

## **DEVELOPING COMMUNITY COURTS WITH RESTORATIVE JUSTICE IN IRELAND**

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### **Abstract**

In 2007 the Irish National Crime Council recommended that community courts should be established in Ireland, located in the inner city of Dublin, to deal with quality-of-life offences. In 2009 the final report of the National Commission on Restorative Justice recommended that restorative justice be legislated for, and introduced nationally in the criminal justice system in Ireland, by no later than 2015. Now, in 2019, we are still awaiting the introduction of community courts and the national rollout of restorative justice. Some progress, however, has been made in both areas. In 2014 the Minister for Justice announced that a pilot scheme would be established in Dublin, through which a community court would be established. Close monitoring and evaluation would determine whether community courts should then be rolled out on a national level. Several restorative justice schemes around the country have been expanded since the publication of the final report of the National Commission on Restorative Justice (2009), and a small but dedicated restorative justice movement is developing in Ireland. This paper argues that the rollout of restorative justice should coincide with the development and rollout of community courts in Ireland, and that community courts should contain an element of restorative justice. It also argues that the recent expansion of restorative justice schemes should be allowed to continue independently of the development of community courts in order to help facilitate a national rollout of restorative justice in the Irish criminal justice system.

### **Keywords**

Community courts; community justice; restorative justice; community engagement; problem-solving courts

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## **Introduction**

In 2007 Ireland's National Crime Council published a report entitled *Problem solving justice: the case for community courts in Ireland*. The report recommended that community courts be established in Ireland as stand-alone courts in areas of high population and as part of ordinary district courts in rural areas. Also in 2007, the National Commission on Restorative Justice was established by the Minister for Justice, Michael MacDowell TD, who stated that restorative justice was 'a victim and community oriented approach which requires the perpetrator to face up to the harm he or she has caused and repair or make good the damage done' (Department of Justice and Equality, 2007). MacDowell supported this approach, saying: 'I want to see how it can be expanded in Ireland with appropriate structures and a sound funding base' (Department of Justice and Equality, 2007). In 2009 the National Commission on Restorative Justice published its final report and was unanimous in its recommendation that 'a restorative perspective be introduced nationally into the Irish criminal justice system' (National Commission on Restorative Justice, 2009:3).

This paper considers both community courts and restorative justice in the Irish context. It discusses the development of community courts internationally before examining the National Crime Council (2007) report and its recommendations. It then discusses the development of restorative justice in Ireland and charts its slow and steady progress since the publication final report of the National Commission on Restorative Justice (2009). This paper argues that any introduction of community courts in Ireland should include a restorative element, while restorative justice should also be allowed to develop independently of community courts. Given that Irish criminal justice policy often follows that of the UK, the operation of the North Liverpool Community Justice Centre is considered. This centre was visited by both the National Crime Council and the National Commission on Restorative Justice while researching their reports.

## **The development of community courts**

The first community court was established in New York City in the Midtown area of Manhattan in 1993. Its principal focus was on quality-of-life offences, such as drug use, shoplifting, prostitution and vandalism, and it 'sought to combine punishment and help by sentencing low-level offenders to perform visible community restitution, receive onsite social services, including drug treatment, counselling and job training' (Center for Court Innovation, 2011:1). In 2000 a second community court emerged in New York, this time in the neighbourhood of Red Hook in Brooklyn. The model that emerged in Red Hook was multi-faceted. For example, in addition to hearing low-level criminal cases it handled selected juvenile delinquency cases from the family court and landlord-tenant disputes from the civil court (Center for Court Innovation, 2010). The Red Hook model ensured that a multi-agency approach was taken to criminal behaviour, and various agencies were located on site. One of the successes attributed to the Red Hook model was in reducing recidivism: adult defendants were 10% less likely to commit new crimes than offenders who had been processed in a traditional courthouse, and juvenile defendants were 20% less likely to reoffend. The Red Hook model has also increased public trust in criminal justice agencies, as approval ratings for police, prosecutors and judges have all increased three-fold since the Red Hook Community Court opened. Furthermore, it has retained

public support: a neighbourhood survey revealed that 94% of local residents support the community court. Before the Red Hook Community Court opened, only 12% of local residents rated local courts favourably (Center for Court Innovation, 2017). The success of these courts resulted in international attention, and community courts have since opened in South Africa (Monaghan, 2008), the UK (Llewellyn-Thomas and Prior, 2007), Sweden (Wolf, 2006; 2008), Israel (Gal and Dancig-Rosenberg, 2017) and Canada (Slinger and Roesch, 2010; Somers et al., 2014).

### **Principles of the community court system**

Every community is unique and faces its own set of problems. Therefore, every community court will also be unique, as it will be tailored to help the community in which it is situated to best resolve its issues. Such courts promote the idea that ‘the justice system should do more than simply process cases – it should actively seek to aid victims, change the behaviour of offenders and improve public safety in our neighbourhoods’ (Berman and Fox, 2009:11). Community courts typically operate through the application of a mixture of therapeutic jurisprudence, problem-solving, and community justice principles (Gal and Dancig-Rosenberg, 2017). Therapeutic jurisprudence is an interdisciplinary approach to understanding legal issues through psychological analysis, and it calls for mental-health workers, legal practitioners and the judiciary ‘to apply techniques drawn from psychology and social work to motivate offenders and patients to accept rehabilitation and treatment and to pursue it successfully’ (Weiner et al., 2010:424). It promotes a problem-solving, pro-active and result-oriented approach that is ‘responsive to the current emotional and social problems of legal consumers’ (Lurigio and Snowden, 2009:199 as cited in Ryan and Whelan, 2012:3).

The collaborative nature of community courts allows the various agencies involved to use problem-solving principles to provide a rounded response to the problems and needs of those who appear before the court. Procedural fairness is important, as by operating a system of sanction and reward in an environment that treats offenders with dignity and respect, the community court encourages compliance with its decisions. This is done through judicial monitoring, which involves bringing offenders back to court for regular reviews and discussion of their progress (or failures) before a dedicated judge, who gets to know the offender and their life circumstances. A focus on outcomes rewards the successes of participants, while monitoring and reflecting on outcomes allows for determining what works and what does not. This in turn allows the court to engage in shaping new services and innovations (Centre for Justice Innovation, 2011; Ward, 2014; Family Drug and Alcohol Court, 2015).

Community courts also promote the use of community justice principles. These include creative partnerships that involve the local community in the judicial process alongside social services and treatment providers. Regular contact with the media can help to encourage community buy-in and reassure the public that problem-solving courts are not a soft option. Karp and Clear (2000:352) contend that criminal justice agencies – including the courts – must ‘make themselves available to the community, and the community must take an active role in the justice process’. This should then encourage the development of community justice through the community courts. Karp and Clear (2000:324) also claim

community justice to be 'a vision of justice practices with particular concern for the way crime and justice affect community life'. Hine (2015:1) notes that:

[for many people] community justice is essentially about community sentences – those non-custodial sentences of the court which require some supervision in the community. For others it is about the actions of all criminal justice agencies which take place in the community, particularly the police and probation, and for yet others the remit is much broader and is about involving the community more directly in all aspects of criminal justice.

Every community court should essentially operate with six common principles: enhanced information; community engagement; collaboration; individualised justice; accountability; and outcomes (Center for Court Innovation, 2010:6-10).

- **Enhanced information:** There is strong emphasis on training and information for staff members. The calibre of information that staff and the judge have about the community and the defendants can improve decision making of the judges involved in the community court.
- **Community engagement:** Active community engagement is essential, and community courts offer communities a voice in doing justice. Local residents play a role in helping the justice system identify, prioritise and solve local problems.
- **Collaboration:** Community courts can successfully bring together a wide range of agencies (for example, probation, police, addiction treatment, victims' groups, education and training services) under one roof. This can make the community court a one-stop shop for all of these services.
- **Individualised justice:** Traditional sentencing practice does little to deal with crime and its effects. Community courts seek to combine punishment with help. They can be engaged with restorative justice or drug treatment programmes, which ensures offenders receive punishment and help so they do not return before the courts.
- **Accountability:** Community courts seek to send the message that all criminal behaviour has an impact on community safety, and that there are consequences for those who break the law. They can hold offenders accountable by requiring them to perform community service.
- **Outcomes:** Collection and analysis of data, costs and benefits are crucial tools for evaluating effectiveness and encouraging improvement.

Community courts should not, however, be viewed as a panacea for all the ills in a community. Thompson (2002) and Williams (2006) have both claimed that community courts may result in net-widening through the extension of jurisdictional reach and the

coercive powers of the criminal courts. Williams (2006:4) has also noted that there is a risk of due process rights being neglected through 'involving possibly unrepresentative spokespersons for the local community at the expense of defendants' rights'. Williams (2006:4) has highlighted further concerns around the possibility that community courts may end up being expert-driven. He claims that they may 'fall into the very trap they are supposed to avoid, replacing magistrates with case conferences of professionals', and that they may have 'the unforeseen consequence of making victims of crime feel that they have responsibilities' (Williams, 2006:5).

### **Community courts in Ireland**

In 2006 a delegation from the Irish National Crime Council visited three community courts in the United States: Midtown and Red Hook in New York, and the Philadelphia Community Court. The National Crime Council's 2007 report highlighted certain characteristics that an Irish community court would have. These were closely associated with benefits for both the offender and the community, and they included: a dedicated judge; a pre-trial assessment; offenders must plead guilty; a problem-solving focus; a team-based approach and on-site provision of key services; rigorous monitoring of compliance with court orders; restitution to the local community through community work completed by defendants in appropriate cases; and the formalised involvement of the local community (National Crime Council, 2007:32-35).

- **Dedicated judge:** Each community court should have a dedicated judge. Defendants can benefit from seeing the same judge on all occasions, who is familiar with both the offending and the offenders' circumstances.
- **Pre-trial assessment:** A pre-trial assessment must take place in every case to identify any underlying problems. This provides the judge with the means to identify and tackle the problems of all those appearing before the court, and to help them access the services they need as soon as possible.
- **Offenders must plead guilty:** In a traditional court, an early guilty plea may be a factor in the mitigation of a sentence. In the community court, defendants have the opportunity to avoid a criminal conviction by entering a guilty plea and by complying with the orders of the court.
- **Problem-solving focus:** Positive outcomes for every defendant are encouraged by addressing any underlying problems that the defendant may have, thereby breaking the cycle of reoffending by addressing the root causes of crime.
- **Team-based approach and on-site provision of key services:** In an ideal community court system, a wide variety of services (such as addiction, accommodation and health, to name but a few) would be provided on site.
- **Rigorous monitoring of compliance with court orders:** Community courts provide increased monitoring of defendants. Defendants must report back to court to discuss progress with court mandates. Breaches of court orders are

also dealt with by the same judge who imposed the order, thus ensuring continuity.

- Restitution to the local community through community work completed by defendants in appropriate cases: The community has the opportunity to benefit from any community work completed by those who appear before the community court. Wherever possible, the community court aims to ensure that any community work imposed is linked to the offence committed and that it is completed in the area where the offence was committed.
- Formalised involvement of the local community: The operation of a community court requires consultation with the local community to listen to their concerns about crime in their area. The efficient manner in which defendants are dealt with, and the way in which low-level offending is targeted, is visible to the community. This can serve to improve confidence in the criminal justice system, increase the reporting of low-level crime and reduce concern about crime amongst local residential and business communities.

As well as listing the characteristics of the community courts, the National Crime Council recommended that the following set list of offences fall under the remit of the community court: drunk in public; disorderly conduct; night-time disorderly conduct; threatening, abusive or insulting behaviour; refusal to give name; wilful obstruction; failure to comply with direction from a member of An Garda Síochána; assault; criminal damage; soliciting or loitering; drug use; theft; handling stolen property; and illegal street trading (National Crime Council, 2007). It also recommended that since approximately one-third of all these offences took place in Dublin, the first community court should be located there. The report, once published, sat on a shelf in the Department of Justice for almost a decade. The most probable reason for this was that the report was published at a time of increasing financial insecurity in Ireland, essentially on the eve of the global economic downturn, which began in 2008.

### **Recent developments**

In 2013 the Irish Parliament's Joint Committee on Justice, Defence and Equality invited submissions from the public on the subject of community courts. It received 17 submissions from groups and individuals, and it agreed to hold a public hearing in January 2014 to explore further the issues raised in the submissions made. In the Committee's *Report on hearings in relation to community courts* (Committee on Justice, Defence and Equality, 2014), it recommended that a pilot scheme be carried out in one of the policing districts in central Dublin, under the supervision of a single judge, supported by an implementation group and local community groups and services. It also recommended that central Dublin be the location for the pilot scheme, as this would place the scheme in close proximity to the Department of Justice and the committee, maximising opportunities to review and monitor the scheme's progress and identify areas where further work is required (Joint Committee on Justice, Defence and Equality, 2014).

In 2014 the Irish Senate unanimously supported a motion introduced by Senator Martin Conway, which called for a pilot community court to be established in Dublin. This motion

was also accepted by the Cabinet. In announcing that a community court pilot scheme was to be established in Dublin, Minister of State Joe Costello TD, on behalf of the Minister for Justice, stated that 'now is the time to fully explore whether or not community courts can be of benefit within the Irish criminal justice system' (Department for Justice and Equality, 2014). Close monitoring and evaluation would determine whether the community courts should then be rolled out on a national level.

In April 2015 the Tánaiste and Minister for Justice, Frances Fitzgerald TD, stated that 'it was not possible to progress the initiative during 2014 due to the need to dedicate resources to other priority projects including the establishment of the new Court of Appeal and also to progress other ongoing projects, such as the judicial appointments review and the reform of the family law courts' (Response to written question 17178/15 from Finian McGrath TD on 30th April 2015). Communications between the authors and the Irish Department of Justice have revealed that the department led a working group of justice sector officials to consider options for moving forward on the proposal to establish a community court. Building on the recommendations of the Joint Committee on Justice, Defence and Equality (2014), the working group considered proposals to enhance the approach to tackling low-level offenders and effectively addressing their offending behaviour through a community justice intervention-type programme. This would be a diversion from the courts in a way that had the potential to respond more effectively to one-off and repeated low-level offending, with an emphasis on speedy processing aimed at reducing the risk of reoffending. It would also enable quick referrals to the necessary services. In 2016 Minister Fitzgerald stated that her department had been moving forward with the proposal to establish a community court, which would 'seek to deal with low-level offences while applying meaningful sanctions and focussing on the principles of restorative justice' (Response to written question 3003/16 from Maureen O'Sullivan TD on 27 January 2016). The Department of Justice is seeking to build on this work and is currently considering a number of possibilities, including the creation of a statutory conditional cautioning system.

The proposal to establish community courts is supported by Dublin City Council. The chair of Dublin City Joint Policing Board, Councillor Daithi De Roiste, has stated: 'This initiative could help keep young men out of prison, give them a future and help the communities where they have committed crimes – there is nothing not to support in this scheme' (Lynott, 2016). The CEO of the Dublin City Business Association, David Brennan, has stated that his organisation seeks:

a system that manages the individual and not the process. We envisage a non-adversarial justice system that deals with the underlying causes of the offences and seeks to help the person and provide relevant support services to the perpetrators of these low level crimes and reduce re-offending. We ask the Government to consider establishing a working committee to establish a pilot for the community courts in the capital (Connolly, 2014:18)

It has also been noted that offences which would be suitable for community courts to hear, such as substance-related crime and anti-social behaviour, are not a new phenomenon [in Dublin city centre], but rather ones which have attracted a great deal of

attention in recent years. Connolly (2014) has claimed that the establishment of a community court might represent 'a novel approach to this old issue'.

### **Restorative justice in Ireland**

The final report of the National Commission on Restorative Justice (2009:3) recommended that 'a restorative perspective be introduced nationally into the Irish criminal justice system'. The commission moved away from traditional definitions of restorative justice and formulated its own version, which it felt best suited an Irish context and the Irish criminal justice system. It defined restorative justice as 'a victim sensitive response to criminal offending, which, through engagement with those affected by crime, aims to make amends for the harm that has been caused to victims and communities and which facilitates offender rehabilitation and integration into society' (National Commission on Restorative Justice, 2009:34).

The commission concluded that there was no requirement for a definitive range of offences to be listed as appropriate for restorative justice, yet it was adamant that certain serious crimes, such as murder, domestic violence and sexual offences, should be excluded from the early stages of any developments (National Commission on Restorative Justice, 2009). It recommended that 'persons appearing before the District and Circuit Courts on criminal charges are those most appropriate for referral to restorative justice [and] [...] offences where sentences of up to three years imprisonment are being considered by a court should be eligible for referral to restorative justice' (National Commission on Restorative Justice, 2009:81). Furthermore, the committee recommended that restorative justice be rolled out on a nationwide basis by no later than 2015, and that it should be legislated for to assist with its rollout and confer legitimacy on the process.

Restorative justice in Ireland has been making slow and steady progress for several years (Leonard and Kenny, 2011, 2014; Gavin and Joyce, 2013; Gavin, 2015). There are two main restorative justice programmes for adult offenders, which are funded by the Probation Service: Restorative Justice Services in Dublin, and Restorative Justice in the Community in County Tipperary. Both projects began as small-scale pilot programmes, but they have seen significant expansion in recent years. In 2010 both projects were awarded additional funding to aid expansion, and this was reviewed by the Probation Service (2012b). The Probation Service found that Restorative Justice Services had doubled its number of referrals, while Restorative Justice in the Community had increased its workload by 300%. Both projects showed positive results in terms of reducing recidivism, yielding results showing that between 75% and 80% of offenders had not reoffended (Probation Service, 2014). Furthermore, as of March 2014, the Probation Service had facilitated 477 restorative justice panels in its central Dublin offices at Haymarket (Probation Service, 2014). This was directly linked to the increased funding and the doubling in the number of referrals to Restorative Justice Services.

A review of the services offered by Restorative Justice Services (Whitford et al., 2015) found strong evidence that:

- offenders were actively and positively involved in the restorative process throughout all stages of the panel;

- strong relationships were being built between the Restorative Justice Services caseworker and the offender through mutual engagement and developing trust;
- involvement had a positive impact on the relationship between An Garda Síochána and offenders;
- the successful operation of Restorative Justice Services Offender Reparation Panels was based on strong interagency collaboration, and strengthened the co-operation between these agencies on the ground in the areas of operation;
- there was clear buy-in to the concept of restorative justice from key stakeholders, including offenders; and
- victim participation and input can be facilitated.

Furthermore, the increase in workload reported by the Probation Service (2014) has continued. The Restorative Justice Services annual report (2017) showed that the number of case referrals it received in 2017 (281 referrals) was almost double the number it received in 2015 (159 referrals). Of the 281 referrals in 2017, 186 were from the District Court, 8 from the Circuit Court and 87 from the Restorative Road Safety Programme. Of the 194 cases referred from the courts, 119 were complete, 42 were incomplete, 4 had opted out of the process and 29 were ongoing (Restorative Justice Services, 2017).

There are also juvenile restorative justice programmes run by An Garda Síochána and by the Probation Service under the Children Act (2001). Section 26 of the Children Act (2001) provides the legislative basis for the Garda Youth Diversion Programmes to facilitate both restorative conferencing and restorative cautioning. Section 29 of the Act provides for the convening of a conference in respect of a child who is being supervised by a juvenile liaison officer. The aim of the programme is to divert any child who takes responsibility for their offending behaviour away from the criminal justice system by way of a caution, which can be either formal or informal (Gavin and Joyce, 2013). There are currently over one hundred Garda Youth Diversion Programmes in operation throughout the country. There has been a substantial increase in the use of police-led restorative justice in Ireland since 2006, when there were only 307 cases where restorative justice was used with young offenders, and An Garda Síochána is now 'fully committed to utilising restorative justice principles for young offenders' (Gavin, 2015:160).

During the period 2011–2016 An Garda Síochána dealt with 6,190 cases using restorative justice, an average of 1,015 cases per annum (An Garda Síochána, 2011, 2012, 2013, 2014, 2015, 2016). In 2016 the total number of individual children referred to the programme was 9,451 (compared with 9,807 in 2015). Juvenile liaison officers used restorative justice in 667 referrals in 2016 (An Garda Síochána, 2016). Many of these referrals involved cases of assault (both on members of the public and on members of An Garda Síochána), robbery, arson, burglary and public order (An Garda Síochána, 2016). The numbers referred to the diversion schemes fluctuate from year to year; the most recently published statistics reveal a decrease of 25% in the numbers referred to the schemes and a 25% decrease in the number of cases where restorative justice has been used. Such

fluctuations are to be expected. However, despite a recent decline in the number of cases where restorative justice has been used, these figures remain highly encouraging for the continued growth of police-led restorative justice at a youth justice level in Ireland, especially if one considers that the number of cases where restorative justice was used in 2016 was still more than double the figure for a decade earlier.

Section 78 of the Children Act (2001) provides for family conferencing organised by the Probation Service. These conferences 'explore ways in which the young person can take responsibility for their behaviour and face the consequences of their actions, and if possible, make amends to the victims' (Gavin, 2015:161). The overarching aim of the family conference is to divert young people who have accepted responsibility for their actions away from court, conviction and custody, and from engaging in further criminal activity (Probation Service, 2014). During the period 2011–2016, the Probation Service held 177 family conferences (Probation Service, 2011, 2012a, 2013, 2014, 2015, 2016).

### **Recent developments**

In 2012 the Irish Prison Service launched restorative justice pilot programmes in two Dublin-based prisons in line with its strategic plan for 2012–2015. The programmes focussed on conflict awareness and resolution, disciplinary adjudication and community reparations. The purpose of these programmes was to 'provide prisoners with another avenue to address and take responsibility for their offending behaviour, make reparations to the community and to raise victim awareness among the prison population' (Stack, 2013). The programmes were run in Wheatfield Prison, a closed, medium-security place of detention for adult males and for sentenced 17-year-old juveniles, and the Dóchas Centre, a closed, medium-security prison for females aged 18 and over. Research undertaken by the authors has found that in the period 2012–2014 there were 120 cases dealt with in Wheatfield Prison that involved inter-prisoner or staff–prisoner disagreements or violence. A scripted restorative conference approach was taken, and there was an 83% non-reoffending rate post-conference. There were no cases involving prisoners and their victims from outside the prisons. Despite the positive results in terms of reducing reoffending, the restorative justice programme has since been discontinued due to limited training funds and resources. There appear to be no plans for the Irish Prison Service to revive its short-lived interest in restorative justice.

In November 2014 a report was published by the restorative justice non-governmental organisation Facing Forward, which examined the potential for engaging restorative justice to address sexual trauma and abuse (Keenan, 2014). It defined sexual violence as follows:

assaults that have an explicit sexual content and includes a variety of forms including rape, sexual assault and sexual harassment. These forms of sexual violence can be perpetrated by family members, current and former sexual partners, other relatives and friends, acquaintances (including colleagues and clients), those in a variety of authority positions, and strangers (Keenan, 2014:25).

The aim of the study was to discover if there were ‘gaps in current service provision for those who have suffered sexual trauma and those who have offended in the area of sexual crime, as well as their families and extended networks’ (Gavin and Joyce, 2013:16). The report noted the National Commission on Restorative Justice (2009) recommendation concerning the exclusion of certain serious offences, including sexual offences, from restorative justice, but claimed that such a ‘cautious approach to restorative justice in sexual crime is no longer appropriate’ and that ‘the scene is now set for restorative justice in certain cases involving sexual violence in Ireland’ (Keenan, 2014:312). Restorative justice for serious offences has been shown to be highly effective in giving the victim or close members of the victim’s family the control they need to move forward (Restorative Justice Council, 2016b). Also in 2014, an evaluation was undertaken of Ireland’s only non-statutory youth restorative justice service, the Le Chéile Restorative Justice Project (Quigley et al., 2014). The evaluation reported highly positive experiences of engagement from young people with increased levels of empathy towards victims. It also highlighted the cost benefit of restorative justice, estimating that for every €1 invested in the project there was a social return of €2.80 (Quigley et al., 2014).

At a political level, there has been support for the development of restorative justice in Ireland. This is somewhat surprising given that criminal justice policy in Ireland has ‘more often than not been constructed with a lack of foresight, in a reactionary process, which is often concerned with dealing with moral panics and short term penal populism’ (Gavin, 2015:158). Despite this, in 2013 Senator Martin Conway tabled a motion on restorative justice in the Senate, which received cross-party support, with restorative justice being described as a win-win situation (Gavin, 2015). In the same year, John Halligan TD introduced the Restorative Justice (Reparation of Victims) Bill to the Dáil Éireann, although it was defeated on its second reading. In 2017 the Criminal Justice (Victims of Crime) Act was passed. Upon publication of the original bill, the Minister for Justice stated:

This landmark new bill seeks to put victims at the heart of the justice system [...]. The Bill will introduce, for the first time, statutory rights for victims of crime. It is time that the rights of victims are given full recognition in the criminal justice system [...] The Bill will also transpose into Irish law Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (Department of Justice and Equality, 2015).

The Act ensures that victims of crime will receive full and unbiased information about restorative justice schemes and the potential outcomes associated with participation in such schemes. They will also receive full and unbiased information about the procedures for supervising and implementing any agreement that may be reached through a restorative event. This is in line with Article 4(1j) of Directive 2012/29/EU, which ‘asserts that victims must be informed, on first contact with the Gardaí, of certain information, including restorative justice’ (McDonald, 2017:23). Following the enactment of the Act, the Irish Probation Service established a dedicated Restorative Justice and Victim Service Unit. This newly established unit provides leadership and support for the consistent and integrated provision of a range of restorative justice models delivered in accordance with best practice guidelines. It offers victim–offender mediation, family/restorative conferences, offender reparation panels and bespoke restorative justice. The unit also acts

as a central point of contact to ensure an effective response to requests and queries from victims of crime.

There is also a healthy interest being generated amongst academics and researchers in Ireland on the topic of restorative justice. For example, the Childhood Development Initiative has introduced a restorative element to its work, with the aim of developing a restorative community in Tallaght in south Dublin (Fives et al., 2013). Community Law and Mediation (formerly the Northside Community Law and Mediation Centre) devoted an entire edition of the *Irish Community Development Law Journal* to restorative justice and mediation in 2013. The recently established Restorative Practices Ireland has stated that its aim is to promote and support the use of restorative approaches 'spanning all sectors of the community in Ireland both locally, regionally and nationally through the development of strategies designed to embed these practices across society including schools, neighbourhoods and services in the context of a life cycle approach' (Restorative Practices Ireland, 2017). In March 2019 an event was held at Maynooth University entitled *Restorative justice: strategies for change*. The purpose of the event was to identify priorities and collaborators for developing restorative justice in Ireland and to glean attitudes, experiences and other information from stakeholders that will inform a long-term strategy for the development of restorative justice in Ireland. It was attended by more than one hundred people from a diverse range of backgrounds, including policing, probation, prisons, prosecution, youth justice, victim advocacy groups, restorative justice practitioners, academics, the judiciary and policy makers.

Despite this interest in restorative justice, some caveats must be noted. For example, despite Keenan's (2014) view that restorative justice should be allowed for in certain cases involving sexual violence, there seems to be a significant lack of awareness on the part of some members of the judiciary as to how restorative justice should operate. This was recently highlighted in the case of John Carvin, who sexually abused his brother's stepdaughter and who was convicted in 2015. He protested his innocence despite the verdict, and after the conviction the victim told the court that she wanted to waive anonymity to have Carvin named in the media. Judge McCartan said that he would not allow Carvin to be named, as he wanted to know if the victim would consider meeting with him in a restorative justice programme before sentencing. Until that point, Carvin had refused to admit guilt. However, when restorative justice was put on the table, and with it a potential non-custodial sentence, he accepted the guilty verdict. Two weeks later, the victim returned to court and said that she did not want to take part in the programme. The judge imposed a three-year suspended sentence on Carvin (Gallagher, 2016). This lack of understanding was referred to by McCarthy (2011), who noted that there is a gap in the knowledge of legal practitioners and other key players and stakeholders within the Irish criminal justice system on the topic of restorative justice. It should be noted that such actions are contrary to Article 12 of Directive 2012/29/EU, which provides for safeguards in the context of the use of restorative justice services. One of the main requirements is that 'the restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time' and if the 'offender has acknowledged the basic facts of the case.'

Although this case is likely to be the exception rather than the rule, it highlights the importance attached to training for the judiciary, for legal practitioners and for those who would facilitate restorative events. Currently there is no single body to ensure that restorative training is accredited in Ireland. A statutory agency could provide such accreditation to ensure that all restorative justice training satisfies a minimum standard, although this would require legislation. Otherwise, delivering restorative justice for sexual violence might simply be a case of running before we can walk. However, in light of the offences put forward by the National Crime Council (2007), and the National Commission on Restorative Justice's (2009) statement that offences that carry a sentence of up to three years should be considered for restorative justice, it would not be unreasonable to state that restorative justice should be incorporated into the development of any community court pilot model, in addition to being allowed to develop independently in Ireland. One such model that could be followed is that of the North Liverpool Community Justice Centre, which was visited by members of both the National Crime Council and the National Commission on Restorative Justice while researching their reports on community courts and restorative justice.

### **North Liverpool Community Justice Centre**

The North Liverpool Community Justice Centre was established in 2004 with the aim of bringing 'the criminal justice system and local citizens together to solve public safety concerns' (Berman and Mansky 2005:5). It was the first and most highly developed example of a community court in the UK, and it shared many attributes with the courts in Red Hook and Midtown. These included one sole judge to oversee the court, a focus on problem-solving justice, co-location of various criminal justice and non-statutory agencies, and the use of restorative justice where appropriate.

The key principles upon which the establishment of the Liverpool Community Justice Centre was based were to 'facilitate community engagement in the criminal justice system, to provide robust and speedy case management, to apply a problem-solving approach to each defendant and the outcome of his/her case and to develop collaborative working amongst the service providers' (National Crime Council, 2007:26). In relation to pleas, 'Defendants plead guilty or not guilty but those defendants who plead not guilty and are referred to the regular court for hearing, are referred back to the Community Justice Centre for sentencing' (National Crime Council, 2007:26).

The centre's objectives included reducing low-level offending and anti-social behaviour; reducing fear of crime and increasing public confidence in the criminal justice system; increasing compliance with community sentences; increasing victims' and witnesses' satisfaction with the criminal justice system; increasing the involvement of the community in the criminal justice system; and reducing the time from arrest to sentence (McKenna, 2007). Initial reports were limited but encouraging, noting that such a 'holistic, problem-solving, multi-agency approach can have a transformative effect' (McKenna, 2007:71). Victim and witness satisfaction were high due to speedier resolution of cases; members of the local community were also impressed with the aims of the centre, and felt that the approach taken would be useful in dealing with the root causes of crime in the area (Llewellyn-Thomas and Prior, 2007).

The record of the centre was highly contested. While supporters of the centre have noted that crime rates in north Liverpool had fallen by 7.2% from 2005 to 2010, a higher rate than elsewhere in Liverpool, sceptics have countered that these reductions do not prove that the community justice centre was any more successful than a traditional magistrates' court (Muir, 2014). One report highlighted that while the centre was a 'flagship development ... there is no consistent evidence that it works' (Mair and Millings, 2011:98-99). The BBC (2013a, 2013b) reported that due to cuts in funding, the North Liverpool Community Justice Centre was at risk of closure, and this was the end result in 2013. This may also be linked to a failure to sufficiently collect data that could be analysed and measured against targets.

The North Liverpool Community Justice Centre was a good example of the positive aspects of incorporating a restorative justice approach into a community setting. This was demonstrated through the multi-agency approach it took with the offenders that came into contact with it; for example, through pre-court meetings and the recognition of what services the agencies could provide to the offenders and the victims, all of which could be found in the court. The positive aspects of the multi-agency work found in the centre included the recognition of the people who provide specific services relevant to the needs of the parties concerned with a criminal offence. The multi-agency approach helped to maintain the purpose of restorative justice not only by ensuring that justice was seen to be done in the eyes of the victim and the community but also by ensuring the rehabilitation of the offender. This model of community justice demonstrates the potential for the development of restorative justice in the criminal justice system and its expansion with adult offenders and young offenders.

Although the North Liverpool Community Justice Centre is now closed due to funding restrictions, there is still a lot of scope for developing a restorative justice approach and expanding on this in the area of community courts, as the British government's current policy approach is to engage with the victim and the community. The research carried out on its efficacy highlights potential for growth, although due to a lack of quantifiable and comparative data, the positive aspects of the centre were difficult to assess. However, positive aspects of the centre were recognised by the community and offenders through the provision of restorative justice services and a multi-agency approach to problem-solving in relation to the community's needs. This perhaps represents the biggest warning for the Irish criminal justice system if it does move forward with community courts: learn from the mistakes of others. It should be noted that to get it right will take time. Despite all the planning that can be undertaken for any new venture, there is a settling-in period during which unforeseen problems arise, and these take time to be ironed out. It would, however, be highly short-sighted of the Department of Justice not to move forward with community courts simply because crime has not fallen by an expected percentage within a given period of time. A solid pilot programme should be in place for several years before any decision is made as to whether it should be expanded.

### **Incorporating restorative justice into community courts in Ireland**

If an Irish community court were to follow the model of the North Liverpool Community Justice Centre, it would involve the use of restorative justice in a community court setting for both adult and young offenders. It would ensure that the views of the victim and the

community are considered at the pre-sentence stage in order to aid the rehabilitation process. The example of the North Liverpool Community Justice Centre demonstrates that using restorative justice to solve problems incorporates the needs of all the parties, as distinct from being victim-led. This process could help to increase the use of restorative justice with adult offenders and help to reduce recidivism rates through the problem-solving approach. Furthermore, the use of a multi-agency approach, which has been shown to be effective in the community justice setting (Berry et al., 2011), is necessary to promote and engage the use of restorative justice (Restorative Justice Council, 2016b).

A community court based in a city centre (as per the National Crime Council's (2007) recommendation) would require this multi-agency approach. While the National Crime Council did not envisage various agencies being under the same roof, this is something that should be aimed for. An Garda Síochána, the Probation Service and non-statutory groups all provide restorative justice, and it would be remiss not to have all these bodies in the same building in order to provide the specific restorative justice programmes that they cater for. Furthermore, community groups, addiction treatment groups and training and education groups should also seek to be located in the premises, as this will ensure 'swift and effective service delivery' (Berman and Mansky 2005:8). Evaluation is of key importance for both the overall operation of the community courts and the use of restorative justice within the community courts. The traditional problem related to restorative justice – that of obtaining referrals (Shapland et al., 2004, 2006, 2007; Wigzell and Hough, 2015) – should be negated, as having the services in the same building could ensure that the presiding judge is able to refer to restorative justice where appropriate, fully aware that restorative justice officers and representatives may be in the court on a daily basis. This multi-agency approach could have a dramatic effect in terms of speeding up the justice process, as it would allow for very quick information-sharing between various agencies. Information-sharing has been highlighted as one of the main barriers to restorative justice delivery (Why Me? 2015). In many restorative justice projects, their ability to deliver effectively has been hampered by an inability to access victim or offender data (Olliver, 2016).

Given the characteristics referred to by the National Crime Council (2007), there is a strong argument for restorative justice to be incorporated into any community court model that is piloted. For example, a dedicated judge is considered to be vital in the community court setting (Ward, 2014). It could also be considered vital in a restorative justice setting, certainly when new ideas and schemes are being tested. A dedicated and informed judge who had a full understanding of how restorative justice should operate and proceed would not have suggested restorative justice for a perpetrator who had not acknowledged his guilt until the possibility of a non-custodial sentence arose, as occurred in the case of John Carvin described earlier in this paper. Restorative justice is not simply about acknowledging guilt – it is about accepting responsibility for the damage and hurt caused to the victim (Sherman and Strang, 2007; National Commission on Restorative Justice, 2009).

This is closely related to another characteristic that restorative justice and community courts share – that of pre-trial assessment and an early guilty plea. The pre-trial assessment can be useful in restorative justice, as it may identify issues which may form

part of a reparation contract. It is not uncommon, for example, for victims who participate in restorative justice to want the defendant to seek some form of treatment for addiction problems (Shapland et al., 2006). This links closely with the defendant pleading guilty and taking responsibility for their actions. The guilty plea must be more than a box-ticking exercise – it must be accompanied by remorse (Maxwell and Morris, 2002).

The idea of the defendant making restitution is a key tenet in restorative justice practice (Latimer et al., 2005). Direct forms of restitution to the victim may include an apology, an explanation, reassurance if possible, financial restitution and commitments to changes in the defendant's life. There is also the potential for participants to make restitution through community and voluntary work, which may be related to their offending (National Commission on Restorative Justice, 2009). This can be the case whether there is a direct victim or whether the victim is the community itself, and a representative of the community is acting as the victim. Therefore, in many situations restorative approaches are used which are designed to give back to the community. This then links in with the community having a role in the community court. The role of the community was also highlighted by the National Commission on Restorative Justice (2009), and it can be a vital tool in successful restorative justice schemes. Community restitution and reintegration can be key in restorative justice practices (Johnstone, 2002; Wilcox and Hoyle, 2004).

Community involvement in restorative justice can take a variety of forms during and after the restorative process. Members of the local community may sit on reparation panels, be a part of restorative justice conferences or take part in victim–offender mediation. In this role, 'they act as a neutral third party, steering the group towards reconciliation' (Rossner and Bruce, 2016:108). Members of the local community may also work alongside offenders as volunteers in restorative programmes after the restorative process has taken place (Wood, 2012). Rossner and Bruce (2016) have highlighted the importance of community involvement in the restorative process. They highlight the symbolic and historical significance of lay participation in the administration of justice. They claim, however, that the role 'is more than symbolic' (Rossner and Bruce, 2016:109). They state that 'Community members can improve the dynamics of the justice ritual' and the inclusion of members of the lay community 'adds legitimacy to the proceedings' (Rossner and Bruce, 2016:109).

O'Mahony and Doak (2006:12) have noted that the idea of the community being involved in restorative justice has an 'inherent appeal'. They argue that such involvement can provide major benefits for restorative justice, 'as community involvement can assist with local problem-solving efforts in terms of contributing to public safety and crime prevention. Community participation can provide a framework for the restoration of harm and reintegration of the offender, and it can add a sense of legitimacy to the outcomes/agreement that may result from restorative processes' (O'Mahony and Doak, 2006:12-13). They also highlight some of the caveats that are attached to community involvement in the restorative process, including the ambiguity that exists surrounding the community's role in the process and the risk that the community is not benign, tolerant and progressive, but rather is deficient in accountability, transparency and human rights (O'Mahony and Doak, 2006:13-19).

## **Conclusion**

This article has examined the development of community courts and the potential for their introduction into the Irish criminal justice system. It has also considered the development of restorative justice in Ireland. The main argument is that they do have a future in the Irish criminal justice system if handled correctly by the body politic.

Restorative justice has been developing quietly in Ireland for several years, and this development should be further nurtured and encouraged. Education on the topic is needed for the judiciary, practitioners and, essentially, the public. Efforts must be made to raise the profile of restorative justice amongst all the key stakeholders, such as An Garda Síochána and the judiciary. This could be done through an education strategy on restorative justice, which could inform stakeholders of restorative approaches, their benefits and the unique contribution of each stakeholder to the process. Education in restorative principles and practices are essential throughout the criminal justice system, as restorative justice can take many forms and can be instigated at various points in the criminal process. Lavin and Carroll (2014:248) have noted that restorative justice 'is not to the fore in public perceptions on crime and how it is dealt with. Many people in Ireland are unaware of restorative justice, its impact and what it has to offer'. Raising awareness of the positive benefits associated with restorative justice – amongst those working in the criminal justice system, the legal community and the general public – would seem to be of vital importance.

At the time of writing community courts have not yet been established in Dublin, but it is hoped that this will be rectified in 2019. As with restorative justice, raising awareness is of vital importance. Buy-in from the media and the public is essential to confer legitimacy on the process. Establishing community courts will, according to the Minister for Justice, require a considerable amount of preparatory work in collaboration with all stakeholders 'both within the justice sector and the wider community of agencies and groups whose active participation and buy in will be necessary – before the pilot project can be established successfully' (Response to written question 19361/15 from David Stanton TD on 26 May 2015).

While adhering to the principles of community courts outlined in this paper, it would be a wasted opportunity if restorative justice were not incorporated into whatever community court model is adopted. The development of restorative justice in Ireland shows that it has a strong future. If community courts are allowed to develop in the same fashion as restorative justice has done, by making slow and steady progress, they may also have a strong future in Ireland.

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