## **EXPERIENCING OFFENDER SUPERVISION IN IRELAND**

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Criminology in the Republic of Ireland has been characterised as an "absentee discipline" (Kilcommins et al., 2004: vii). As a result, very little is known about the characteristics or experiences of people sentenced to community and other sanctions. This review aims to consolidate existing knowledge about offenders under probation supervision. In particular, it examines the views of probationers as well as those of practitioners, politicians and other stakeholders.

#### Introduction

Most commentators agree that the Probation Service has remained marginalised, under-resourced and neglected throughout much of its history (Expert Group, 1999; Seymour, 2006; Healy, 2009). Probation supervision continues to be governed by the Probation of Offenders Act 1907, which was enacted before Ireland gained independence from Britain and directs probation officers to "advise, assist and befriend" their clients (s4). The only significant legislative reform to occur in the past one hundred years is the Criminal Justice (Community Service) Act 1983, which permits judges to impose a community service order of between 40 and 240 hours in lieu of a custodial sentence (see McNally (2009) for a comprehensive overview of the history of the Probation Service). In addition to supervising offenders in the community, probation officers also work with prisoners, including those serving suspended prison sentences in the community (see Criminal Justice Act 2006, s99) and those who are on temporary release from custody (see Criminal Justice (Temporary Release of Prisoners) Act 2003).

In contrast to the stagnation evident in the adult system, a menu of new community sanctions was introduced under the Children Act 2001 to deal with children who offend (a child is defined as a young person under the age of 18 years). Examples include the mentoring order (s131) where in echoes of the language of the 1907 Act a mentor is assigned to "help, advise and support" the child and its family; the training or activities order (s124) where the child is ordered to complete a community-based programme; and the detention and supervision order (s151), which permits the courts to sentence the child to a period of detention followed by a period of supervision in the community. Nevertheless, some critics have suggested that these measures are not in fact innovative but are merely re-branded versions of existing sanctions and practices (Kilkelly, 2007).

Ireland's rate of imprisonment currently stands at 100 per 100,000 population (Walmsley, 2011), suggesting that levels of punitiveness are relatively high in this jurisdiction. In

2011, there were 17,318 committals to prison (Irish Prison Service, 2012). That year, just 6,653 adult supervision orders were made (Probation Service, 2012). Examination of long-term sentencing trends reveals a gradual but steady rise in the number of supervision orders made between 1980 and 2011 (see Figure 1). Over the same period, there was sharp and substantial growth in the number of committals, a trend that has become particularly pronounced since 2006. The number of children in custody is lower, with 211 admitted to detention schools in 2010 (Irish Youth Justice Service, 2011) and 231 committed to prisons in 2011 (Irish Prison Service, 2012). In addition, 843 supervision orders were imposed on children during this period (Probation Service, 2012).

Taken from the Annual Reports of the Probation Service and the Annual Reports of the Irish Prison Service

#### **PROBATIONERS**

It is not possible to compile a contemporary profile of people under probation supervision since the Probation Service does not publish detailed statistical information about their characteristics, offences, sentence lengths or recidivism rates. In 2011, 86% of probationers were male and about two thirds were aged 25 years or over (Probation Service, 2012). Despite the lack of official data, some information can be gleaned from research studies. One of the earliest and most comprehensive empirical investigations of probations supervision was conducted by Hart (1974). This study found that probationers tended to have relatively high rates of re-offending and to experience significant levels of social disadvantage.

The most recent statistical information available was collected by Walsh and Sexton (1999) who reviewed a national and representative sample of 269 community service

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<sup>&</sup>lt;sup>1</sup> Statistics on prison committals were not published between 1995-1998

cases over a one-year period. Their analysis showed that the typical person on community service is "a young, single male who is unemployed (or underemployed) with poor educational qualifications and vocational skills and is living in the parental home" (Walsh and Sexton, 1999: 97). The limited social resources possessed by this group are of concern since social capital is believed to aid desistance from crime (see Laub and Sampson, 2003). More positively, the sample experienced relatively low levels of addiction and mental health problems although this may reflect the requirement that all recipients of community service orders must be fit for work. Other studies have confirmed the finding that people under probation supervision tend to experience high levels of social difficulty. For example, Seymour and Costello (2005) reported that 9% of the individuals referred to the Probation Service over a six week period in 2003 were homeless.

There is only limited information available about the experience of offenders on probation. The most comprehensive study was conducted by Healy (2012a) who found that over 80% of probationers expressed positive attitudes towards probation supervision. Furthermore, probation officers rated probationers highly on attitudes, attendance and engagement. Probationers who were currently offending were less likely to express positive views as were probationers who perceived supervision to be oriented more towards surveillance than welfare. Their main complaints were that probation appointments were inconvenient, that officers had too much control over their lives and that they received limited practical help (see also Durnescu, 2011 on the pains of probation). Overall, although most participants claimed that probation supervision had assisted them in resolving personal problems, few attributed desistance to their supervision experiences (see Farrall (2002) for similar findings in England and Wales). However, while probation supervision may not significantly affect behavioural outcomes, it can support personal efforts at change (Farrall, 2002; Healy, 2012a).

In a follow-up study conducted several years after the initial interviews, Healy (2012b) found that probationers largely retained their positive attitudes towards probation supervision. In particular, they valued the practical assistance they had received from their probation officers, such as help with employment, addiction and housing. They also positively recalled opportunities to exercise autonomy, participate in strong therapeutic relationships, and engage in meaningful rehabilitative activities during the supervision period. However, many of the probationers began to experience personal difficulties after the supervision order ended but did not know how to access formal assistance outside the criminal justice system. This highlights the need to develop a more effective and continuous system of formal social support that extends beyond the criminal justice system.

Finally, an in-house customer satisfaction survey conducted by the Probation Service which involved 150 probationers found that around 80% were satisfied with the quality of the service they received (Probation Service, 2011). Although further independent research is required to confirm the results, the satisfaction ratings are in line with existing

studies and are consistent with international evidence. Typically, offenders on community service report more positive attitudes towards the criminal justice system than short-sentence prisoners (Killias et al., 2000). Offenders on community sanctions also evidence high levels of compliance, along with significant reductions in criminal attitudes and personal problems (Rex et al., 2003).

#### **FAMILY**

Evidence suggests that imprisonment has a detrimental effect on the parent-child relationship as well as on family finances, behaviour and emotional wellbeing (King, 2002; Bedford Row Family Project, 2007). There has been no comparable research with the families of probationers but it is likely that such difficulties would be less pronounced among offenders who are supervised in the community. Indeed, the majority of fathers on probation describe having satisfactory relationships with their children (Healy, 2012a).

#### **PRACTITIONERS**

The popularity of the penal welfare model has waned in many Anglophone countries where it has been superseded by a more punitive, risk-oriented approach (Feeley and Simon, 1992). Such trends are less evident in Ireland. Structured risk assessment was introduced into the Irish Probation Service in 2003. Bracken (2010) studied probation officers' responses to this development using focus groups involving 30 probation officers from Dublin and Cork. Officers expressed a number of concerns about the encroachment of actuarial methods and a public protection agenda into what was traditionally a welfare-oriented organisation. Their fears centred on the potential devaluation of professional skills, therapeutic relationships and welfare-based interventions. In practice, the majority of officers adjusted to the new regime by adopting a hybrid approach in which clinical judgement was supplemented by the results of structured risk assessment tools (see Robinson (2002) for similar findings in England and Wales).

It is unlikely that actuarial approaches will ever fully supplant traditional welfare methods (Healy, 2009). According to a survey conducted by Petrus (2009), senior probation officers believe that community service orders are beneficial because they allow offenders to preserve family bonds, gain new skills and repair harm to the community. This suggests that they continue to regard the community service order as a welfare sanction rather than as a means of punishing or managing offenders in the community. Moreover, a senior probation officer recently expressed the view that rejection of the social welfare ethos would be "anathema" to probation officers, many of whom are trained social workers (McNally, 2009: 208).

The recent trend towards actuarial justice and punitiveness in community sanctions has been extensively criticised by criminologists (e.g. Kemshall, 2008). It has been argued that effective practice should aim instead to build agency, human and social capital, focus on strengths as well as risk and need, foster relationships and operate within a framework

that is both legitimate and rights-based (McNeill, 2006). Arguably, the welfare model, such as that operating in Ireland, is closest to this ideal.

### VICTIMS

The Probation Service offers the option of family group conferencing to children involved in crime and their victims. However, just 19 such conferences were held in 2011 (Probation Service, 2012). No specific research has been conducted on victims' attitudes towards community sanctions but international evidence suggests that victims who take part in restorative justice events are more likely to express satisfaction with the process and outcomes compared to victims whose cases are resolved through traditional court proceedings (e.g. Strang, 2002).

### THE PUBLIC

Public attitude surveys suggest that the Irish public holds ambivalent attitudes towards community sanctions. A recent survey found that 60% of the public favoured the use of community sanctions for all but the most serious offences (An Garda Síochána, 2008). A slight majority supported the use of community sanctions with young offenders and offenders with substance use problems. However, public attitudes have become increasingly punitive in recent years and the numbers advocating punishment for these groups has risen steadily. For example, the numbers favouring a punitive response to youth offending grew from 19% in 2002 to 45% in 2008 (An Garda Síochána, 2008). Furthermore, surveys suggest that 60% of the population would not like to live next door to an offender (Halman, 2001), indicating that putative desisters will not always receive a positive reception from their communities. This is of concern, since social recognition of a desistance attempt may encourage long-term behavioural change (Maruna and Roy, 2007).

Nevertheless, despite the apparent rise in public punitiveness, crime has not become an important political issue. Kilcommins et al.'s (2004) examination of public opinion polls over the previous two decades revealed that crime has always been a low priority for the electorate with the exception of the 1997 election when a short-lived moral panic, generated by several high-profile murders, took hold of the public imagination. According to a recent survey, Irish citizens experience low fear of crime compared to other nations (NCC, 2009). The same study found that people with high levels of fear were more likely to endorse punitive attitudes and to believe that the criminal justice system was too lenient. The low fear of crime may explain the relatively low levels of punitiveness found in this jurisdiction.

### **EMPLOYERS**

International evidence suggests that ex-offenders often find it difficult to obtain meaningful employment and, even when they do find work, tend to earn lower salaries than their non-convicted counterparts (Uggen et al., 2006). Little is known about Irish probationers' experiences with employment, however, one study found that just half of Irish employers were willing to employ an ex-offender and then, only in low-level positions (Lawlor and MacDonald, 2001). This finding is particularly worrying because the study was conducted at a time of economic prosperity in Ireland. After Ireland entered recession in 2008, its unemployment rate rose rapidly and reached 14.8% by July 2012 (CSO, 2012). It is likely that ex-offenders will experience even greater difficulties finding work in the current economic climate (see Healy, 2012b).

On a more positive note, employers appear to be more willing to consider employing exoffenders when appropriate supports are provided by criminal justice agencies (Lawlor and MacDonald, 2001). At present, over 100 local projects participate in the community service scheme (Petrus, 2009). The government valued the unpaid work completed under this scheme at €1.5 million in 2007 (Department of Justice and Equality, 2011). This suggests that there may be scope for achieving greater cooperation between employers, ex-offenders and criminal justice agencies.

# THE JUDICIARY

Several reviews of community sanctions have been conducted in recent years and all expressed concern about the limited use of community sanctions by the judiciary (e.g. Petrus, 2009; Expert Group, 1999). Reviewing the sentencing practices of the courts, O'Donnell (2004: 257) concluded that there is "a strong orientation towards custody among Irish judges." Community sanctions currently account for less than 10% of all sentences handed down by the courts (Irish Court Service, 2012).

Seymour (2006) suggested that a process of up-tariffing was occurring in the courts. For example, a survey of young prisoners found that a fifth had no contact with the Probation Service prior to serving their first custodial sentence (Geiran et al., 1999). In addition, community service orders are mainly used in cases involving first-time offenders and those who have committed minor offences - cases that may not otherwise have attracted a prison sentence (Walsh and Sexton, 1999). Finally, Davies and Gailey (2006) were concerned about the low levels of risk among probationers because low-risk offenders who receive intensive sanctions may be more likely to re-offend (see McGuire, 1995). By 2011, however, most probationers scored in the moderate to high risk range, suggesting that community sanctions are now being used more appropriately by the courts (Probation Service, 2012).

Judges have traditionally had high levels of discretion and, consequently, there are significant inconsistencies in the sentences meted out to offenders (Hamilton, 2005).

There is also wide variation in the use of community service orders across the country (Petrus, 2009). The majority of judges who took part in a recent survey expressed positive views about the community service scheme and recommended that it be expanded (Petrus, 2009). However, many judges felt they lacked information about existing community service projects, including their effectiveness, and feared that sanctions for breaches were overly lenient. These findings may partly explain why the use of community service orders is sporadic. Nevertheless, while the survey provided important insights into judicial attitudes, it is important to note that there was a response rate of just 29% so the findings may not be representative.

Other studies provide additional insights into judicial attitudes towards offenders and community sanctions. Healy and O'Donnell (2010) reviewed newspaper accounts of judges' sentencing statements from over 500 court cases. Their analysis suggested that, while judges accepted that offenders could desist from crime, they believed that offending was a personal choice rather than the result of social causes. Although judges were willing to give first-time offenders a second chance, they treated repeat offenders particularly harshly on the grounds that they had displayed an unwillingness to change. It is unlikely therefore that judges would fully endorse rehabilitative practices that focus on the social causes of crime, such as those offered by the Probation Service.

#### **POLITICIANS**

On the surface, political rhetoric is punitive and advocates harsh measures to combat crime (Kilcommins et al., 2004). In substance, government policy is more often pragmatic, expedient and parochial (Campbell, 2008; Kilcommins et al., 2004). As a result, community sanctions have escaped the punitive revisions that have occurred elsewhere (Kilcommins et al., 2004; Seymour, 2006). On the other hand, rehabilitative services remain under-resourced and under-researched (IPRT, 2010). Recently, a number of important legislative reforms regarding community sanctions have been implemented by government. These developments will be examined since they provide insight into political attitudes to offender supervision.

The Fines Act 2010 (s18) was introduced to permit the courts to sentence fine defaulters to community service rather than to a custodial sentence. A perusal of political debates suggests that the Act was inspired primarily by a pragmatic desire to improve the cost-effectiveness and efficiency of the criminal justice system during an era of economic austerity. The average annual cost of one prison place is €65,359 (Irish Prison Service, 2012) compared to an average cost of €5,000 for a probation order and €2,200 for a community service order (Probation Service, 2012). This development may also reflect a softening of attitudes towards fine defaulters, perhaps because a growing number of 'non-criminal' citizens have found themselves in receipt of custodial sentences since the recession began due to an inability to pay fines. As explained by Dermot Ahern T.D., the then Minister for Justice, Equality and Law Reform:

"The traditional policy of imprisonment is no longer viable or socially desirable. It also places a significant financial burden on the State and uses prison places that should be available for serious criminals." [Dáil Debates, Wed 3<sup>rd</sup> March 2010].

The new legislation has not yet been fully enacted and the numbers of fine defaulters in custody continues to rise. In 2011, 7,514 individuals were imprisoned for fine default compared to just 2,520 in 2008 (Irish Prison Service, 2012; Irish Prison Service, 2010 respectively).

In addition, the government recently enacted the Criminal Justice (Community Service) (Amendment) Act (2011), which it estimates will save between €13 and €18 million if it diverts 10% of eligible offenders from custody (Department of Justice and Equality, 2011). This Act states that the courts should consider imposing a community service order in cases where an offender would otherwise be eligible for a prison sentence of 12 months or less. If this legislation is fully utilised by the judiciary, it could have a significant impact on prison populations since most prisoners are serving short sentences for minor and non-violent offences. In 2011, 65% of prisoners were serving sentences of 3 months or less (Irish Prison Service, 2012).

Finally, the government recently published the Criminal Justice (Spent Convictions) Bill 2012, which, if enacted, will expunge the criminal records of individuals whose offences attracted non-custodial sanctions after three years and those whose offences attracted custodial sentences of 12 months or less after 5-7 years. The bill excludes offences which attracted custodial sentences in excess of 12 months, even where those sentences were suspended; offences tried by the Central Criminal Court, that is, murder and rape; and other sexual offences. In addition, ex-offenders who wish to work with vulnerable people or in certain parts of the public sector will still be obliged to disclose their criminal records as will those who apply for certain licences. According to the Bill, no more than two convictions per person can become spent. Young people under the age of 18 years already have their criminal records expunged after three years under the Children Act 2001 (s258) provided they remain crime-free during that time. The proposed measure reveals a political willingness to implement strategies that could aid offender reintegration. Nevertheless, the pace of reform has been exceptionally slow and earlier versions of the bill have been in circulation since 2007.

It is too early to say what impact, if any, these new pieces of legislation will have on prisoner numbers but their introduction implies a readiness on the part of politicians to support the use of community sanctions. Early indications show that the numbers of community service orders increased significantly between 2010 and 2012 from 1,972 to 2,738 (Probation Service, 2012). However, the use of other community sanctions declined during the same period, suggesting that community service orders may be displacing other types of supervision rather than increasing the use of community sanctions generally.

### **OUTCOMES**

The national recidivism rate for people under probation supervision in Ireland has never been calculated. However, it is known that around 80% of community service orders are completed successfully, indicating a high level of compliance (Walsh and Sexton, 1999; Petrus, 2009). At the same time, Walsh and Sexton (1999) discovered that 40% of participants received at least one warning letter for breaching their order. Moreover, probation officers described spending significant amounts of their time following up on participants who did not attend, competed their hours very slowly or whose chaotic lifestyles impeded compliance. This extra attention and tolerance may partly account for the high completion rates. Overall, completion rates were highest among older, first-time offenders. Using a sample from the same dataset, Healy (2006) found that 41% of offenders on community service orders were reconvicted within three years. It is important to note that, unlike Walsh and Sexton's original study, Healy's study concerned repeat offenders only.

Lower completion rates are evident among certain offender groups. Geiran et al. (1999) found that young prisoners with a history of offending successfully completed just 30% of the supervision orders they received prior to their current sentence. Of the remainder, 26% received a new prison sentence before the end of the supervision period while 44% breached their order. This finding is unsurprising since repeat offenders and offenders under the age of 21 are known to be at higher risk of re-imprisonment (see O'Donnell et al., 2008).

Healy (2012a) found that 66% of repeat offenders on probation were reconvicted within four years. At first glance, these results seem pessimistic but the picture is not as gloomy as it appears. The majority of new convictions were for relatively minor or non-violent crimes, mainly motoring, public order and theft offences. This is particularly noteworthy, since 70% of participants had served a prison sentence in the past and most were on probation for serious crimes, including assault, robbery and drugs offences. In addition, only 27% were re-imprisoned during the follow-up period. This contrasts favourably with a re-imprisonment rate of 49% for prisoners after four years (O'Donnell et al., 2008). The groups are not directly comparable, however, since O'Donnell et al. used a national representative sample while Healy's sample consisted of probationers with at least two previous convictions, who were aged 18-35 and living in the Dublin area. One of the most striking findings to emerge was the length of time it took for participants to acquire their first reconviction. On average, the sample remained crime-free for over three years. Other smaller studies have found high reconviction rates among repeat offenders, including studies of probationers attending community-based cognitivebehavioural programmes in Cork (Phillips, 2002) and Dublin (Nexus, 1997).

## CONCLUSION

Seymour (2006: 10) concluded that the outlook for community sanctions was "pessimistic" on the basis of limited legislative reform, chronic under-resourcing, lack of sentencing guidelines, and a dearth of research. The prospects for community sanctions have since become more promising and there appears to be a belated recognition among politicians that the high costs of imprisonment are unsustainable, particularly during a period of economic difficulty. Time will tell what effect, if any, the new legislative measures described above will have on sentencing in Ireland.

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