		?		?					
DC02	2	?		?	?	?	?	?			
DC03	3	?			?	?			?		
DC04	2	n/a			n/a						
DC05	2	?			?	?					

The range of information accessed in different cases depended on the complexity of the presenting issues. For all cases, information on a person's criminal record is requested from the Gardaí. This information was received in time for the preparation of the report in 8 of the 9 cases analysed. In the case where it was not received, the probation officer noted that he was unable to complete the LSI-R risk assessment tool as a result. However, in the course of fieldwork, we were told that information on the criminal record cannot always be relied upon. In some cases, there are omissions or inaccuracies in the record, and for this reason, as explained in the account below, probation officers check through the record with the defendant to confirm its accuracy and to establish an account of patterns of offending:

...with everybody I will go through their criminal record, because, as the Gardaí say themselves, they are not 100%, they will never, in the absence of fingerprints they will be not be a 100% that the information they give us related to this person. So again, in a policy of being open and honest I have to go through with the person.

(PO, CC01)

Further information on the particular circumstances of the presenting offence(s) is gleaned from evidence in the case. In Circuit Court cases, the probation officers access the Book of Evidence, making notes of key points in order to establish a fuller picture of events and to address this with the defendant in interview and to challenge any discrepancies in the defendant's account:

...With the Circuit Court case in the intervening period between the first and second interview you'd be looking to see the Book of Evidence as well and having a read through that so that you can go back. If they've been what ... was described once by a psychiatrist as an 'unreliable historian', we might go back and say, look this is what... I read in the book of evidence and this doesn't tally with what you were saying, and do a piece around that. (PO, DC01)

Information in the Book of Evidence can also provide a useful insight into the impact of an offence on the victim and inform assessments of risk of harm. In the following extract, this probation officer describes how the victim impact statements provided a 'concrete' basis for an assessment of the risk of harm:

...the victim impact reports were quite, quite enlightening I suppose that is the best way to describe it, in terms of...not as much focusing on the physical harm as the actual long-term psychological harm. That was just a feature of what was contained in the Book of Evidence, and that was something that... makes [it] a lot ... more concrete, in that sense. (PO, CC01)

In District Court cases, further information on the circumstances of the offence is obtained from a Précis of Evidence. In all of the Circuit Court cases in the sample (n=4), probation officers accessed the Book of Evidence. A Précis of Evidence was only referenced as sources of information in two of the five District Court cases. Further information on the circumstances of the offence is also gleaned from the prosecuting Gardaí. Information from prosecuting Gardaí, usually in the form of a phone conversation with the Garda, was obtained in five of the nine cases in our sample. In two cases, the report author notes that efforts were made to contact the prosecuting Garda but that s/he was unavailable. In two cases, no reference is made in the report to contacting the prosecuting Garda. This probation officer explains the rationale for contacting the Gardaí to obtain further information on the circumstances of the offence:

If his [defendant's] description of the offence is at odds with the Guard's, the arresting officer's description, I would say that to him. So if he said to me, the Guards walked in and the drugs were on the bed, I wasn't touching them, and the Guard came on and said he was actively bagging them, then I would, I would say that to him, and I would put it to him and give him a chance to argue it.

(PO, DC05)

However, another respondent queried the utility of relying on information provided by the Gardaí, preferring to cross-reference this with information in the Book of Evidence:

We would always gather information about the offence itself so, I mean, I, I would differ a bit from my colleagues in that there is a practice of, phoning and speaking to the Guards, and then taking that account as fact, and then placing the offender's account against that. I actually think ... there is problems with that [that] are not addressed if that's not actually the account of the offence. And it's just my opinion, it is a professional opinion but it's an opinion. So what I would usually do is speak to the person...I would be much more comfortable taking the Book of Evidence as what's accepted as fact. Sometimes I would speak to the Guards but usually it is simply around time, date, arrest. It's not about their kind of view because that can be, be very jaundiced. (PO, CC02)

While probation officers recognise the importance of drawing on multiple sources of information to inform their report, the issue of reliability of information from these sources is raised in the excerpt above. The respondent notes that the information provided by the Gardaí may be coloured by their interaction with the defendant and/or previous knowledge of them. In this circumstance, this probation officer views the Book of Evidence as a more reliable source of information. Considering that probation officers gather information as a means to confirm or challenge the client's account, an important question relates to how probation officers view the status of such evidence. The Book of Evidence is compiled by the prosecution and in practice by the prosecuting Garda. It is only compiled in relation to indictable trials and is served on the defendant in advance of trial. Therefore, the Book of Evidence contains witness statements and evidentiary exhibits which are not findings of fact but one side of the story. As such viewing the Book of Evidence as if it was a 'finding of fact' is potentially problematic.

Further Offending

The question of further offending and/or outstanding criminal matters arising separately to the index offences for which the report is requested also raises interesting issues regarding *how* or *whether* this information is referred to in the Pre-Sentence Report. A Pre-Sentence Report should deal with adjudicated matters where there has been a finding of guilt. However, in some of the cases that we observed, there were other outstanding matters before other courts, the outcome of which was relevant to (a) the overall assessment of risk and (b) the sentence proposed in the report. Practice varied as to whether any reference was made to outstanding matters in reports. In the excerpt from a Circuit Court report below, the fact that the defendant has another matter outstanding is presented in the 'Offence Analysis' section of the report. In particular, the fact that he did not disclose this in the initial interview with the probation officer is viewed as a matter of concern:

Garda xxx informed me that Mr xxx has come to their attention earlier this year and is due before the Courts in relation to this matter in [date]. It is of concern that Mr xxx did not disclose this information to me at interview until asked about it directly based on information received from Garda xxx. (PSR, CC03)

In another report, reference is made to outstanding matters before the Court in a section on 'Offending History and Contact with the Probation Service':

According to the Garda criminal records Mr xxx has no previous convictions recorded against him. However during this adjournment I am aware that Mr xxx has other matters before the District Court. This is his first referral to the probation service. (PSR, DC05)

In both of the examples above, no specific information is provided on these offences, but in interviews, probation officers were clear that they believed it was important to signal to the Court that there were outstanding matters before the Courts, as this was a relevant factor

that they had taken into account in their overall assessment. However, as this probation officer indicates, colleagues may take different approaches as to whether they make reference to un-adjudicated offences in the PSR:

We're not allowed to [refer to specifics of the outstanding offence] because he hasn't pleaded on it, it's been...no plea has gone in yet. So we can just say it has come before the courts and even some people wouldn't, would be a bit iffy about saying it. But I think it's important because it's, like it's still significant that he's come to their [Gardaí] attention. (PO, CC03)

Information from Other Sources

Five of the reports also drew on information from other sources. In three cases, the defendant had previous involvement with the Probation Service so there was an existing case file with information on previous offending and response to supervision. Information was sought from drug treatment services in two cases, where substance misuse was a relevant factor in offending. Information from a GP and a psychiatrist were obtained in two cases. In one case, the probation officer liaised with Social Services regarding child protection and welfare concerns where there was a risk that the defendant, who was a primary carer, would receive a custodial sentence. In all instances, probation officers sought consent from the defendants before contacting external agencies, a matter which was usually covered in the first interview.

Interviews with Defendants

Notwithstanding the range of information drawn upon as described above, it is clear from the process of report preparation and the content of reports that the interview with the defendant is the main source of information in the PSR. As previously noted the number of interviews conducted with the defendant varied across the sample, ranging from two to four interviews. Circuit Court cases typically involved more interviews. Probation officers' accounts of the purposes of each interview suggest that they use similar processes when conducting interviews. Almost universally, probation officers saw the three key functions of

the first interview as: 1) introducing the client to the purpose and process of pre-sentence reports; 2) assessing the situation of the client; and 3) building a relationship with the client.

Probation officers explained their approaches to determining the number of interviews required in each case. Relevant factors included the seriousness of the offence(s), the complexity of the case, and the time available.

It is usually, I mean for me, it's usually two [interviews] for the District Courts, three to five for the Circuit Court, and five to seven for the Central Criminal Court. That's just usually the way it works out. So with xxx it was four. I suppose some of those interviews ... maybe was kind of a part of each assessment is the reassurance and the kind of trying to build the relationship, to get the information for the assessment. Usually if someone has been here, you might spend four interviews with them but it might be much more, you know. Two of them might be offence focused, you know, or if it was a very serious offence, say if it was an offence against a person, if it was a sexual assault, if it was a like a very violent offence, you, there would be more dynamics there to kind of evaluate. Whereas if it is a drug offence it usually wouldn't take four interviews but I would say that's more because you are kind of trying to draw the information out a lot more. (Probation Officer, CC02)

It is clear that the interview process serves a number of functions. It is primarily a means to establish the defendant's account of the offence and to gain information about the relevant background circumstances that have led to them appearing before the Court. Establishing a coherent account, both of the defendant and their circumstances and the reason they have committed the offence, is a central task within the report. As this probation officer explains, the sequencing of interviews allows for a process where information can be gathered and tested:

I would get as much information as I can in the first interview. Then I would go back and make a second appointment with them, go through everything that I needed to

go over and clarify for myself, having contacted whoever I needed to contact ... in the meantime... (PO, DC02)

Probation officers further characterised the purpose of interviews as a means to hear the defendants' account of events, but also to challenge possible discrepancies in these accounts, to probe attitudes towards offending and levels of insight of the impact of offending on victims:

... You are really starting to challenge them on the offence. So if they are minimising the offence, if they are blaming others, if they are not really seeing where the victim is...you can really use that information to just try and tease that out with them. Because you want to get an idea of... does the person have any victim awareness? Do they understand like the consequences, and what are, you know, if they don't or...What are the chances that this person kind of reoffending again? What, what is their attitude to the offence? (PO, DC01)

Establishing a Relationship and Assessing Capacity to Change

The interviews also serve a means of testing the defendant's motivation, a factor of critical importance in making a recommendation to the Court. The approach taken by most probation officers to assessing suitability includes many of the traditional characteristics of establishing a supervisory relationship with the client. Many probation officers described how the report-writing process involves actively establishing and building a relationship of trust, which often involves challenging, guiding and testing attitudes and motivation. They see this approach as being necessary to facilitate the assessment of suitability for probation. Clients are unlikely to disclose sensitive information unless they feel comfortable and trust the probation officer. Similarly, it is difficult to assess how a person might respond during supervision without some probing, testing and challenging of their attitudes and motivation during the pre-sentence report interviews. In one sense then, the involvement of the client with the pre-sentence report process could be seen as an intervention in itself. This was particularly evident when the assessment process led to a defendant being referred to relevant support services.

... I think you have to build a relationship and you have to start the process in order for, you know, to actually get the information and all that so....if you could start the process with someone and get them to link in with a group or whatever at this stage ... that's great like, they've started the process.... (PO, CC02)

This probation officer further describes the importance of testing motivation in the period over which the interviews take place:

Sometimes it can also be, when you are assessing it is also about how realistic some people will...[be]... they will aspire to one thing to engage and do XY and Z. But are they realistic as to what that is going to entail? How difficult it could be. And again that's not about punishing, but you actually have to say okay we need to set realistic goals here because there is no point in putting somebody under supervision in either a conditionally suspended sentence or the recognisance sentence, that has very onerous conditions, that somebody doesn't really know what it means. You are actually setting somebody up for failure and it... it would have parallels to informed consent I suppose in a way. (PO, CC01)

A further important element in this process is ensuring that the defendant understands the content of the report and is on board with any recommendation for a supervised community sanction and/or is prepared for court and the possibility of a prison sentence. Probation officers typically used the final interview to discuss the content of the report and the recommendation with the defendant:

And then I suppose again depending on the case some people, if some people particularly want to ... they can read the report, it's not a problem. I would always discuss the recommendation, explain why I'm recommending it, and that the judge

won't necessarily agree with me on this, or that there's a chance that they won't...
(PO, DC02)

...I went through prison with them, what you do when you went to prison...I always try and prepare them for prison and make sure that they've thought about it and then also prepare them for court. (PO, CC03)

For clients with literacy difficulties, reading through the report with them was particularly important, as they may not otherwise have an opportunity to hear the contents of the report.

I ... literally read the whole thing through...with them, and you can see each flinch through the offence. Once you get past the offence and the victim and the risk assessment you can see them visibly kind of relax a bit more ... I think it is good for them to hear it...because I don't think they will read it in the court. And I don't think the barrister will go through all of it with them. So I don't see that it's too, harm[ful] in, in it all being there in front of them you know, but, depending on, some of them don't want it. (PO, CC02)

Location of Interviews

The Probation Service (2014) guidance specifies that, subject to Health and Safety provisos, it is best practice to conduct a home visit when preparing a PSR:

A home visit should be considered for the second or third interview as this will facilitate a fuller picture of family dynamics and relationships.

(Probation Service, 2014:7)

However, home visits were not carried out in any of the cases we observed¹⁹. When asked about this, probation officers generally saw the merits of conducting a home visit, but the main issue was having the time to do so:

I: Do you ever do home visits, or does anybody do them?

R: They do, it's recommended in the... manual, it is recommended as best practice but I just don't have the time. If I thought it was beneficial and I thought it was necessary I would do them, yeah ...People do do them if they feel, yes there is something here that they need to go and see the family, there's a need, or the crime, or what, you know, yeah definitely ... but I haven't, I haven't yet. (Probation Officer, CC02)

Whether or not the probation officer speaks to the family depends on the circumstances of the case and on the consent of the client. Probation officers explained that for younger clients, it is sometimes helpful to get the insight of the parents but another explained that as supervision was an individual endeavour (i.e. one that a person had to get through themselves), they were less inclined to make contact with family members.

Because to be honest, as their probation goes on and if they are supervised, their families aren't going to be involved that much. They're going to have to do a lot themselves anyway...so we would tend, I wouldn't tend to speak to family too, I would on occasion but not as a matter of course. (PO, CC02)

¹⁹ We tried to recruit participants who were remanded in custody also. However, this was unsuccessful. On one occasion, we travelled with the probation officer to the prison where the client was remanded, only to arrive there to find that he had been released. For clients who are remanded in custody, the process of interviews is more truncated, because of the time constraints involved in arranging professional visits.

While this may reflect a level of concern for the intrusion into the client's personal life, other probation officers believed that family members can often reveal significant information and can often support the client in making changes:

... I as a general rule I try and have some kind of contact with, with a family member or a significant other, his partner or that, you know ... In terms of home visits, there's kind, there's, you know quite a lot of health and safety issues. So, I, as a general rule... on the assessment team we wouldn't necessarily do home visits. But should there, should there be a particular reason that certainly is an option open to us and I have done one or two since... I've come here for, you know, just for different, different reasons. And there is certainly a value... in them... but it's a, so as far as a phone conversation can often be nearly more valuable than. And I have had, like I've had just coming to mind, two very significant, contacts with family where ...really significant information was disclosed and it was the start of a conversation between the family member and the client, so it is very valuable...within this context. (PO, DC03)

LSI-R and Risk Assessment

The LSI-R risk assessment tool is referenced as a source of information in all but one of the reports in the study sample. In the report where it is not referenced, the defendant's criminal record had not been received from the Gardaí, so the report writer noted that the assessment tool could not be applied:

Garda Criminal Records were not available at the time of writing this report and, as such, no actuarial risk assessment was applied in this case. (PSR, DC04)

Notably, in this case, the absence of a structured tool did not preclude the probation officer from providing an assessment of risk of re-offending to the court:

While no actuarial risk assessment was applied in this case there are a number of factors in Mr xxxx's life which clearly represent a risk in terms of further offending such as homelessness, lack of daily routine and his willingness to engage in offending behaviour without considering the harm, potential or actual, of his behaviour. (PSR, DC04)

Previous research on PSRs in Ireland has examined the extent to which risk assessment has become core to probation practice (Bracken, 2010; Fitzgibbon et al., 2010; Bourke, 2013; Quigley, 2014). Fitzgibbon et al.'s (2010) research found that probation officers retained a strong commitment towards clinical judgement. In our interviews with probation officers, we found that practitioners also tended to emphasise their own judgement, viewing the risk assessment tool as a structuring framework and guide to relevant ground that needed to be covered in interviews and ultimately in reports.

It [LSI-R] almost forms an interview guide for you because you know that these are the areas of risk that you're trying to assess, so you use that...as a way of knowing what questions to ask, because you know what information that you need in order to fill it out. They kind of go hand-in-hand but it doesn't, it's still always your, your professional kind of judgement that's going in...Sometimes you can almost, you kind of know what somebody is going to be coming up on as, as you are doing it and you are really just, you are using the LSI-R to kind of backup your own professional judgement. (PO, DC05)

It is useful but ... I think it kind of, you'd probably identify the areas anyway. But I suppose it ties it together in a way in that you're not just saying, he's got a drug problem, he's got that... It's about saying if he addresses this, this and this he will, it's shown that he will reduce likelihood of his reoffending,...I think it kind of adds a bit of value to your own probably professional judgment. (PO, CC03)

While there were clear articulations about the importance of professional judgement amongst all of the probation officers in our sample, it was also evident that the use of a

structured assessment tool prompted considerations of issues that may not otherwise be addressed with the client:

The risk assessment I suppose adds structure to the report because it [is] outlined in such a way you have to go through the different steps. It is also handy I suppose in some way because sometimes you might not think to ask a particular question, or it might not seem like that question has anything to do with me but the fact that it is on the form means that it has to be asked, so it kind of gives you permission even to ask questions that might be that bit sensitive. For example there is one question on it - Are you reliant on social welfare? I mean the client could turn to me and say, why do you need to know that?...particularly if the offence has nothing to do with money, but because it's on the form it kind of gives you leeway to ask those extra questions. (PO, DC05)

Probation officers took different approaches to the extent in which the risk assessment tool was foregrounded in interviews with the defendants. Some practitioners went through each question on the tool with the client in the interview, while others compiled it in between interviews and subsequently explained the assessment to the client when they went through the report recommendations:

I generally would show them the risk assessment tool, I would explain what that is all about, and the fact that the reason they are here is because the courts want to try to [do] whatever it takes to make sure that they don't come back again, so they are kind of given a chance, even though there will be sanctions, they are still being given a bit of a chance to explain, how they got themselves into this situation and how we can get them back out. (PO, DC05)

Ultimately the assessment of risk of re-offending informed the report recommendations.

The LSI-R risk assessment instrument was used to estimate the likelihood of re-offending in this case and to identify the most useful targets for intervention.

(PSR, CC04)

The LSI-R Risk Assessment instrument has been used to estimate the likelihood of re-offending in the next twelve months and to identify the most useful targets for intervention. (PSR DC02)

However, despite probation officers' emphasis on the importance of their clinical judgement when they described their use of the LSI-R, in some instances the language used in PSRs to describe the use of the risk assessment tool conveys the impression that the 'tool' has established the risk of re-offending rather than the probation officer through the use of the tool. This may have the unintended effect of side-lining the author's professional judgment.

The LSI-R risk assessment tool has been applied to give an indication of risk of re-offending in the next twelve months. (PSR, DC01)

The LSI-R risk assessment tool used by this service places Mr xxx in the moderate risk category in the next 12 months. (PSR, DC05)

A standardised risk assessment instrument was utilised in this case. This instrument measures the likelihood of committing further offences in the coming 12 month period. Mr xxx falls into the high risk category. (PSR, CC02)

These references to the use of the LSI-R can be contrasted with the extract from the report below, which refers to the tool informing the overall assessment:

The assessment has been informed by the Level of Service Inventory Revised (LSI-R) risk and need assessment instrument, which has been used to estimate the likelihood of re-offending over the next twelve months and to identify the dynamic risk factors which are the most useful targets for intervention. (PSR, DC03)

Construction of the Subject

Previous research on PSRs has noted the manner in which the report subject is constructed in the report (Horn and Evans, 2000; Power, 2003; Hudson and Bramhall, 2005; Field and Tata, 2010). As we have noted, the Risk-Need-Responsivity model (RNR) provides a structuring framework whereby risk factors are identified and proposals to ameliorate dynamic risks or 'criminogenic needs' can be put forward. Some of the criticisms of the RNR model have centred on the narrow construction of risk factors, in particular the overt focus on the characteristics of the individual (e.g. thinking and behaviour patterns), with much less attention paid to broader structural issues such as poverty, discrimination etc. (Ward and Maruna, 2007; Haines and Case, 2008). The reasons for this particular focus have been subject to some analysis. For one, the focus at the level of the individual prescribes the level and mechanism of intervention (Ward and Maruna, 2007). Secondly, it provides a legitimisation for a renewed rehabilitative enterprise that aligns with broader trends such as managerialism (Robinson et al., 2013) and an emphasis on individual responsibility (Phoenix and Kelly, 2013). These tropes can be seen in the construction of subjects within the PSRs analysed in this study.

Individual Responsibility and Navigating Risk

Ms xxx's description of her relationship with her ex-boyfriend is one that appears to have featured controlling and at times, violent behavior. This relationship also appears to have other risks attached to it insofar as Ms xxx stated that she was aware that her boyfriend was distributing drugs. This lack of consideration of risk is quite troubling and is an area that could be revisited through supervision with a Probation Officer. (PSR, CC02)

In this example, the subject of the report is positioned as a person who has been subjected to intimate partner violence, details of which are provided in the report and are described as the impetus to this person's offending. In this short extract, the subject is constructed as both a victim, but also as a person who did not adequately navigate risks (her ex-partner's drug dealing). The need to consider such risks is deemed to then be the task of supervision.

It is also the case that descriptors of an individual and their family situation reflect broader social constructs such as class, gender, race and ethnicity but can be couched in the language of risk or protective factors. This potentially serves to re-enforce normative constructs. What is considered risky or protective aligns with dominant constructs regarding family or social class, thereby constructing some subjects as 'risky' and others less so because of their social position (e.g. the area they live in or their family background):

Mr xxxx reported he was raised in [name of affluent suburb]... Mr xxxx advised that his father is a retired [professional] and his mother has always remained at home... Mr xxxx reported none of his family have come to negative Garda attention. Mr xxx described his relationship with his parents as positive and supportive, though in the past it was at times strained. Mr xxxx's supportive relationship with his parents is identified as a protective factor against offending. [PSR, DC03]

Interestingly, when we explored whether clients had an understanding of the term 'risk' or 'risk assessment' – probation officers explained that they would sometimes interpret this for a client as having 'needs'. In this extract, the probation officer explains a client's reaction to being categorised as 'high risk' and his attempt to explain this:

'I don't think I'm high risk of reoffending', and I said, no, no, what I'm saying is, I think you have high needs. All he could hear was high risk, and 'I'm not going to reoffend', it's like I'm not sure, but yeah so I do try and ... shift it a little bit from risk to identifying needs, but yeah no I do I think it's not fair for them because the solicitors

and barristers it's one [risk assessment] of the first things they look for. (Probation Officer, CC03)

Report Recommendations

Almost all reports provided a clear recommendation to the court, outlining a sentence proposal, and a programme of work to be undertaken with the defendant. In one report, there was no recommendation because of the defendant's legal status (i.e. they did not have leave to remain in the country). In each of the other cases, the report writer set out the potential benefits of a community sanction. Some programmes of work contained very specific details with a request that the Court impose specific conditions on any order (see DC02 and DC05 in the table below).

In other cases, it was clear that the recommendation was framed in the context of the expected outcomes in a case. Here a number of factors were relevant: a) the seriousness of the offence(s); b) the level of court and c) any indications expressed by the judge.

Table 5 below provides an overview of the report recommendations and the sentences received in the nine cases in our study sample. Information is also presented on the length of time between report request and the final sentence. Generally speaking, there is congruence between the report recommendation and the final sentence outcome. Overall five of the nine cases in our sample received suspended prison sentences. Three of these cases received a suspended prison sentence coupled with community supervision orders. Two cases received suspended prison sentences without any form of supervision in the community. Of the remaining four cases, one case was dealt with by way of a fine, one received a Community Service Order in lieu of a prison sentence, one received a Probation Order and another was dealt with by way of adjourned supervision. Following a seven-month adjournment period, the case in which adjourned supervision was utilised was ultimately struck out and no penalty was recorded.

Making a Recommendation to Court

When asked about their recommendations in specific cases, probation officers tended to use the language of risk to summarise client needs and then linked this in a logical fashion to

their proposal. Where some form of probation supervision was recommended, the client was typically described as 'needing support' and as someone who could 'benefit from probation supervision'. This construction of clients as potential 'probation property' is illustrated in the following excerpt:

Okay, so I would have assessed that [client] was at medium risk of reoffending, and that the main issues for him were his attitude to the offending...his continued use of cannabis, his lack of structured routine, his mental health issue, difficulties both financial difficulties, and no engagement in any kind of pro-social leisure activities. So given that, that there was quite a lot of different issues there, I felt that he would benefit from probation support in addressing them. [PO, DC03]

In one case, the client was not eligible to be placed under the supervision of the Probation Service for specific legal reasons. However, the probation officer described him as not being suitable for probation supervision as he did not have the range of problematic issues that requires probation intervention.

I don't necessarily think he may have been [a] suitable person for probation supervision in, or like say a 12 month bond or anything like that because he didn't necessarily have all the other issues that we would need to look at. Even he might have ... I may have looked for an adjournment and maybe see if he could have done some work around gambling or maybe do a bit more offence-focused work but in terms of getting somebody in on a probation bond he wouldn't necessarily have really been, met the criteria for that anyway . (PO, DC01)

It is clear that to be constructed as suitable for probation supervision clients must represent a certain level of risk. In various discussions with probation officers over the course of the research, it was mentioned several times that the types of clients that typically get referred for pre-sentence reports in recent years have much more complex needs and have a higher risk of reoffending than was the case a decade ago.

Table 5: Overview of Report Recommendations

Case	Offence	Report Recommendation	Sentence	Length of time between report request and court sentence
CC01	Assault on Police Officer (x2); Production of Article in the course of dispute; Threatening to kill or cause serious harm.	Mr xxx is aware of the seriousness of the offence before the Circuit Court today and the Court may impose a custodial sanction. However, if the Court is considering a community based sanction as part of sentencing in this case, the Probation Service is in a position to offer 12 month Probation supervision with the following conditions: Attend all appointments with the Probation Service in order to address offending behaviour and victim issues; Continue to engage with relevant support services in respect of addiction issues/training and employment; Notify of change of address.	Suspended prison sentence (18 months) with probation supervision for 12 months (Criminal Justice Act, 2006)	285 days
CC02	Possession of Drugs with Intent to Supply	In regards to the areas of Ms xxx's life where the Probation Service may be of assistance to her, I would identify the areas of personal development, re-entering the education and employment sector and desisting with her cannabis use. Should the Court be minded toward attaching a period of supervision to its disposal of this matter, I would respectfully ask that the following be attached: That Ms xxx engage with one-to-one support aimed at reducing her drug use; That she engage with a service deemed suitable by her supervising PO to provide counseling to her; That she engage with the PS funded Linkage Service to re-enter training or employment.	Suspended prison sentence (3 years). No supervision.	140 days

CC03	Attempted Robbery	<p>Should the Court be considering a community sanction as part of the disposal in this case, Mr xxx is assessed as suitable for probation supervision. The following conditions would be proposed to reduce Mr xxx's risk of re-offending:</p> <p>That Mr xxx attends all appointments with his Probation Officer;</p> <p>That Mr xxx remains drug free and engages with community addiction supports to address his poly-substance misuse;</p> <p>That Mr xxx engages in urinalysis if directed to do so by his Probation Officer;</p> <p>That Mr xxx participates in one-to-one or group offending behaviour work with the Probation Service;</p> <p>That Mr xxx engages with training and employment supports if required;</p> <p>Should Mr xxx fail to comply with these conditions, this Service can re-enter the matter before the Court.</p>	Suspended prison sentence (3 years) with probation supervision. (Criminal Justice Act, 2006).	300 days
CC04	Theft (Breach of suspended sentence)	<p>It is my view that Mr xxx would benefit from a further period of Probation supervision. It appears that he progressed well while on the xxx Project and responded well to routine structure in his life. The offence before the Court today occurred during a time of having no daily occupation or structure as his period of supervision had ended and he experienced a loss in his life ... Mr xxx has commenced addressing his risk factors by commencing an alcohol detox and could benefit from the support of this service and addiction services to complete this programme. This process is at a tentative stage given his addiction history. The Probation Service could assist Mr xxx in exploring options regarding education and rehabilitation opportunities and assist in addressing his offending behaviour.</p>	<p>Suspended prison sentence revoked. Probation Order imposed (12 months).</p> <p>Prison sentence re-imposed (3 years) and suspended to allow for completion of Probation Order.</p>	95 days
DC01	Theft (x3)	No recommendation as the defendant did not have leave to remain.	Fine – €750	56 days

	Value: €6358			
DC02	Theft Value: €170	12 month Probation Order with the following conditions: Attend all appointments with the Probation Service; Engage proactively and consistently with relevant accommodation services to identify and secure stable accommodation; Engage in offence related work, particularly in relation to choices and decision making; Continue to address his drug use and engage with addiction services Re-engage with counseling services Explore training and employment possibilities as appropriate	Probation supervision (12 months)	165 days
DC03	Unlawful Possession of Drugs (x2); Possession of Drugs with Intent to Supply	Should the court consider dealing with this matter by placing Mr xxx on Probation Supervision, may I respectfully propose a period of six-months Probation Supervision with conditions to attend all Probation Service appointments, and to engage with addiction, mental health and education and training services be attached.	Adjourned supervision – 7 months then case struck out.	215 days
DC04	Possession of Drugs for the Purpose of Sale or Supply; Unlawful Possession of Drugs; Possession of a knife	In relation to the disposal of this case, I would be of the opinion that the intensive supervision and support of the Drug Treatment Court would benefit Mr xxx. However, given his age I would be of the view that his attendance at xxx should be a central component of any Drug Treatment Court agreement. I would respectfully suggest to the Court that Mr xxx be brought back in the usual week-to-week manner but that an updated report is sought for the first date available in [month] which would provide an overview of Mr xxx's response to supervision through the remainder of this month and [next month].	Suspended prison sentence (9 months).	198 days

DC05	Possession of knives and other articles; Handling stolen property	In light of the above I believe Mr xxxx could benefit from the support and guidance of the probation service. Should the Court concur I would suggest a twelve month Probation Bond during which time Mr xxxx would be referred to the Choice and Challenge Offending Behaviour Programme, an eight week programme, which uses a cognitive behavioural approach to challenge impulsive and inappropriate choices. It is imperative that Mr xxx engage with the support service in a meaningful way therefore the following strict conditions are requested: Attend all appointments with his probation officer; Follow up on referral to Employment & Training Officer to gain training support; Look into the possibility of voluntary work; Complete anger management awareness with the Probation Service; Commit no further offences during the period of supervision.	Community service order (80 hours) (in lieu of two months prison sentence).	197 days

Delays in Case Processing

A further striking aspect of the overall sample is the length of time taken from report request to sentence outcome and this does not even include the length of time some cases took to be processed through the criminal justice system in the first instance (i.e. the time it took from arrest to conviction). The length of time between a report request and final sentence outcome varied across the sample ranging from 56 days to 300 days. Circuit Court cases typically took longer to reach a sentence outcome, an average of 205 days, compared to 166 days in District Court cases ²⁰. The reasons for the delay in the processing of cases varied. These included adjournment for specialist assessment, non-appearance of a defendant in court, non-appearance of a prosecuting Garda, court recess periods and the absence of the judge who had originally made the report request.

While the period of assessment and engagement with Probation Services is reflected in both the Pre-Sentence Report and Update Report, there are clear issues with delays in case processing that merit attention. The first concerns case allocation – in the CC01 case, a period of five months passed between the date of report request and the date that the person was first seen for an interview. The second issue concerns the period during which a person is required to engage with services prior to being made subject to any sentence. In the CC01 case, over a five-month period the person attended a number of appointments (two interviews for a pre-sentence report and one for an update report, and further interviews with a restorative justice service) in addition to engagement with drug and alcohol treatment services and an employment scheme. An argument may be made that this ‘tests’ a person’s commitment to supervision, an alternative viewpoint is that an order itself is when this commitment should be ‘tested’.

²⁰ The median number of days between report request and sentence outcome was: District Court (n=197) and Circuit Court (n= 213).

Case Study: CC01

In the case of CC01, the offences for which the report was requested occurred between February and July 2012. A report was requested by the court in January 2014 and was prepared for a July court date. In this case, the court had specifically requested an assessment as to the defendant's suitability for a restorative justice scheme. Restorative Justice Services, an external agency, conducts these assessments and the PSR report author made a referral to this agency in June 2014. As there is a waiting list for this service, in the pre-sentence report before the court in July 2014, a request was made for an eight-week adjournment in order to complete the assessment.

The case was duly adjourned until October 2014 where the Restorative Justice Services Report and a Probation update report was provided for the court. Prepared by another author, the update report noted the defendant's progress, including attendance for assessment for a restorative justice intervention, and engagement with a range of other services. The update report contained a recommendation for a 12-month period of probation supervision, with a number of specific conditions (attendance at employment and addiction support services, undertaking victim work). In October, CC01 was sentenced to an eighteen-month suspended prison sentence, with a condition of probation supervision for a period of 12 months.

The length of time between the commission of the offences and the final sentence outcome in this case was 27 months. It was beyond the scope of this study to explore the reasons for the initial delay, i.e. the progress of the case to court in the first instance. From the point of the initial referral of the case to the Probation Service, it took 10 months to achieve a sentence outcome. Part of the reason for this was the request by the court for a specialist assessment. However, this request was received in January 2014, and it was five months later before the individual was referred for a restorative justice assessment. This, therefore, necessitated a request for an adjournment of eight weeks before the case was finalised.

Deferring Sentence: Adjourned Supervision

Arguably, in the CC01 case, given the seriousness of the offences and his list of previous convictions, the outcome was positive for the defendant (an 18-month suspended prison sentence and 12-months probation supervision). It is unclear if the interim period between the court request for a report and the final sentence, (when the defendant engaged with the Probation Service), would be

categorised by the Probation Service as 'adjourned supervision'. When we sought information on all sentence outcomes for the cases in our sample, the final outcome recorded on the case information system was the suspended prison sentence with probation supervision. In the following case study (DC03), a report was requested by the court and the final sentence outcome was not decided until 215 days later, at which point the case was struck out and no conviction was recorded. In the interim period, the defendant engaged with the Probation Service and this period was categorised as 'adjourned supervision'.

Case Study: DC03

The client was charged with three offences, two Possession of Drugs and one Possession of Drugs for Sale or Supply. This case was dealt with by the District Court and the judge ordered a PSR in May 2014 with the report due to be presented at the next court sitting two months later. In the interim period, the probation officer and the client met three times for the purpose of preparing the report. The probation officer noted that the judge indicated that he was thinking of dealing with the case on the basis of a dismissal under the Probation of Offenders Act (1907) (DPOA) and understood this to mean that the judge was seriously considering finalising the matter without imposing a conviction. On this basis, the probation officer was expecting the client to be of much lower risk than he presented. She expected him not to require any probation supervision but in fact, she considered that his needs were quite complex, assessed him as being of medium risk and proposed a period of six months' probation supervision. At the subsequent court hearing the judge received the report and spent a full five minutes reading it. He described the report as a 'good report' and encouraged the client to continue to engage with the Probation Services. The judge asked whether the client consented to a probation order and the client's barrister asked that the judge not record a conviction. The judge adjourned the case until October for an updated report. The court subsequently received an updated report. As the client had been transferred to a local supervisor, another probation officer prepared the update. The report writer requested a further adjournment to ensure that the client continued to engage and address certain issues. The case was adjourned until December 2014 and at which point another update report was provided to the court. At this hearing the court finalised the matter by striking out the charge.

The probation officer who wrote the original report explained the process surrounding adjourned supervision in this case in interview:

I: You suggested maybe, in your recommendation, a six-month probation order.

R: Yes.

I: I'm just wondering how that worked because you said at the beginning that you kind of knew at the beginning that there were instructions from the court to say that he, the judge was maybe minded not to record the conviction, and, is it possible if you don't record the conviction to still give a probation order?

R: Well, I suppose that what the judge did has given him the possibility of doing that, of, by adjourning the matter for that period of time it means that [the client] does have, is getting the benefit of probation supervision, and at the end of that period the judge will get an updated report from a supervising officer, and may at that stage, there is, there is still the opportunity for him to not record the conviction. (PO, DC03)

The probation officer who wrote the original report explained the process of supervision in relation to adjourned supervision cases. After the hearing in July, the client was transferred to a local supervision team and assigned a new probation officer. A detailed transfer file is written up highlighting the main areas that the client needs to work on. The new probation officer assigned would then meet with the client and provide an updated report to the court in October. The updated report recommended a further adjournment to “ensure that he has committed to engage with relevant services to support him”. The case was adjourned until December where the judge heard the case and then disposed of it without imposing a conviction.

The practice of adjourned supervision in this instance also resulted in a positive outcome for the defendant, in that he did not receive a criminal record. In this particular case, the defendant's legal representative was clearly advocating for this approach. It is clear that in these case studies, the period between report request and ultimate adjudication is something of a liminal space, where there is potential for engagement with the Probation Service and during which period the client's motivation is tested. There are potential positive impacts of this for defendants, if the final sentence outcome is in their favour. However, this is by no means guaranteed.

CONCLUSION

It is clear from our analysis of PSRs, observations of interviews and subsequent interviews with probation officers, that the process of report-writing is a complex task that involves gathering information and engaging with the client over a number of interviews. The interviews served a number of interrelated purposes that included building a relationship with the client; gathering information in order to interpret and construct the subject; and testing the client's account and motivation in order to assess capacity to change. The emphasis on establishing the client's trust and on relationship building suggests that the pre-sentence report process can be seen as a type of intervention in itself. This is particularly evident when clients are referred to other services and begin to engage with those services during the PSR process.

Long delays in final sentence outcomes were a feature of some of the cases analysed in this sample. During the interim period clients engaged with the Probation Service in a capacity that was similar to a supervisory relationship mandated by the Court (i.e. as if an order was in place). For the cases we analysed, this resulted in positive outcomes for the clients concerned, but this may not necessarily always be the case and issues of overall proportionality and impacts of delay and access to justice are raised.

Probation officers use both clinical judgment and interpretative frames provided by risk assessment tools in a process of 'construction'. The construction of the 'subject' and ultimately the recommendation of the report are framed to some extent by the RNR model, but this cannot escape wider social constructs (e.g. class, gender). The construction of the subject is also influenced by the interaction between the client and the probation officer in the process of the interview. The relationship with and engagement of the client during the period taken to complete the report allows for a 'testing' of veracity and motivation. The result of this 'testing' ultimately informs the recommendation to the court.

Pre-Sentence Reports are a means of communication with the Court, and in this respect, the probation officer also has an eye to the wishes of the Court. The following section explores probation officer's perspectives of the Courts' expectations and the process of communication between Probation Officers and the Courts.

CHAPTER 5: PROBATION OFFICER PERSPECTIVES

Introduction

This chapter explores probation officers' perspectives in relation to the Court's expectations regarding PSRs. It notes that in many cases there is a 'distance' between the report-writer and the sentencing judge. While in some cases this is welcome, probation officers also talked about tailoring their reports to what they perceived to be individual judge's expectations (albeit practices in this respect varied). It is clear that probation officers view the PSR as a tool of communication, through which they articulate an assessment of the client and a proposal that will stand up before the Court.

Distance between the Report-Writer and the Court

Probation officers and judges were asked about the system of communication that currently exists between judges and probation officers in relation to the reports. In the area in which this research was conducted, having a central assessment team responsible for the production of reports means that the probation officers writing the report do not usually meet judges and are not typically in court when the request for a report is made.

There are two official documents - Form A and Form B - that serve as the official methods of communicating messages between the courts and probation officers. Form A is received by the report writer from the court and provides information on the main facts of the case (i.e. the offences for which the person has been convicted and the date of the next court appearance). In some instances, it contains information about why a judge has requested a pre-sentence report in a particular case. However, in our sample, less than half of the cases had some information on the Form A about what the judge was thinking or considering when requesting a report.

Due to the lack of specific information on why a judge has referred a case for a report and to remedy the 'lost in translation' aspect of the system, some probation officers mentioned that they sometimes ask the client what the judge said in court when requesting the report. At other times, a

probation officer will simply imply their own interpretation of what they think the judge is looking for. Both probation officers and judges had mixed views regarding the impact of this distance regarding individual cases.

Some probation officers felt that having an opportunity to communicate in person and to really understand what the judge is looking to find out about the client enhances the quality of reports. With a centralised assessment team, this is lost and often the probation officer does not have specific guidance regarding why the judge requested a report and what particular issues the judge wants addressed. On the other hand, several probation officers felt that there were advantages to their absence in court. Some felt that their absence reinforces their objectivity and shows that they are not “on any side”:

Well I suppose in other ways ... it reinforces our objectivity in that we are not on any side, we are very much objective and that maybe ... in other ways it's a positive thing ... that we are not subject to whatever kind of arguments that are otherwise going on in the, in the court.

(PO, DC03)

Adapting and Individualising Reports to Judges

This need for professional objectivity is counter-balanced with a view that reports should take into account the ‘mind’ of the requesting judge. From our field research and interviews, it became apparent that the specific sentencing patterns of individual judges are well known to all court users including probation officers, lawyers, and clients.

I suppose...individual judges, their personalities...their kind of, what their decisions, or sentencing decisions, are well known among probation, among solicitors, among the clients even. They know, they're up in front of a judge, whether it's going to go one way or another.

(PO, DC01)

A number of times, probation officers mentioned that although they did not have statistics on the level of correspondence between recommendations and sentences that through their own desktop

research and knowledge, they would be aware of which judges routinely request reports and follow recommendations, which judges do not use probation at all, and which judges request reports but routinely do not follow them.

Despite this general awareness of the idiosyncrasies of different judges, some probation officers maintained that they paid no attention to which judge requested the report. However, others described how they had in the past adjusted the orientation of their report depending upon the judge the report was aimed at. For example, one probation officer explained how on a number of occasions, they had slightly adjusted the emphasis of their report so that it would have more influence with the specific judge in question:

I was overly positive in it because I really thought he [the defendant] deserved, despite it being a serious enough offence, that he had made such significant changes, so I, in that regard I really pushed the, all the positive stuff. Now I wasn't like... there was... nothing not true, but I was probably a bit more [positive]. But I was aware of that judge and I was nervous that he might get a sentence despite all of that... and yeah he did, he got [a custodial sentence]. But then another time I could be writing for a different judge who is very lenient and I initially had written down that they would be suitable for probation in the future but not now and then I withdrew it and said they're not suitable for probation. But she ignored me and said come back to me in four weeks with a pre-release plan. But that would make me think yeah she does need probation but she needs a sentence first, but, so then I withdrew that because...I thought if I write that she's just not going to do it, and she didn't do it anyway. But it did make me probably be a bit more harsher on the person so yeah I am, but yeah it's probably, it's hard but yeah, because, if you know the judge. (PO, CC03)

There was recognition, however, that such an approach could become 'unstuck', particularly if the report went back before a different judge. In fact, when gathering data on sentencing outcomes in the cases in the sample, and comparing these with the report recommendations, we noted that in one case (CC02), the probation officer had recommended community supervision but that a fully suspended sentence with no supervision had ultimately been imposed. When querying this outcome, we were told that the judge who had requested the report had moved and the view was that the ultimate sentencing judge 'does not believe in Probation'.

Some probation officers recognised that they must be careful not to be seen to impose on the discretion of the court in terms of deciding the appropriate sentence.

I suppose the, the policy in relation to direction that we're given for judges, that we don't, we can't tell a judge this...[We state] should you consider [a particular sentence]... we will be available to do this. So they are ... free to do whatever, and most of them act fairly appropriate...like I mean there, we can't save every soul, can't keep everybody out of prison.
(PO, C004)

As will be explored further in the next chapter, in general, the judges we interviewed did not feel that probation officers, through their recommendations in pre-sentence reports, encroached upon judicial discretion.

Probation Officers' Perceptions of Judicial Understanding of Risk Assessment Tools

As highlighted in the previous chapter, risk assessment, and the RNR model have become important elements of probation practice. However, many probation officers were unsure about whether or not judges really understand risk assessment tools and about what judges read into their risk assessments. One probation officer explained that in his experience, some judges have referred to risk assessments as psychometric tests and although this portrays a lack of understanding of what they are, they are still very anxious to know the results. Another probation officer expressed the view that while feedback on risk from judges suggests that they do not really understand what it means, he observed through media reports of sentencing that they are increasingly referring to risk in their decisions:

In terms of the judges, I mean, the feedback I got from judges, that's all I can base it on...has been kind of they've shrugged their shoulders at it. They would much rather, the judges I know, would much rather have a report. They don't particularly worry themselves with what this tool says because they don't really know what it is...and I've noticed that it has happened

in recent times, judges in their summing up have started referring much more to the... risk of it. And you receive the newspaper reports, and it's very interesting because it is actually usually says in the newspaper reports, and it comes from the judges, is that you are a high risk, you are a high risk of reoffending, and it's not technically what the risk assessment means. (PO, CC02)

Signalling in Reports – Saying Something, without Saying it

Several probation officers also explained that there are times when they want to say something in a report, but for various reasons, it may not be appropriate to do so. In these circumstances, the probation officer would find other ways to signal the importance of issues when they cannot articulate them clearly in writing. The previous chapter highlighted how this sometimes operates in relation to unadjudicated offences. The following extract provides a further example:

The case I had today he's very controlling and I think he's very controlling of his ex-partner and abusive and I know that he was from her but I can't say that. But his mother referred in the Book of Evidence to him being very controlling and trying to control the household. So I would probably put that in stronger than I would have to balance out the fact that I can't say that. And I suppose, he disputes a lot of what, he has a lot of dispute with what the Book of Evidence has said, what his mother had said, and what his brother had said, his ex-partner had said. So I, you know, have to highlight that usually but it's trying to say it without saying it but...it's a fine line. (PO, CC03)

Correspondence between Report Recommendations and Sentences

Most probation officers expressed confidence in the fact that in general their recommendations were usually taken on board by judges.

It's, my own personal experience is I think that the vast majority of my, of the reports that I have completed in the last year and a half...the judge has gone with the recommendations. So that would suggest that... the judge... you know, takes them seriously ...when they look for a report that...they do value...the assessments and the reports that are sent back to them. (PO, DC03)

Probation officers were able to rationalise the reasons why, in a minority of cases, judges did not follow the recommendation in a report. In the example cited above (CC02), the requesting judge had moved and the matter was adjudicated by another judge. Another reason why recommendations might not be followed is that the report writer was not aware of an important piece of information, usually the commission of further offences around the time of the report, or of other charges for which a defendant was before the court.

A judge taking the time to read the report and the acknowledgement of the effort expended in producing it was important for probation officers. Some queried whether judges actually read the report in full or just read the conclusion. One probation officer distinguished between the District and the Circuit court judges saying that in the District Court judges typically just go to the back page. When judges read the full report, probation officers at least feel that the work they did with the client was worthwhile or 'for something'.

Frustration was also expressed when a report is done and a recommendation is made to supervise and then a judge goes in completely the opposite direction. Despite the frustration felt the probation officer in question acknowledged the independence of the judiciary in terms of sentencing decisions:

Obviously then the situations where you will make recommendations to court, or a suggestion to the court, and they'll go completely against it, like completely, and you, you will go, why did you ask, not necessarily our opinion but why did you ask us to give you information to effect change or to inform your decision when what we told you is completely at, at odds with what you were looking for? (PO, CC04)

Another concern expressed by one probation officer is that judges sometimes order supervision even though it is not recommended by the report. Other probation officers identified a trend whereby some judges request reports but routinely do not follow them. They speculated that these judges were only seeking general background information on the client before imposing a prison sentence and did not intend to use the report as an aid to sentencing. Two probation officers in particular mentioned that

some judges look for reports before imposing sentences just to make sure they have covered all matters in case there is an appeal.

However, it could be argued that using reports in this way is in keeping with using them as an aid to sentencing. As outlined earlier, judges are required to consider both the circumstances of the crime and the personal circumstances of the person being sentenced. Also, the legal basis for requesting reports in Ireland does not limit their use to the consideration of community sentences and supervision. As we shall see in the next chapter, judges we interviewed tend to request reports when they are considering custodial and non-custodial sentences.

The Form B is used to convey the sentence outcome back to the Probation Service and report writers. In adjourned supervision cases judges also use Form B as a form of communication with the probation officer regarding which area the judge wants the next update report to focus on. However, in many instances, the report writers receive no feedback from the court about their reports other than finding out the sentencing outcome in a case. Some report writers indicated that they would find it useful to get some feedback on their reports from judges:

No, I actually sat in when I was down in the court with judge XXX a couple of times which is very useful because in his summations he's good about, what he picks out of it and I found that quite good. But I'd love to do more of it, I find it really useful to know what...but no, no feedback which would be nice. (PO, CC03)

Deferment of Sentence and Adjourned Supervision

As noted earlier, a number of cases examined in this research were dealt with by way of deferment of sentence. Probation officers typically refer to this approach as adjourned supervision. This provided an opportunity to explore probation officers' understanding of what adjourned supervision involves. One probation officer compared adjourned supervision to regular supervision with the exception that the court plays a much more central role in making decisions around about the period and nature of supervision.

...Our line would be that he's on an adjourned supervision with an updated report required so in terms of a probation officer dealing with [this] ... they would be trying to address the issues like they would with any other cases in regular supervision and would be treated in a similar respect...But with the slight difference that after a period of time that ... an updated report ... would be sent into the courts, and then at that stage, either the court...as part of that updated report the new probation officer ... would make recommendations either that...he has done enough, or has made considerable progress and there is no further need for the support of probation or he hasn't engaged at all and leave it in the hands of the court, or while he has engaged the is still a need for further support. And at that stage I suppose then the judge would have the option to either do a probation bond then or to maybe even further adjourn the matter ...if the judge was minded to have a DPOA [Dismissal under the Probation of Offenders Act], you know...So it is still very open and it is still very much involved, the court is very much involved in the case. (PO, DC03)

The probation officers we interviewed outlined some of the perceived advantages of adjourned supervision. One probation officer explained that he likes adjournment (even though it is not policy to like it) because it allows him to work with the client, who, due to the threat of a sentence is more highly motivated to try to change. He can harness that high motivation by developing a relationship with the client and making referrals to the appropriate services. In this respect, adjourned supervision can sometimes give an element of urgency and focus to the client in terms of engagement and proving to the court their commitment to engage with services.

Providing updated reports to the court on the progress of the client is a very important aspect of the process of adjourned supervision. However, the focus of update reports is different to PSRs. The focus is not so much on the offending behaviour but on how well the client is doing in terms of avoiding further offending and highlighting the good things they have done in this regard. Although this almost involves an element of advocacy in terms of reporting progress, probation officers explained that if there is a lack of engagement or a failure to address and reduce risk factors then this has to be outlined to the court in the update report.

When asked about how long adjourned supervision could possibly last, one probation officer identified nine months as the longest period that they had encountered. As noted in the previous

chapter, our sample of cases contained one person (DC03), who was supervised on an adjourned supervision basis for seven months. Depending on how well the client is doing, an update report might recommend ending supervision due to excellent progress, officially imposing a Probation Order due to the large volume of work needing to be done or another period of adjournment during which the client's supervision continues. If the latter is recommended then the client may be transferred to a local supervisor to finish the remaining period of supervision.

When the matter is returned to court the judge has the same three options provided the overall period of adjournment is not excessive. Alternatively, the judge has the option if satisfied that the client has successfully addressed all the concerns addressed by the probation officer, to impose a penalty or strike out without a penalty. One approach that appears to be common is to strike out the charge and not record a conviction, which is available as an option for judges in the District Court in addition to using section 1.1 of the *Probation of Offenders Act 1907*.

CONCLUSION

The analysis of probation officers' perspectives on the process of communication embodied in the reports suggests that they have a high level of confidence in how their reports are received and interpreted by the courts. This is evident from the level of confidence they expressed in relation to the generally high rate of correspondence between the sentence recommendations contained in reports and the actual sentencing outcomes. There was some variation between probation officers regarding whether or not 'knowing' the judge influenced how they constructed the 'client' and how they articulated their recommendation. Some probation officers expressed uncertainty about whether judges fully read their reports and whether or not they share a common understanding with judges about the meaning of risk assessment. In contrast to this, probation officers were confident about the distinction between the court's requirements in relation to pre-sentence reports and update reports in the context of deferred sentences.

CHAPTER 6: JUDICIAL PERSPECTIVES ON PRE-SENTENCE REPORTS

Introduction

This section of the report details judges' perspectives on pre-sentence reports. As noted earlier the recruitment rate of judges into the study was disappointingly low. The findings presented here are based on the analysis of interviews with five judges (all based in the District Court). All of the judges in the sample expressed positive views towards Probation and the utility of assessment reports, whilst also noting areas for improvement. The judges in this study recognised the negative effects of prison and the potential benefits of supervised community sanctions. Given what we know about differences in patterns of use of PSRs and community sentences across Court areas, it is important to bear in mind that the views expressed here may not be representative. Nonetheless, the data presented points to key considerations of the judiciary in relation to the purpose and utility of PSRs.

Purpose of Reports

From a judicial perspective, pre-sentence reports serve a number of purposes including: Assistance; Background Information; Individualisation; and Rehabilitation

Assistance to Sentencers

Judges tended to see pre-sentence reports as a form of 'help' or 'assistance' particularly when they are sentencing a case where they feel that they need some additional insight and/or information about a particular client. Judges explained that while they must consider all possible sanctions before imposing a prison sentence, if a person has a long list of previous convictions and shows no inclination to change, then prison might be the appropriate sanction. However, some of the judges that we interviewed explained that they request reports even when they are considering a prison sentence. As the respondent below identifies, from a judicial perspective, the role of the report is to assist the sentencer by bringing to his or her attention all of the matters that may have a bearing on the sentencing decision.

I think the reports should assist a judge in identifying all matters, or as near to all... that should be considered by the judge. (J01)

In some instances, the assistance may be required in relation to a case, which is perceived to be difficult or not straightforward. There may be some signs of 'hope' but the judge is unsure and so may refer the case to the Probation Service for assessment. Reports may also be used by judges to seek a second opinion about the 'bona fides' of the defendant in terms of remorse or efforts to reform.

What I would do is consider sending the accused for a pre-sentence report to let him engage with the Probation Service and let them suggest, [having assessed] his sincerity and bona fides, a course of action they would deem appropriate...in that particular case. (J02)

When requesting a report, some judges seek advice from probation officers on potential courses of action that may be appropriate. Judges recognised that probation officers operate in a different professional realm and have distinct expertise and skills relevant to provision of advice about working with people involved in offending. One judge referred to this as the "social aspect of criminal justice" whereas another judge observed that their work forms part of the "remedial" aspect of the criminal justice system. These judges perceived probation officers' work and expertise as belonging more to the welfare rather than the penal domain of the criminal justice system.

Pre-sentence reports also help judges to decipher the veracity of claims made by defence lawyers during the plea of mitigation. More than once, judges explained that defence lawyers often make claims on behalf their clients that they are engaged in efforts to change their lives and that they want another chance. In these cases, from a judge's perspective, a pre-sentence report can often help to identify how realistic these claims are, as well as, suggest a possible way forward.

The solicitor or barrister for the defendant would be likely to give you a load of old flannel, and you want to test that, and you want to see whether in the opinion of this particular probation officer that would be effectively an appropriate line to take. (J03)

Pre-sentence reports provide judges with a way of gaining information about and insights into the client and the case. Importantly, these insights are not readily available from other sources or from the details of the case as presented in court. Explaining the limitations of the information that is available from other legal actors including, the Gardaí, the prosecution, and defence lawyers during the process of sentencing, one judge concluded, “you do not get a sort of full picture without a probation report” (J04). Pre-sentence reports, therefore, provide access to a fuller picture so often missing, particularly in courts of summary jurisdiction where 'trials' are frequently over in minutes.

Information on Background

The word most commonly used by judges in interviews when asked to identify the purpose of reports was ‘background’. All judges mentioned information on the offender’s background as being a crucial feature of a good quality report. In summary trials and in cases where a person enters a plea of guilty there is typically very little time to gain insight into an individual’s background. The judges interviewed for this study believed that information on a person’s background is a very important consideration in sentencing. Legally, Irish judges are constitutionally required when exercising sentencing discretion to consider the personal circumstances of the offender. However, judges do not request reports in all cases but instead exercise their discretion in which cases to request reports. Gaining insight into a person’s background is related to the desire to understand the reasons for offending:

Yes, well the court process is so fast and you don’t have time and equally you can’t impose a sentence just in a bubble when you know in your heart and soul that there is a reason for this offending and if you can get to the reason and the Probation Service they have the time to look into the background. (J05)

In many instances, when discussing ‘background’, judges referred to issues such as addiction or other personal issues.

...you would properly look at the individual and observe the signs of alcoholism or addiction to some form of intoxicant, but you wouldn't actually know the history so that pre-sentence report provides generally speaking a history and that's very helpful. (J03)

I will ask for them or I am looking at someone who has committed an offence that may involve an addiction and I feel that it would be appropriate because it goes into the detail on the offences, it goes into the history of the individual, it goes into the personal detail and the whole family history. (J04)

However, 'background' is an expansive concept comprising not just a person's personal context or history but also their health, educational, work, social and family circumstances.

...The background of the convicted person...deals with the understanding of that person and of the crime that they have committed, will look at family background, educational background, health issues, mental health issues, behavioural history, family history,...will then deal with the record of the person, in so far as criminal law is concerned...(J01)

Some judges placed emphasis on understanding clients' social backgrounds and how they might impact on their behaviour and involvement in crime. For example, one judge acknowledged that many people who come before the courts come from backgrounds of social disadvantage, while another judge referred to the fact that many offenders come from complex family backgrounds.

It matters for the simple reason that the person frequently will have either have been in the situation where the committing of crime is a likelihood, and environmental situation, for instance being in a home where the other members of the family are criminals for lack of ... a better way of describing it, or alternatively in an area of deprivation where the only form of social, social outlet is recreational crime. (J03)

Another judge explains that there would be different expectations, and thus different sentencing approaches, depending on a person's family background:

I would certainly vis-a-vis a student coming in on a minor public order matter, if it would cause havoc with his qualification and eventually for travel then I'd either apply Section 1.1²¹ or depending on the circumstances a donation to charity. The guy coming in from the other background, where I'm saying hasn't had, where it's alright not to be educated or working but they are getting a €100, well if they've never been in trouble before, well really they're doing well...(J04)

The importance attached by many judges to the background of the offender confirms previous research suggesting that often social and moral reasoning has as much influence as legal reasoning in sentencing.

Individualising Sentences

The information contained in pre-sentence reports enables judges to individualise their sentence. As previous research shows, the need to treat each case as unique is a key feature of the working ideology of Irish sentencing judges (Maguire, 2010). As the previous section highlighted, judges emphasised the necessity of information on the offender's background for making a decision about the sentence they would impose. One of the primary purposes for seeking information on the offender's background is to facilitate the individualisation of sentences to the specific facts of the case. However, although the concept of 'background' is quite expansive, the reports also provide judges with other key information needed to individualise sentences including information on personal mitigating factors; levels of understanding and willingness to accept responsibility for offending; and attitudes towards rehabilitation.

From a judicial perspective, a key concern in terms of individualising sentences to the specific circumstances of each case, is the desire to get to the root of the matter by understanding the reasons underpinning each individual's offending behaviour:

²¹ Section 1.1 of the Probation of Offenders Act (1907) allows a District Court judge to dismiss a charge without conviction even though the facts are proven.

From my point of view they [PSRs] are terribly important because what I feel...if you have a reservation about sentencing on the day which you could do just to get rid of it...but if you have a reservation go with it. There is always a reason why. Get the report and that may explain why you were right to pause and see what's the problem and see if you can get to the root of the problem and deal with it and move it along on that basis. (J05)

A key aspect of getting to the root of the matter is establishing what can be considered as the 'attitude threshold'. As the following extract illustrates, the 'attitude threshold' is a combination of factors that considered together, are highly relevant to the decision about whether a person should be imprisoned or given a non-custodial sanction. These factors include the risk of reoffending, a person's attitude to rehabilitation and whether or not they are perceived to be truly remorseful:

What you get in the probation report is a risk assessment in respect of further offending and that's very important because not just for the defendant. Are they really interested in rehabilitation and changing their ways which is a really hard thing to do or?...Because the probation report will tell you about the attitude. And a lot of the time they have very little awareness...very little awareness and you want to see whether when they do express remorse through their solicitor...apologise...is that just to put them in good order with the court or is it more real? (J04)

The following extract illustrates the forensic approach adopted by one particular judge in an effort to get to the root of the matter and to assess the 'attitude threshold'. This judge explained that he compares the information in the reports with information on previous convictions in order to examine whether the person has offended whilst under supervision and thereby get a fuller picture:

...I get a full picture, I get a very full picture of the defendant, I can marry that then with the previous convictions. I will ask the Garda to set out the dates of the previous convictions and the dates of offending and for instance, the Probation Service will be able to tell you whether they have been engaged with the Probation Service before and the extent, if any, with which they liaised or cooperated, or carried out the instructions of the Probation Service. And if somebody has, which will happen, you will deduce from the probation report, not infrequently,

which might not be before the court, if I determine that a CSO [Community Service Order] is appropriate, and seek a mere assessment for CSO, I may not have been aware and I would never be aware that that crime was committed while they were on supervision, while they were on a bond, or during a sentence. Sometimes you will...clearly if somebody has a 130 [previous convictions]...but short of that...[J04]

Whether or not the client offended during a previous community sentence was an important consideration for this judge as it goes to whether or not the client can be trusted not to reoffend in the future if given a similar sentence. It also allowed the judge to evaluate claims that a person is really motivated to change. While compliance with previous community sentences is a valid sentencing consideration, some judges acknowledged that it may take a long time before people are really ready and motivated to change and that failure to comply in the past should not be seen as a permanent bar to receiving a second chance.

Rehabilitation

The concept of rehabilitation also featured strongly in interview data. From a judicial perspective, one of the key purposes of pre-sentence reports is to aid the offender's rehabilitation. Judges use pre-sentence reports as a mechanism to aid rehabilitation in two ways. First, as described above, they provide insight into the background of the person which helps judges get to the root of the matter in terms of understanding what is behind the offending. In this way, the judge is better informed about whether the offender is disposed towards rehabilitation and also better able to individualise the sentence by identifying the particular issues he or she needs help with.

Second, pre-sentence reports are sometimes used by judges to help clients begin a process of engagement with the Probation Service whereby they may also get help accessing other social services such as social welfare, housing and most importantly drug rehabilitation.

... if you were adjourning the matter for a probation report officially, unofficially you are giving that person an extra piece of leash ... to use the Probation Service as an assist in getting

themselves detoxified or, or stabilised in terms of their accommodation and so on and so forth. (J03)

Pre-sentence reports can be a way of supporting a person's rehabilitation or "re-direction" and ultimately, once their sentence is served, helping them to move out of the criminal justice system. Again, rehabilitation connects clients with the services and supports offered by the Probation Service. Describing the rationale for referring one of the sample cases for a PSR, this judge explains:

This young man had no previous convictions, if memory serves me correctly, and it was a foolish enterprise. If he can be redirected by use of the services, that the Probation Service make avail of, then it is all to the good in my view. The young man may cease using drugs, may find direction in life, may get employment and may have a perfectly normal successful life, with employment, finding a partner in life, or not as the case may be, just become a part of the social fabric that is necessary... (J01)

As this judge explains community sentences serve multiple purposes. They are a way of 'curing the problem' causing the offending, helping to ensure that someone will not be drawn back into the criminal justice system. Community sentences also allows the client to repay the community:

If it gets the punter out of the system that's what you want. You don't want to punish someone. You want to get them to repay society in some way but then get them out of the system. You can punish them by a fine and by imprisonment but does that cure the problem. I don't necessarily think it does because you get them back again. What you want to do is to find out why they are offending and try to get them away from that. (J05)

Some judges explained that while they may request a report in a case where they are considering imposing a prison sentence, they would also be looking for information about the offender's attitude to rehabilitation. For example, one judge explained how he would look to the report for some good news about the possibility of rehabilitation:

The report, I'm hoping, will provide me with some direction or good news. He's had previous...sentences in prison, is he institutionalised, is putting him back in prison actually...only postponing the day when some form of rehabilitation is considered? (J03)

A number of judges highlighted the fact that pre-sentence reports can act as a means to support a redemptive process for clients by helping them to "see the light":

Yeah...but, I believe in, in redemption of people, I believe that people can, all people, even badly behaved people, people who cause harm, can turn around their situations can, can suddenly, see the light of, of the wrong of what they are doing, the harm and injury, the upset and psychological damage that they have caused the victims, so, you know, we should never forget that... (J01)

Futility of Prison

Most of the judges we interviewed expressed negative attitudes towards imprisonment. The following excerpt is illustrative:

Yes, absolutely, I mean what is it all about, if, if rehabilitation is not part of it? Do we want a scenario where we build more and more and more jails? Do we want a scenario where every 50% of let's say the islands off the country become places of incarceration? I don't want that. And I don't think society wants that. (J01)

In contrast to their views on prison, they had considerable faith in the redemptive potential of community sentences to encourage, support and guide clients, who wanted a second chance. This suggests that judges who value and prioritise rehabilitation, and who hold strong views regarding the futility of prison, may be more likely to use pre-sentence reports. A lack of faith in the utility of custody is clearly related to the discourse of second chances and rehabilitation which featured in judicial perspectives on the purposes of pre-sentence reports. One judge explained that when he reads a

report, he is actively looking for some positives. He looks for evidence that the offender would be willing to engage with the Probation Service so that he can avoid imposing a custodial sanction:

I want to see some good in someone, I don't want to see people locked up, and I believe that someone should be given a second chance. (J02)

When asked whether requesting a pre-sentence report was a sign that he may be considering a non-custodial sanction, the same judge explained that he would only refer the case to the Probation Service if there were some 'hope'. If there was no hope, he could easily have convicted and imposed a prison sentence immediately.

...It sends out a message because you could easily have...if you like convicted him and sentenced him there and then after completing the mitigation because you are looking for this, they know themselves. Well listen there is some hope here so we really have to engage with the Probation Service and if we cooperate and engage and the Probation Service comes back here we can nearly guarantee you that he is, this judge it's not going to go down that road. (J02)

From the perspective of the judges we interviewed, reports also play a role in terms of crime prevention. One judge expressed the view that greater investment was needed in the supervisory capacity of the Probation Service. He believed that it was regrettable that there had not been greater investment in the Probation Service in earlier decades. A greater investment, he believed, would have led to a more preventative approach towards the interrelated problems of crime and drugs and to fewer people being sent to prisons that were unsuited to their needs. Furthermore, he argued that prison was damaging and only promoted further criminal involvement and addiction. He added that supervision in the community was much more cost effective than imprisonment and that reports had an important role to play in preventing reoffending:

... the report... marks a judge's card. The probation officer...marks the accused's card. And if the whole system could, can work with a warning, that costs nothing, relatively speaking. And the

cost of keeping a person in prison, I'm not sure is it 400 a day or 500 a day, I think it might be more. (J 03)

Judges identified a number of elements that would have to be present in the pre-sentence report before they would be convinced that an offender was on the path to rehabilitation and therefore deserved a second chance. The report would have to show that they were engaging fully with the Probation Service, had taken responsibility for the crime, and truly wanted a second chance. If these factors were present and if the recommendation was favourable, then the judges would consider a non-custodial sanction. Judges recognised the skill of the probation officers as being important in terms of recognising when the client is ready to fully engage and in terms of referring the client to the appropriate programme.

That Irish judges consider information relevant to the personal circumstances of the offender when sentencing is quite legitimate. As discussed previously, Irish judges are constitutionally required to take into consideration any personal circumstances of the offender that might mitigate the proportionate sentence. However, a key question relates to how judges decide which cases they need this type of information in and which they do not. What are the factors that influence or filter judicial choices about when to request a pre-sentence report?

Rationales for Requesting Reports

Judges that participated in this study were asked about the types of circumstances in which they typically request pre-sentence reports. Previous literature suggests that, at least in some jurisdictions, pre-sentence reports are requested when judges are considering imposing a community sentence. In this study, judges reported that they routinely request reports when considering both the imposition of a prison sentence and the imposition of a community sentence. Currently, while Irish legislation requires judges to request a report before imposing a prison sentence in relation to juveniles, there is no similar requirement in relation to adults.

Before Imposing a Prison Sentence

Judges explained that they routinely request reports when they are considering imposing a prison sentence:

Now, if you are considering a custodial sentence it is absolutely *de rigueur* that you get a pre-sentence report. (J03)

Sometimes they even request reports where a prison sentence is the most likely outcome. Even in these circumstances, some judges explained that they would still remain opened minded about the possibility of receiving some good news or some hope regarding the potential for rehabilitation. However, even where no such good news was forthcoming, judges explained that they considered it absolutely necessary to inquire into a person's background before imposing a prison sentence.

So,...if you are presented with a person who has a, a history of, you know, issues related to public safety, then you are really looking at a [prison] sentence, and before you look at the sentence ... you are, I think, in prudence obliged to take into consideration all circumstances which may not be before you...(J03)

Some explained that if the offender had an extensive criminal history and seemed to have no inclination towards rehabilitation then they might imprison that person without reference to a report.

I may, imprison somebody, without reference to [a report] although I would usually get a report before imprisoning somebody, and even people with [an] extensive history of offending. (J01)

It is not clear whether the practice of requesting a pre-sentence report before the imposition of a prison sentence is common or widespread amongst Irish judges. As identified earlier, the judges who took part in this study tended to express the view that prison is not the answer and therefore they may be more inclined to request a pre-sentence report to explore all options before passing sentence.

During the course of our fieldwork probation officers explained judges also request reports when considering the imposition of a Part-Suspended Sentence. If a report is requested in these circumstances these cases are usually prioritised by the Probation Service in terms of the allocation of resources to these clients in prison.

Before Imposing a Community Sentence

A judicial request for a pre-sentence report could in itself be an indication of a willingness on the part of the judge to consider a non-custodial sanction. However, judges also request reports when they are seriously contemplating a custodial sentence. During the course of our research, we came across instances where the judge's inclination was recorded on the request for the pre-sentence report (Form A). Another judge explained that he clearly notes 'without prejudice' on requests for reports where he is genuinely considering all options including custodial and non-custodial. The judges explained that they usually request pre-sentence reports in cases where they believe a community sentence might be appropriate but want a second opinion as to whether or not a person is really willing to change or respond positively to and comply with the conditions of a community sentence.

Some judges acknowledged that when they request pre-sentence reports there can be an expectation arising that they are thinking in terms of a non-custodial sentence. One judge explained that when this expectation should not be relied upon, he conveys this to the report writer and to the defence lawyer by noting on the Form A "no expectation arises":

...but where there is a plea of guilty and I hear at the outset that there is convictions which may mean that I have to consider all the potential for imprisonment or community service order...I ask for a full probation report to include the question of community service order and I will also say that 'no expectation arises' which means therefore that the full panoply of potential are available to the judge. [J04]

Borderline between Custodial and Non-Custodial Sentences?

There is some evidence to suggest that judges use pre-sentence reports as a tool to aid decision-making in borderline cases. As discussed above, a number of judges explained that they would

sometimes request pre-sentence reports in cases where they were planning to impose a custodial sentence but would be open to recommendations made by the probation officer regarding alternatives. They would be particularly open if the report showed that the offender was serious about wanting to change. Thus some judges may request pre-sentence reports in cusp or borderline cases to explore whether or not the offender wants an opportunity to engage in rehabilitative work and whether he or she is in reality likely to engage. Indeed as discussed earlier some judges used terms such as 'redemption' and 'hope' to explain their rationales for requesting reports in certain cases.

However, the range of borderline cases might be quite broad in Ireland considering that the only way to impose a community service order (outside of the enforcement of fines) is in lieu of a sentence of imprisonment. This means that a judge must consider a sentence of imprisonment to be appropriate in the first instance before a community service order may be considered. Thus the legislation may have the effect of blurring the line between the consideration of custodial and non-custodial penalties. However, even when judges request a report in circumstances where they are clearly favouring a prison sentence they explained that they often remain open to the possibility of changing their mind if the report provides some 'good news' in the form of evidence that the client is willing to engage and that the Probation Service believes change is possible.

Deferred Sentences and Adjourned Supervision

One case in our sample (DC03), was dealt with by way of a deferred sentence, an approach also known as adjourned supervision. As noted in the previous chapter one of the main benefits of adjourned supervision according to the probation officers we interviewed was that it provided an opportunity to capitalise on a client's high level of motivation to avoid a custodial sanction. Probation officers also observed that one of the main differences between adjourned supervision and probation orders was the extent of involvement of the court in relation to decisions around the supervision of client.

However, one perplexing question that has arisen around the use of deferred sentences is why judges use this instead of using the statutory based Probation Order. In this study, we discussed adjourned supervision with some of the judges we interviewed. One of the judges we interviewed had dealt with a case in our sample by way of adjourned supervision and so we were able to ask why he had adopted

that approach rather than a Probation Order. He explained that the defendant in this case had been charged with Section 15 of the *Misuse of Drugs Acts 1977* which involved the possession of drugs for sale or supply and that although it was a relatively serious offence, the amount of drugs involved was small, and he saw a 'glimmer of light' in relation to the client. The judge was clearly motivated by rehabilitation in this case:

It was a foolish enterprise, if he can be redirected by use of the services, that the Probation Service may be, make avail of, then it is all to the good in my view, the young man may cease using drugs, may find direction in life, may get employment and may have a perfectly normal successful life, with employment, finding a partner in life, or not as the case may be, just become a part of the social fabric that is necessary. [J01]

He also noted that the defendant in question was supported by his family in court and that his lawyers had argued strongly against their client receiving a conviction. After seven months the case was ultimately struck out and the defendant was left with no conviction. When asked why he did not combine a dismissal under Section 1(1) of the *Probation of Offenders Act 1907* with a Probation Report to achieve the same purpose the judge explained that:

The problem with section 1.1 of, of the Probation Act is that some people regard that as a conviction, and it is recorded as a conviction, and then if you have a conviction and then beside that the Misuse of Drugs Act, that's, you know, a large red X beside the name of that person, and I don't think that, that...a... section 1.1 decision should be capable of being used to adversely affect somebody in later life and for many, many years. [J01]

The fact that a Section 1(1) dismissal under the *Probation of Offenders Act 1907* would effectively leave a record of the offence against the defendant's name if the defendant ever appeared before another criminal court is a common concern among judges and was noted in a previous study (Maguire 2008). Anecdotal evidence suggests that it has become common practice in the District Court for judges to use their discretion under Order 23 rule 1 of the Rules of the District Court 1997 to strike out the case leaving no record of the offence lodged against the name of the defendant.

Another judge explained why he thought it sometimes made more sense from a judicial perspective to choose adjourned supervision rather than a Probation Order:

I think also you want to put the pressure on the Probation Service in a more immediate way to engage... where I allow the Probation Service to deal with a person over a six month period, it is when there has been a plea for leniency on the basis that the person has already started to engage, and perhaps has an in-house treatment program for drug addiction...for an eight week period during which time he won't be under the control of that particular probation officer, but will come back with some kind of good housekeeping seal of approval if you like. So you have, you want to allow the thing to germinate...but I often feel that...the Probation Order once given indicates to all and sundry, including the probation officer, or the services themselves, that this is a low-grade, low risk individual, who perhaps gets put [to the] back of the queue. (J03)

The views expressed above suggest that adjourned supervision achieves a more immediate impact in terms of allowing a person who has already started to engage the time and space to continue and to allow that approach to 'germinate'. There is also the perception amongst some judges that when someone is given a Probation Order they are considered low risk and thus not prioritised in terms of resources.

Managing Court Chaos

The huge volume of cases dealt with in the District Court and the pressure to progress cases out of the system means that intense time constraints are an inherent feature of summary justice. Most judges mentioned feeling under pressure due to the short time frames and the need to efficiently manage their case load, and explained that requesting a pre-sentence report provides them with a little more time to consider a particular case in more depth:

There is such pressure of work in terms of the number of cases, that getting a report allows you a little bit more time to, to consider the things that you should consider before writing out a sentence. (J01)

In this way, pre-sentence reports may provide judges with a tool to manage the internal conflict that arises when they try to combine two disparate goals of efficiency and justice. Judges recognise that they are not the only ones who experience these pressures. Judges acknowledged that defence lawyers only have a limited amount of time to devote to each case and they are also “constrained in terms of what he can say and what needs to be said” (J03). Judges may use pre-sentence reports as a way of managing this conflict, particularly when they see a ‘glimmer of hope’ or have an instinct that there is a reason behind the offending that could be addressed with the help of the Probation Service. Another way to manage the chaos of the system is to seek ways to filter people out of the system. Reports, if they lead to an opportunity for rehabilitation and thus resolve the underlying reasons for the commission of crimes, may provide such a filter.

However, judges were very aware of the finite resources of the Probation Service and as such, they make choices in which cases they will request a report. As one judge explained, he tries to dispose of certain cases quickly, especially where he thinks the person will never return to court again, and while he reserves pre-sentence reports for those with problems, the end goal is to filter them out too.

You have to measure who you send to the Probation Service , you don't want to waste their time. But, so that's why you deal with some people, get rid of them straight away if you feel like you are never going to see them again, if they have never been before the court before...Unfortunately with some people they get away and then come back a second time...
(J05)

Efficiency and preventing unnecessary adjournments also influences the type of reports that judges request. According to one judge, requesting a full pre-sentence report is sometimes more efficient than merely requesting a shorter community service suitability report. This is because something might arise in the shortened report that needs to be explored at more length which would ultimately necessitate a full report and thus another adjournment and more delay in the case.

Quality of Reports

Judges were asked about what they thought were the characteristics of a good report, what they would regard as qualities of a bad report, and whether or not, from their perspectives, the quality of reports had changed over time.

Characteristics of a Good Report

According to respondents, a good report is comprehensive, insightful and coherent. It must include all the relevant background information including details of personal circumstances, previous convictions, and current health issues. It should provide both an understanding of the person and the crime they have committed. A good report provides insight into how the probation officer views the client in relation to motivation to change. Coherence is also a key characteristic of a good report. A coherent report is one where the recommendation is arrived at logically based on an assessment of the information gathered.

A good report...sets out the background of the convicted person, and deals with the understanding of that person and of the crime that they have committed, it will look at family background, educational background, health issues, mental health issues, behavioural history, family history, it will then deal with the record of the person...the Probation Service may be able to explore, with a view to assisting a person to change his or her ways...and that that should be detailed, and very often it is. And then you make an assessment, and I find that the recommendations about that are in a good report are very often worth...following, obviously they should be considered at all times, but very often if you have a good report it leads logically to the recommendations that they're putting forward. (J01)

In terms of providing insight into the attitude of the offender, a good report will help judges assess whether the person before them is motivated to change:

They [reports] are very thorough and that helps me to assess what am I dealing with...am I dealing with an eejit or a crook? Or somebody who is taking me for an eejit! (J05)

A good report should be logical, structured and directional:

A good report should have a good beginning, a good middle, and a good end. It should not be some vaporous document that is non-contentious, and non-directional..[J03]

From a judicial perspective if a report looks logical and cogent it is more likely to be trusted even if the judge does not know the report writer:

I do trust them, probably that's not terribly prudent of me but I accept the... facts that are put before me and if as I say the report looks logical and cogent and everything is in the right place as it should be that leads me to having confidence in the author even though I don't know the author. (J03)

However, if the report is not well written this can give subtle messages about the lack of skill and commitment of the report writer leading the judge to downgrade the contents of the report:

...as I said the start of the report will frequently inform you of how that person does their business, if it is a lazy report, if it is a disinterested report, if it is a complete cop-out of a report, then, you, that comes through in the writing. (J03)

Recommendations and Quality

A key finding from the international literature is that judges do not necessarily welcome sentence recommendations contained in pre-sentence reports. They are sometimes viewed with scepticism and as a form of interference with the judicial role of deciding the sentence. We asked judges about their views on the recommendations contained in reports and found that overall most judges were positively disposed towards them with many viewing them as essential components of the reports and indeed a report would be failing in its purpose if it did not provide a recommendation. Most judges expressed the view that recommendations should always be considered and that in good reports they are worth following.

I welcome that... it seems to me to be appropriate that the author of the report would make suggestions of recommendations. I think that the report would be failing its purpose if it didn't make recommendations. The author of the report has a much greater opportunity to explore the background history of the individual that the report is about. It has an opportunity, [a] much greater period of time to consider the offence, the criminal history of the offender, and the various ways that.... person could embark on changing their lives for the better of all . (J01)

The importance that judges placed on the role of recommendations in the reports was directly related to and premised upon the confidence that judges had in the expertise and skills of probation officers. Probation officers, from the perspectives of the judges interviewed, have specific expertise that judges do not have. Their expertise arises from their ability to understand whether a person is likely to engage or not with a particular intervention. They also have knowledge about which programmes will assist the offender:

Well, you see, a probation officer there is a skilled person in relation to the imposition of actual sanctions themselves. So they see whether or not, they will know full well whether or not someone will be able to engage with the Probation Service. Now they have other programs that

will assist the accused. That will be educational programs, or other things that will help in a cure and set him on the right path. So when they make certain recommendations that this guy is an ideal candidate for A, B and C, I have to defer to their expertise simply because they are the experts and I'll be guided by that, and...those recommendations actually are as a result of the accused themselves engaging fully, and cooperating with the Probation Service so I find it very helpful. (J02)

Judges recognise the probation officers' professionalism and expertise as being distinct from that possessed by judges. They accept that probation officers are in a better position, both in terms of their specific expertise and the time that they have to meet with the defendant to understand and interpret their attitude in terms of whether or not rehabilitation is potentially achievable. As a result, judges generally welcome probation officers' recommendations and tend to follow recommendations when they are logically related to the rest of the report, when they seem realistic and when they are strongly expressed:

...and in the majority of cases that I'm dealing with it, if I see a strongly, ... not to say passionately..., expressed view I would probably follow it. (J03)

Judges explained that they generally follow recommendations because they perceive probation officers to be skilled at determining what might work. They do not follow recommendations when the public safety concerns supersedes the offender's desire to change or when the report is good but the recommendations seem unrealistic. While there was a consensus that a good quality report needs to be directional, one judge mentioned that it should not try to unduly influence the sentencer.

I think the quality is very good. The Probation Service is circumscribed because they cannot put anything in the report that guesses the sentence. You know, they have to be careful how they couch it. Because at the end of the day they shouldn't unduly influence or they shouldn't, you know what I mean, that the judge has to be free to read everything. (J04)

A good report offers realistic recommendations that are logically connected to the main findings of the report and whereby the “author... [has made] the necessary approaches to the relevant people” and has “work[ed] hard to find a solution to the problem” [J01]. As one judge explained, a good report often “leaps off the page” [J03] in that it shows that the report writer has explored a number of different options in order to bring the person towards a rehabilitation route.

Characteristics of a Bad Report

Judges explained what they believed to be the features of bad quality reports. A number of judges mentioned that sometimes reports ‘lacked clarity’ and that this could be frustrating because it means that the judge has to interpret the message and may not pick up on the intended meaning. Some also mentioned that if a report lacks structure and coherence, it would be a bad report.

Not clear... lacking a structure that leads you to the recommendations. A good report I find has a structure to it, where b follows a, not just the second letter of the alphabet but, would have links to the a, and the c and the d and so forth. (J01)

Another feature of bad quality reports is that they lack the relevant information necessary for assisting decision-making. Such a report was described by once judge as “woolly”:

...that the report would not deal with, accurately with the background, family, socially, behaviourally, education, of the accused, a bad report could be woolly. (J01)

For one judge, the provision of inaccurate information in reports was particularly problematic. He explained that reports that provide inaccurate information, although rare, are highly prejudicial to the offender because that information may influence the judge’s determination whether to impose custodial or a non-custodial sentence.

On one [case] I spent nearly 45 minutes going through the report, I think she [probation officer] left...the court. She was in tears, and I said well at the end of the day it is this person here, he could be going to jail because certain questions that were asked, certain answers that were given, but they weren't reflected in the report. So I take that very, very serious, that at the end of the day ... this is not just ticking boxes when they are actually putting a report together. When they are putting a report together what they're saying is highly influential for the judge, so if there are any inaccuracies there it could be highly prejudicial to, to the accused, or I take it very serious, so yes I have called in probation officers and I've gone to town on them. (J02)

Reports that were contradictory in nature were also considered to be bad reports.

I've also found in certain reports that through the body of the report, in certain aspects they are actually contradicting themselves, and I don't know what it is, whether it is that someone has just downloaded a report by way of a word processing exercise and shoved in certain seminal paragraphs without reading it through but I found that some reports are very bad, very bad, but by and large to be fair there are very few that I would say would be excellent. (J02)

Another judge explained that for him, a bad report is one that uses a lot of words, says good things and bad things, which often contradict each other but in the end the report does not actually convey anything. The problem with this type of report is that it is non-directional and "will leave you in reality making up your own mind just to what you propose for the, for the individual" (J03).

Clearly, sentencers view reports that provide no direction as bad reports. However, even where direction is provided, it must be realistic in that what is being proposed must have some potential to work. In the following extract, the judge explains that if a recommendation does not seem realistic or does not ring true with the other information on file (past record of compliance or breach of warrants or other conditions), they would consider that to be a bad report.

The report was actually very comprehensive in very many ways. But ... I felt it sort of gave an unrealistic view in its conclusion, which was seized upon then by the solicitor. And as I said that's their job, you know you go in and you do...you fight for your client. I felt that unfortunately, the report and history was good, but that the leaning wasn't right because as I said this woman just wasn't going to be helped, you know, she needed a sharp shock or tough love that they talk about. And her being at large, she had failed to show up at court several times, so she wasn't even able to come to court, there were bench warrants out for her arrest. And that to me is a bad report...(J04)

Most judges interviewed were aware that when requesting a report or some form of probation supervision that this involved drawing upon a finite resource and that as such they needed to be careful about how they used this resource.

The pressures on the Probation Service are such that they probably don't have enough time to, you know, consult with the relevant people, such as, medical people, there is a medical background to the offender, if education, social workers and so forth. So maybe that is something that could be improved upon. But I am doubtful about that because I would say that the Probation Service is stretched in terms of manpower, how far they can go. The other point is of course that the offences that we deal with are, are by and large considered to be 'not serious', but in actual of fact that they are quite serious, but, there is a limit to the extent of the enquiry. (J01)

One judge went into some detail about the heavy workloads of probation officers sometimes having a caseload of 50 clients and the difficulties involved in supervising this number of people. If this perception is widespread, it is possible that it may impact judicial confidence in probation officers' ability to supervise clients and thus in their use of community sentences.

Improvements in the Quality of Reports over Time

Most judges who participated in this study believe that the quality of the reports has improved over time, especially over the course of their time on the bench. Some talked about improvements in the comprehensiveness of the reports and in the general standard and quality of reporting.

I think on the whole they have improved, and I think on the whole they show...a range of... skills...within the Probation Service that wouldn't have been present say 10, 15, or 20 years ago. (J03)

Others commented on improvement in the initiatives sourced and provided by the Probation Service. These included more interdisciplinary and interagency cooperation which lead to significant benefits for clients both in terms of the programmes and supports that could be availed of. One judge explained by giving an example of how a client had already been referred to a service and had attended three times by the time the report had come back to the court. For some judges, these improvements were a direct result of changes in the training that probation officers receive now compared to a decade or two ago. As the quotation below indicates some judges perceived that the improvement in quality has also resulted in enhanced efficiency in terms of the number of cases returned to court for breach of probation imposed conditions:

The new people coming in are better trained....The new people coming in have high-class degrees and they have experience working in English jails and things like that. They know what they are dealing with. And that's why I say that the efficiency of the service now is amazing. ... (J05)

Risk Assessment

All judges were asked about their views on the importance of risk assessments as part of pre-sentence reports.

Importance of Risk Assessment to Decision-Making

All agreed that risk assessment is important to their sentencing decisions. Most judges were concerned to know about the probability of the offender re-offending and mentioned their duty to protect society. However, several also recognised the limitations of risk assessment. While the ability to predict behaviour was the key issue some recognised that current tools are not foolproof:

Risk assessments are actually tools that are used that a pre-printed type of questionnaires and by asking a person certain questions, then boxes are ticked, so therefore, as reflecting precisely the level of risk, I have a problem with that, whether or not it actually does that, but it is the best that we have. It is the only tool we have of predicting whether or not someone is low, medium or high risk of re-offence. So I have to work with them actually. I would like a greater, a greater ability to predict and it's not too difficult. (J02)

Risk Assessments, Knowledge, and Trust

Most judges did not know much about the methodology used to assess risk. For some this was perfectly acceptable; they didn't feel the need to know the precise details of how risk is assessed because they trust the Probation Service. Others felt that they would appreciate more information on risk assessment.

I think it is important, I'm not sure that I fully understand the basis of which it is done. Very often it is the one area that might cause me concern as to why the author of the report finds the person is likely to be... of low risk, or moderate risk, or high-risk...To my mind, the risk assessment is probably an area where the Probation Service as a general rule might convey to judges what the methodology of that assessment is. Because that is something that I never received at any stage, in the sense that, the first report that I would have dealt with in 2007, would have made reference to a risk assessment but, would have been relatively silent as to how that was measured, and subsequent reports did not enlighten me to a great extent, as to how the risk assessment was carried out. So I think that that's an area where they, they, in general terms...and at a higher level of the Probation Services, there could be a communication from the service to judges from time to time, maybe something like every three years, five years or whatever, where they set out the criteria that they would consider in, in, in making the assessments that they do. (J01)

By contrast, one judge explained that while he only knows a 'small bit' about risk assessments he is perfectly happy to trust the expert.

Judicial Assessments of Risk Still Important

From a judicial perspective, knowing the level of risk of reoffending is an important factor, especially when deciding between a non-custodial or community sentence. Furthermore, most judges have confidence in the professional expertise of probation officers and believe that they have the time and skill to figure out whether or not a person is, in reality, likely to engage with services and attempt to change their lives around. However, there are times when judges may consider the risk to public safety to be too great and regardless of any recommendation about risk contained in a pre-sentence report they would make the call to impose a custodial sanction:

There are some times when a person may have a desire to improve themselves, but ... the public safety aspect of the matter requires they'll be incarcerated, even though that that would have a deleterious effect on... the individual. (J03)

Judicial Suggestions for Changes to Reports

When judges were asked to comment on any changes they would like to see made in relation to pre-sentence reports a range of different issues arose. As mentioned, one judge suggested that he would like more communication from the Probation Service about the nature of risk assessment and in particular about the criteria used by probation officers in making their assessments. It is interesting that while a number of judges explained that they did not fully understand the current methodology used in risk assessments, only one judge suggested that he would like to know more about it.

Another suggestion for reform was that there should be special sittings to consider cases with pre-sentence reports. Most judges commented on the time needed to read reports carefully and, although lengthy reports are always welcome, many judges explained that they are often under pressure to read them in open court. During the course of our fieldwork, we observed a variation in practice. Some judges took a full five minutes or more in court to read reports. Others appeared to barely read the reports spending less than two minutes reading them. Some judges stated that they like to get the reports and read them the night before the cases are due in court. In the following extract, the judge reasons that if the probation officer has put considerable time into providing a full report then judges should also make sure to fully consider the report and that a special sitting to hear particularly complicated cases with lengthy reports might be useful:

I don't know, it's just then trying to find time, set up, like if you have a special type of, a day, each month, when you're dealing with all these heavy reports, or over a month then pick a day to put in a particularly difficult or complex case, or a case that would have such magnitude that you just wouldn't be able to make the decision there and then. Get the report for us, put it back for another day and then make the decision another day so, so that's what you could actually do there. (J02)

The length of time taken to produce full reports was highlighted by a number of judges. One in particular opined that the time taken to produce reports was too long and needed to change.

I'll tell you what change I'd like to see: Justice delayed is Justice denied. I have found that if you want a blunderbuss report it takes 8 to 12 weeks ...A fully comprehensive report. Now I'm getting probation reports out there as we sit for community service...and if there is work available and they are suitable I can deal with it today and that's the end of it. (J05)

His main concern was the difficulty of getting a full report and the person in court at the same time so that a decision could be made. He explained that if the case is adjourned for two to three months the client often does not turn up to court or has disengaged.

Professional Boundaries

As discussed earlier, judicial acceptance of the practice of making recommendations appears to be related to judicial acknowledgement of the distinct expertise of probation officers. Probation officers are regarded as skilled experts in assessing motivation and capacity to change and the interventions that would be likely to support this, and judges defer to this expertise. One judge explained that he does not need to know the details of how probation officers prepare and write their reports. In his view, to require such knowledge would be to undermine the role that probation officers play and to render their work superfluous. He identified probation officers as working within the 'social' domain of the criminal justice system and viewed that judges would be incompetent in this domain.

Well at the end of the day this is the social aspect of criminal justice okay. And I think we'd be treading into that realm there well it does render it, you know, somewhat perfunctory at the end of the day, if we are going to be doing their work. And if we tell the probation officers what we're looking for well that's then not going to help the probation officer measure someone's abilities in relation to some aspects they're considering whether it's educational, whether it's therapeutic or whether it's trying to engage with, with work programs or whatever. See they're at the end of the day, that's the end product for them. We're just looking at a proper sanction or a penalty as a consequence of.., so we're, we're treading into an area that we're, we're incompetent to advise on in my view. (J02)

The same judge specifically acknowledged that if a judge and probation officer know each other and have built up a relationship over time that this could influence how the judge deals with the matter. So while judges are aware of the distinct 'social' and 'legal' boundaries between probation officers and themselves they are also cognisant that familiarity may lead to perceptions of a "cosy cartel" and to a lack of confidence in the impartiality of the system. As a result, he considered that anonymity regarding the report writer would probably be best and that it would force judges to satisfy themselves as to whether the report writer's recommendation is the best approach or not.

CONCLUSION

Judges in this study were largely positive about PSRs and their role in informing the sentence decision. Pre-sentence reports were viewed as particularly important in providing background information about a defendant and their potential capacity and motivation for change. In busy courts, particularly at the District Court level, adjourning the case in order for a pre-sentence report to be prepared, allowed a pause to give greater consideration to the individual in an otherwise hectic system.

Reports which were clear, coherent and well-argued were viewed positively. While not wanting to be unduly influenced, judges welcomed a clear direction from report-writers. Judges deferred to probation officers' expertise in the realm of the 'social' and their abilities to carry out assessments regarding risk, need, and suitable interventions. Most judges did not understand the 'technology' behind risk assessments but viewed these assessments as an important component of reports.

Overall the judges whom we interviewed were positively disposed towards the Probation Service and the possibility of community sentences providing a pathway towards rehabilitation; in contrast, they were cognisant of the potentially harmful effects of imprisonment. However, the decision to refer a person for a pre-sentence report was tempered by an awareness of resource constraints and a view that cases referred to the Probation Service should be prioritised. Pausing to request a PSR was viewed as important in some cases and for some, the process of pausing was seen as part of an intervention in itself, perhaps most notably in relation to the practice of adjourned supervision.

CHAPTER 7: CONCLUSION-KEY THEMES AND RECOMMENDATIONS

This section of the report draws together the main findings of the report in order to highlight the key themes that we believe are particularly important. It also sets out a number of recommendations for change arising out of the main findings of the report.

Purpose of Reports and Process of Communication

A key assumption underpinning this study from the start was that pre-sentence reports represented an important form of communication between two distinct professional groups within the criminal justice system: probation officers as report writers and judges as report readers. As a result, one of the questions we wanted to explore was the extent to which the processes of communication embodied in the reports aligned with the specific aims and objectives of those writing the reports and with the expectations of those receiving and interpreting the reports.

While probation officers and judges clearly approach PSRs from different perspectives, there were a number of areas of congruence between both sets of respondents regarding the key purposes and functions of PSRs. Probation officers highlighted the three key purposes of reports as: assessing the client's background, their level of risk of reoffending and their suitability for probation supervision. Judges perceive pre-sentence reports as an aid to sentencing, as a means of accessing background information about the client and most importantly as a means of providing insight into the client's 'redeemability', that is whether or not the client is willing and able to engage in some form of rehabilitative work. Although probation officers and judges sometimes use a different language to describe these key purposes, it is clear that there is considerable overlap in terms of their common understanding of what they are communicating about and key purposes of pre-sentence reports.

The analysis of probation officers' perspectives on the process of communication embodied in the reports suggests that they have a high level of confidence in how their reports are received and interpreted by the courts. This is evident from the confidence they expressed in relation to the generally high rate of correspondence between the sentence recommendations contained in reports and the actual sentencing outcomes. From the perspective of judges interviewed the general

experience was that reports are of a very high quality and most judges trust and have considerable confidence in the report recommendations. The judges in this sample expressed very high regard for the distinct expertise of probation officers and related this to the high level of trust they place in the Probation Service more generally.

Overall the process of communication embodied in the reports was relatively coherent and showed a high level of congruence between the aims and objectives of both probation officers and judges. However, the fact that the probation officers who write the reports are not routinely in court means that they are often not clear about why a particular judge has requested a report. In this study, judicial reasons for requesting reports were recorded on the Form A in only half of the cases in our sample. This may account for a degree of insecurity expressed by some probation officers when judges sometimes appear to take an approach in direct opposition to their recommendation.

Process of Engagement: A Form of Intervention?

Probation officers and judges both viewed the preparation of PSRs as a *process* that had significance beyond the preparation of a report. Both groups recognised the importance of engagement with the defendant. For probation officers, this engagement was necessary to provide an evidence-based account to the Court, to test the veracity of client's stories and their levels of motivation for change. Judges also saw the importance of this process in relation to establishing a defendant's 'bona fides', and testing a commitment to change. Critically, for judges this engagement was also important in terms of attending to issues of need. From a judicial perspective, referral of a person to Probation was a means to ensure that that person received help and support in terms of access to services and the opportunity to begin a process of change. In some ways then referral to the Probation Service for the purpose of completing a pre-sentence report could be seen as an intervention in itself, at least in so far as it offers the opportunity to engage with the probation services and thus embark on a process of change.

The Role of Risk Assessment in Reports

Another important question we wanted to explore was the extent to which probation officers currently prioritise risk assessment over other forms of information in pre-sentence reports. We found

that while probation officers tended to emphasise their own professional judgment and used risk assessment tools as a way to structure the interview, that sometimes the language used within the report to describe the use of risk assessment gave the impression that the tool had established the risk rather than the probation officer. The use of risk assessment tools as a way to frame the overall structure of the report could also contribute to the construction of clients according to a risk discourse in a way that narrowly reinforces wider social constructs. Probation officers noted that in recent years there had been an increase in higher risk clients with more complex needs than a decade ago. From a judicial perspective while the information on the level of risk provided in the report is important many judges focused more on the probation officer's assessment of the person's ability and motivation to change. Some judges did not fully understand the technology underpinning risk assessment tools but confidently deferred to the professional expertise of the probation officer, indicating a high level of trust between the two professions.

Delays in Case Processing

In Chapter 4 we noted that there were sometimes long delays between the court request for a report and the final sentence outcome. We tracked the length of time cases took to process in this period, but in some instances, the delay leading up to conviction was longer. The length of time between a report request and final sentence outcome ranged from 56 days to 300 days and this timeframe does not include the length of time taken for a case to reach the courts in the first instance (in one case the offences for which the report was requested occurred two years previously). Delays are therefore clearly a feature that effects all aspects of the criminal justice system, and yet paradoxically, the actual hearing of a case, particularly in courts of summary jurisdiction and where a guilty plea is entered, can be perfunctory.

In interviews, judges expressed the view that for them referrals to Probation can act as a means to secure a service for a defendant. While requesting a pre-sentence report may provide a means to pause the process to look in further depth at an individual's particular circumstances, this may also be counterproductive in so far as it may extend the overall length of time it takes for cases to reach a conclusion.

Deferring Sentence: Adjourned Supervision

Probation officers' understanding of adjourned supervision involves the court playing a much more central role in decision making around the period of supervision. Immediacy can be beneficial because a person's level of motivation tends to be higher closer to the court hearing. Adjournment of a case

can give an element of urgency and focus to the client in terms of engagement and proving commitment to the court to change. Judges also highlighted that in their view, adjourned supervision allows certain cases to be prioritised immediately in terms of probation resources. Perhaps more pertinent for judges was the compatibility of adjourned supervision with their desire to pursue rehabilitation as a sentencing option and most importantly the fact that it can be combined with a “strike out” leaving defendants with no record of conviction.

The argument can be made that the liminal space between conviction and sentence outcome provides for constructive ambiguity. This judicial practice creates a space where the defendant’s commitment can be tested and achievements can be rewarded. In many cases, one could argue that the outcome for defendants is often positive in that they may avoid a prison sentence and/or do not acquire a criminal record. However, it may also be the case that a person engages in a range of work pre-sentence, and is required to engage in further work post-sentence, or indeed to serve time in prison. In such instances, issues of proportionality are raised. None of the cases in our sample subsequently received a prison sentence following a period of adjournment. However, we think that the wider practices of adjournment, deferred supervision and ultimate sentence are areas that require more extensive research.

“Striking Out”: Not Recording Convictions

Very little is written about the nature of deferred sentences in Ireland. Even less is written about the practice of striking out charges after the guilt of the offender is proven in order to avoid a conviction. As discussed in Chapter Two, the legality of this practice was confirmed by the courts a number of years ago. A number of judges in this study explained the importance of leaving the defendant without a conviction in an age when having a conviction can severely limit a person’s mobility and thus their ability to improve their life by gaining employment elsewhere. Despite the insight provided here we still know very little about how widespread this practice is.

Variation in Use of Reports by Judiciary

As noted we encountered some difficulties in securing the participation of judges in the research. One possible reason for this may be that Ireland has a much lower ratio of judges per 100,000 population than elsewhere and that judges in the District Court in particular, simply do not have time to engage in

research in a meaningful way. Judges who did participate were enthusiastic users of the Probation Service and regularly request pre-sentence reports. However, this study was not able to access judges who do not use or are not as familiar with the Probation Service and who rarely request pre-sentence reports. Future research should attempt to access the perspective of a wider range of judges.

Recommendations

Report Content, Structures and Processes

- ***Reports should adhere to a standard format:*** We found some variation in the use of different sub-headings in the reports that we analysed. In many respects, this reflected differences in the content and focus of the different reports, and from this perspective is not necessarily problematic. However, in terms of overall consistency, and in relation to the Court's expectations regarding the content, structure, and form of PSRs, it would ensure greater consistency if reports adhered to a standard format. ***Some consideration should be given to the language and use of risk assessment in reports.*** In relation to the use of the LSI-R assessment tool our research found that while probation officers emphasised the continuing importance of their own professional judgment in terms of assessing the level of risk, in several instances the language used in reports to describe the level of risk gave the impression that it was the 'tool' and not the probation officer that had established the risk of reoffending. As ***noted previously, this may have the unintended consequence of undermining and side-lining the report writer's professional judgment.***
- ***Consideration should be given to the use and status of the Book of Evidence in PSRs.*** Probation officers, when writing reports for the Circuit Court, regularly examine the Book of Evidence to gain insight into the nature and seriousness of the offence. Clear guidance and training should be provided to probation officers on the nature and status of such information.
- ***Consideration should be given to introducing a more formal gatekeeping process for PSRs.*** Introducing a formal requirement of at least one other reviewer before a report is sent to the court would enhance quality control and consistency across reports.
- ***Review the subsequent allocation of cases to ensure continuity of service for service users.*** This study found that PSRs and the process of assessment often represents the beginning of a process of engagement between the client and the probation officer and, in this sense, that it could be viewed as an 'intervention' in itself. However, the use of centralised assessment teams means that the clients often establish a relationship with a PSR author who will not ultimately be supervising them. Consideration should be given to the potential benefits of case continuity from the client's

perspective.

- ***Ensure consistency between policy and practice regarding Home Visits.*** The Probation Service policy guidelines state that it is best practice to conduct home visits as part of the report writing process. However, this study found that in general probation officers do not conduct home visits. Some consideration should be given to the importance of home visits and steps need to be taken to ensure consistency between policy and practice.

Ensuring Timely Delivery of Reports

- ***Reconsider current procedure for issuing appointments to clients.*** One of the most striking findings of this report is the length of time taken for a case to be processed from report request to sentence outcome. While many of the reasons for delays are outside the remit of the Probation Service, this study found that in some instances there were considerable delays in issuing appointments to clients. One option for speeding up the issuing of appointments would be to issue appointments to clients immediately following the Court hearing.
- ***Develop a new protocol with Gardaí to ensure more timely access to criminal records.*** Another reason for delay is the time taken to access information from An Garda Síochána on clients' criminal records. Currently, probation officers might have to wait four to five weeks for this information. This inevitably causes knock-on delays in the PSR writing process. The current situation also seriously calls into question any proposed legislative requirement to complete reports in 28 days.

Information Sharing between the Probation Service and the Judiciary

- The findings of this study underscore the need to re-examine existing procedures for sharing information from courts (Forms A and Forms B).
- This might include a more structured engagement with the judiciary to share information on purposes of PSR and encourage use where appropriate.

Deferred Sentences and Striking Out

- The Probation Service should give further consideration to how 'adjourned supervision' could be used innovatively (but with appropriate safeguards), particularly when it results in no conviction.
- Further research is urgently needed to allow full insight into the practice of adjourned supervision.
- Any such research should include the perspective of legal practitioners (defence solicitors and

barristers) regarding this practice.

- Research is also urgently needed in order to understand how widespread the practice of striking out charges after guilt has been proven is.

Measures and Sanctions involving Non-Conviction

Legislative changes

Any legislative change, which would introduce a requirement for courts to request a PSR when imposing a community sanction, would potentially lead to a more equitable treatment of defendants before the courts. However, if such a requirement is solely linked to the imposition of a community sanction, there is a risk that a court may choose not to impose such a sanction to avoid the delay (or perceived delay) entailed in the time required to prepare a report. Consideration should therefore be given in any legislation for a requirement that the court must request a PSR when considering a community sanction or a sentence of imprisonment. This aligns with the position for under 18s, where there is a stated presumption within legislation that custody should be used as a ‘measure of last resort’. It would also align with the objectives to reduce the use of imprisonment as set out in the *Strategic Review of Penal Policy* (DoJE, 2014).

- As cautioned by the Law Society in their submission to the Joint Oireachtas Committee on Justice, Defence and Equality in relation to the Criminal Justice (Community Sanctions) Bill (2014), any changes to legislation such as those proposed would place a significant resource demand on the Probation Service (and even more so if custodial sentences are included in this requirement)²². The need to adequately resource the Probation Service to ensure timely delivery of reports to the court under any new arrangements is therefore imperative.

²² Submission of the Law Society of Ireland – Criminal Justice (Community Sanctions) Bill 2014. In: House of the Oireachtas (2014) *Joint Committee on Justice, Defence and Equality. Report on hearings in relation to the Scheme of the Criminal Justice (Community Sanctions) Bill. June 2014.*

REFERENCES

- Aebi, M.F., Delgrande, N., & Marguet, Y. (2015) 'Have community sanctions and measures widened the net of the European criminal justice systems.' *Punishment and Society*, 17,5: 575-597
- Allen, F. (1981) *The Decline of the Rehabilitative Ideal*. New Haven: Yale University Press
- Andrews, D.A. & Bonta, J. (2010) *The Psychology of Criminal Conduct. Fifth Edition*. New Providence, NJ: LexisNexis Matthew Bender
- Ashworth, A. and Roberts, J. (2013) 'The Origins and Nature of the Sentencing Guidelines in England and Wales' in A. Ashworth and J. Roberts (eds) *Sentencing Guidelines: Exploring the English Model*. Oxford: Oxford University Press.
- Bacik, I. (2002) 'The Practice of Sentencing in Irish Courts' in P. O'Mahony (ed) *Criminal Justice in Ireland*. Dublin: Institute of Public Administration
- Beyens, K. and Scheirs, V. (2010) 'Encounters of a different kind: Social enquiry and sentencing in Belgium', *Punishment and Society*, 12,3:309-328
- Bourke, A. (2013) 'Pre-Sanction Reports in Ireland: An exploration of quality and effectiveness.' *Irish Probation Journal*, 10,1: 75-89
- Bracken, D., (2010), 'Differing conceptions of risk and need in Irish probation officers.', *Irish Probation Journal*, 7:108-18
- Bryman, A. (1988) *Quantity and Quality in Social Research*. London: Routledge
- Cahillane, L. (2013) 'Are Sentencing Guidelines Needed in Ireland?' *Irish Criminal Law Journal*, 23(1):1-7.
- Carr, N. and Maguire, N. (2012), 'Pre-sentence reports, assessment and sentencing in the Republic of Ireland-an initial review'. Paper presented at Seminar on Pre-Sentence Reports and Assessment, organised by CEP (The European Organisation for Probation), Oslo, Norway, 10th-11th May 2012.
- Carr, N. (2016) 'Community Sanctions and Measures.' In: D. Healy, C. Hamilton, Y. Daly and M. Butler (Eds.) *The Routledge Handbook of Irish Criminology*. (pp. 319-336)
- Cavadino, M. (1997) 'Pre-Sentence Reports. The Effects of Legislation and National Standards.' *British Journal of Criminology*, 37,4: 529- 548
- Department of Justice and Equality (DoJE) (2012) *Report of the Working Group on Efficiency Measures in the Criminal Justice System- Circuit and District Courts*. Dublin: DoJE
- Department of Justice and Equality (DoJE) (2014) *Strategic Review of Penal Policy. Final Report*. Dublin: DoJE
- Department of the Taoiseach (2016) *A Programme for Partnership Government*. Available at: http://www.taoiseach.gov.ie/DOT/eng/Work_Of_The_Department/Programme_for_Government/Programme_for_Government.html

- Downing, K. & Lynch, R. (1997) 'Pre-Sentence Reports: Does Quality Matter?' *Social Policy and Administration*, 31,2: 173-190
- Field, S. & Tata, C. (2010) 'Connecting legal and social justice in the neo-liberal world? The construction, interpretation and use of pre-sentence reports.' *Punishment and Society*, 12,3: 235-238.
- Fitzgibbon, W., Hamilton, C. & Richardson, M. (2010) 'A risky business: An examination of Irish probation officers' attitudes towards risk assessment.' *Probation Journal*, 57,2: 163-174
- Garland, D. (2001) *The Culture of Control: Crime and Social Order in Contemporary Society*. Oxford: Oxford University Press
- Gelsthorpe, L. & Raynor, P. (1995) 'Quality and Effectiveness in Probation Officers' Reports.' *British Journal of Criminology*, 35, 2: 188-200
- Haines, K. & Case, S. (2008) 'The rhetoric and reality of the 'Risk Factor Prevention Paradigm' approach to preventing and reducing youth offending,' *Youth Justice*, 8(1), 5-20
- Hamilton, C. (2005) Sentencing in the District Court: "Here Be Dragons", *Irish Criminal Law Journal*, 15(3):9
- Hamilton, C. (2013) 'Punitiveness and political culture: Notes from some small countries.' *European Journal of Criminology*, 10.2: 154-167
- Hannah-Moffat, K. & Maurutto, P. (2010) 'Re-contextualizing pre-sentence reports. Risk and race.' *Punishment and Society*, 12,3: 262-286
- Healy, D. (2016) 'The evolution of community sanctions in the Republic of Ireland: Continuity, challenge and change.' In: G. Robinson & F. McNeill (Eds.) *Community Punishment in Europe*. Oxon: Routledge (pp. 136 -155)
- Healy, D. & O'Donnell, I. (2005) 'Probation in the Republic of Ireland: Contexts and Challenges.' *Probation Journal*, 52,1: 56-68
- Heard, C. (2015) *Community Sentences Since 2000: How they work – and why they have not cut prison numbers*. London: Centre for Crime and Justice Studies
- Horn, R. & Evans, M. (2000) 'The effect of gender on pre-sentence reports.' *Howard Journal of Criminal Justice*, 39, 2: 184-197
- House of the Oireachtas (2014) *Joint Committee on Justice, Defence and Equality. Report on hearings in relation to the Scheme of the Criminal Justice (Community Sanctions) Bill. June 2014*. Available at: [http://www.oireachtas.ie/parliament/media/committees/justice/Criminal-Justice-\(Community-Sanctions\)-Report.pdf](http://www.oireachtas.ie/parliament/media/committees/justice/Criminal-Justice-(Community-Sanctions)-Report.pdf)
- Hudson, B. & Bramhall, G. (2005) 'Assessing the 'Other' – Constructions of 'Asianness' in risk assessments by Probation Officers.' *British Journal of Criminology*, 45, 5: 721-740
- Kilcommins, S., O'Donnell, I., O'Sullivan, E. and Vaughan, B. (2004) *Crime, Punishment and the Search for Order in Ireland*, Dublin: IPA

- Law Reform Commission (1993) *Consultation Paper on Sentencing*. Dublin: Law Reform Commission
- Law Reform Commission (1996) *Report on Sentencing*. Dublin: Law Reform Commission
- McNally, G. (2007) 'Probation in Ireland: A brief history of the early years'. *Irish Probation Journal*, 4:5-24
- McNally, G. (2009) 'Probation in Ireland, Part 2: The Modern Age, 1960s to 2000'. *Irish Probation Journal*, 6:187-228
- Maguire, N. (2008), *Sentencing in Ireland: An Exploration of the Views, Rationales, and Sentencing Practices of District and Circuit Court Judges*, unpublished PhD thesis, Trinity College Dublin.
- Maguire, N. (2010), Consistency in Sentencing, *Judicial Studies Institute Journal*, 10,2: 14-54
- Maguire, N. (2011) 'Repentance and the Law: The Intersection of Theological, Legal and Criminological Perspectives', *ET Studies* 2,2:197-221
- Maguire, N. (2014) 'When is Prison a Last Resort? Definitional Problems and Judicial Interpretations'. *Irish Criminal Law Journal*, 24(3):62-72
- Maguire, N. (2016) 'Sentencing.' In: D. Healy, C. Hamilton, Y. Daly and M. Butler (Eds.) *The Routledge Handbook of Irish Criminology*. (pp. 398-318)
- Maguire, N. & Carr, N. (2013) 'Changing shape and shifting boundaries – the media portrayal of probation in Ireland.' *European Journal of Probation*, 5,3: 3-23
- Millie, A., Tombs, J. and Hough, M. (2007) 'Borderline sentencing: A comparison of sentencers' decision making in England and Wales, and Scotland', *Criminology and Criminal Justice*, 7,3:243-267
- O'Malley, T. (2000) *Sentencing Law and Practice*. Dublin: Round Hall Sweet & Maxwell
- O'Malley, T. (2006) *Sentencing Law and Practice*, 2nd ed. Dublin: Thomson Round Hall
- O'Malley, T. (2013) 'Living without guidelines" in A. Ashworth and J. Roberts (eds) *Sentencing Guidelines: Exploring The English Model*. Oxford: Oxford University Press
- Phelps, M. (2013) 'The paradox of probation: Community supervision in the age of mass incarceration.' *Law and Policy*, 35, 1-2: 51-80
- Phoenix, J. (2010) 'Pre-sentence reports, magisterial discourse and agency in the Youth Courts in England and Wales,' *Punishment and Society*, 12,3: 348-366
- Phoenix, J. & Kelly, L. (2013) 'You have to do it yourself' Responsibilization in youth justice and young people's situated knowledge of youth justice practice,' *British Journal of Criminology*, 53(3), 419-437.
- Power, C. (2003) 'Irish Travellers: Ethnicity, racism and pre-sentence reports.' *Probation Journal*, 50, 3: 252-266
- Probation and Welfare Service (1999) *Service Practice for Preparation and Presentation of Pre-Sanction Reports*. Dublin: Probation and Welfare Service

Probation and Welfare Service (2005) Revised Contents of Reports. Dublin: Probation and Welfare Service

Probation Service (2014a) Annual Report 2014. Dublin: Stationary Office

Probation Service (2014) *Policy and Procedures for the Preparation of Pre-Sanction Reports for Courts*. Dublin: Probation Service

Quigley, E. (2014) 'Pre-sentence Reports in the Irish Youth Justice System: A Shift to Risk-Oriented Practice?' *Irish Probation Journal*, 11, 63-86

Richardson, M., (2008) *Risky Business: An Examination of Probation Officers' Attitudes Towards Risk Assessment*. Master's Dissertation, Dublin Institute of Technology. Available at: <http://arrow.dit.ie/cgi/viewcontent.cgi?article=1008&context=aaschssldis>

Robinson, G., McNeill, F. & Maruna, S. (2013) 'Punishment in Society: The Improbable Persistence of Probation and Other Community Sanctions and Measures.' In: J. Simon & R. Sparks (Eds.) *The Sage Handbook of Punishment and Society* (pp. 321-340)

Rogan, M. (2011) *Prison Policy in Ireland: Politics, Penal-Welfarism and Political Imprisonment*. London: Routledge

Rottman, D.B. (1984) *The Criminal Justice System: Policy and Performance*. Report No.77. Dublin: National Economic and Social Council

Seale, C. (1999) *The Quality of Qualitative Research*. London: Sage

Silverman, D. (1985) *Qualitative Methodology and Sociology*, Aldershot: Gower

Tata, C., Halliday, S., Hutton, N. and McNeill, F. (2008) 'Assisting and Advising the sentencing decision process: The pursuit of "quality" in pre-sentence reports', *British Journal of Criminology*, 48,6:835-855

Tombs, J. and Jagger, E. (2006) 'Denying Responsibility: Sentencers' Accounts of their Decision to Imprison.', *British Journal of Criminology*, 46,5:803-21

Wandall, R. H. (2010) Resisting Risk Assessment? Pre-sentence reports and individualized sentencing in Denmark, *Punishment & Society*, 12,3:329-347

Ward, T. & Maruna, S. (2007) *Rehabilitation*. Oxon: Routledge

Wilson, H.A. & Gutierrez, L. (2014) 'Does One Size Fit All? A Meta-Analysis Examining the Predictive Ability of the Level of Service Inventory (LSI) with Aboriginal Offenders.' *Criminal Justice and Behavior*, 41,2: 196-219

Zedner, L. (2002) 'Dangers of Dystopias in Penal Theory.' *Oxford Journal of Legal Studies*, 22,2: 341-366

An Ardoifig, Margadh an Fhéir, Margadh na Feirme, Baile Átha Cliath 7.
Head Office, Haymarket, Smithfield, Dublin 7.
Tel: +353-(0)1 – 817 3600 Fax: +353-(0)1 – 872 2737

www.probation.ie