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## **A Review of the Research on Offender Supervision in the Republic of Ireland and Northern Ireland**

**Nicola Carr, Deirdre Healy, Louise Kennefick and Niamh Maguire\***

**Summary:** This paper reviews existing research on offender supervision in the Republic of Ireland and Northern Ireland. Three distinct areas are considered: practising offender supervision, experiencing supervision and decision-making in this sphere. The material presented draws on findings from a European-wide research action under the Cooperation in Science and Technology (COST) initiative. The review highlights some of the gaps in knowledge and the need to focus research attention in this area. This need is underlined by the expansion in probation's role, both North and South. In common with other countries there has been a growth in referrals to probation and in the numbers of people subject to supervision, whether on a community sentence or under post-custodial licence conditions. This review highlights some of the relevant factors including the increased emphasis placed on public protection and attempts to reduce the prison population. The circulation of people through systems and the experiences, processes and decision-making involved are all areas that we argue are worthy of further research attention.

**Keywords:** Offender supervision, experiencing supervision, practising supervision, decision-making and supervision, sentencing, probation, community sanctions, Ireland, Northern Ireland, COST, criminology.

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## **Context and background**

The practice of offender supervision is often overlooked by penology scholars, policy-makers and practitioners. To address this relative neglect, offender supervision is the subject of a Europe-wide research action under the Cooperation in Science and Technology (COST) initiative. The COST action, which commenced in March 2012 and runs for four years, involves a network of researchers from 20 European countries. The action comprises four working groups, of which the authors participate in the first three: practising supervision, experiencing supervision, decision-making and supervision, and European policy and practice. In the first year of the action each working group has been tasked with evaluating empirical research in the area, analysing the methodologies employed and determining areas that require further study.<sup>1</sup> The last of these is particularly pertinent due to the lack of data available in Ireland (North and South).

This paper provides a brief context of probation practice North and South before addressing the available research evidence from both jurisdictions in the areas of the practices and experiences of offender supervision and the context of decision-making in this expanding sphere. Our intention is to provide not a critique of practice but a brief overview of the findings gleaned from a review of research in both jurisdictions, to draw out some common themes and to identify potential avenues for future enquiry.

### **Context of probation, North and South**

Probation on the island of Ireland, while sharing common antecedents, operates under two separate administrative and legal jurisdictions. Traditionally the Republic of Ireland has had, and it continues to have, a strong orientation towards imprisonment: committals rose from 12,127 in 2001 to 17,026 in 2012.<sup>2</sup> However, since the 1980s, the use of non-custodial sanctions has expanded. The number of Probation Orders,

<sup>1</sup> Further information on the Offender Supervision in Europe COST Action (IS1106), which is chaired by Professor Fergus McNeill and Professor Kristel Beyens, is available at [www.offendersupervision.eu](http://www.offendersupervision.eu). This paper draws on material prepared by the respective authors for the COST Action Working Groups. The section on 'Practising offender supervision in Northern Ireland' draws on material from the UK Report co-written with Dr Gwen Robinson, while 'Experiencing offender supervision in the Republic of Ireland' draws on material from a more detailed report, both of which are available from the web address above.

Community Service Orders (CSOs) and Adjourment Supervision Orders peaked in 2006 at 8,651, levelling off to 6,994 by 2012 (Probation Service, Annual Reports 1998–2012). The development of community sanctions is due largely to increased efficiencies in the Probation Service (McNally, 2007) and recent legislative reforms. Overall, however, such alternatives have been under-utilised (Irish Penal Reform Trust, 2003; Healy and O'Donnell, 2005, 2010).

Similarly to the Republic of Ireland, the statutory responsibility for probation supervision in Northern Ireland is placed with one agency – the Probation Board for Northern Ireland (PBNI). Since the signing of the 'Good Friday Agreement' in 1998, there has been a process of 'normalisation' within the criminal justice system whereby attention has been increasingly refocused towards more everyday matters of crime and criminal justice.<sup>3</sup> Within this context a range of legislation has been introduced, leading to an expansion of the numbers of people coming under the remit of probation. PBNI prepares approximately 10,000 reports annually and supervises 4,000 offenders at any given time (PBNI Annual Report 2011–2012).

### **Practising offender supervision in the Republic of Ireland**

Notwithstanding a wealth of research in other jurisdictions highlighting the importance of the supervisory relationship in helping offenders to desist from crime (Rex, 1999; Trotter, 1996, 2000, 2006; Burnett, 2000; Farrall, 2002; Burnett and McNeill, 2005), we know very little about the roles, characteristics, recruitment or training of key actors who deliver offender supervision in Ireland. Few studies specifically examine the recruitment of Probation Officers or other probation staff. Information on the recruitment of Community Service Supervisors (CSSs) and Probation Officers can be gleaned from studies carried out by McGagh (2007) and Bracken (2010) respectively. While CSSs are not required to

<sup>2</sup> Irish Prison Service: [www.irishprisons.ie/index.php/information-centre/statistics](http://www.irishprisons.ie/index.php/information-centre/statistics) (accessed 30 July 2013).

<sup>3</sup> This is not to suggest a straightforward process. Indeed, matters concerning the criminal justice system and its constituent agencies have been among the most contentious areas of public policy in Northern Ireland in recent years. For example, the continued legacy of the past is played out in the attempts to reform the prison system (Owers *et al.*, 2011) and in debates over aspects of policing, most recently evident in the Policing Board's declaration of 'no confidence' in the PSNI's Historical Enquiries Team ([www.nipolicingboard.org.uk/news/article.htm?id=14330](http://www.nipolicingboard.org.uk/news/article.htm?id=14330), accessed 8 July 2013).

have a social work or indeed any degree qualification (most had trade or DIY skills), Probation Officers were predominantly recruited from the ranks of three third-level educational institutions, where they attained their Master's in Social Work degrees.<sup>4</sup> The contrast in training and qualifications is striking given that CSSs are ideally situated to engage in rehabilitative work with offenders and currently perceive this to be part of their work (McGagh, 2007).

Indeed, many CSSs recognised the importance of their relationships with offenders and indicated that they would welcome interpersonal skills training to enhance the supportive role they play (McGagh, 2007). The lack of training provision suggests that the Probation Service perceives CSOs as being primarily about 'community payback' rather than rehabilitation. This view is echoed in the motivation behind recent policy developments, which support the expansion in use of CSOs based on its relative cost-effectiveness when compared with prison. This may be a lost opportunity when we consider that research at the interface of desistance and probation practice shows that it is not just programmes that work, but also workers' skills and techniques (McNeill, 2003). As Burnett (2000, p. 15) writes, 'for influence to be exerted in interventions, good communication built on empathy and the establishment of trust are needed'.

Examination of training arrangements for Probation Officers has similarly received little attention. Two studies stand out in this regard: Richardson's (2008) study which examined the attitude of Dublin-based probation officers to the use of risk assessment tools and Fernée and Burke's (2010) research on diversity training in the Probation Service.<sup>5</sup> An interesting point to emerge from both studies is that respondents expressed a desire for more training (see also McGagh, 2007). Whereas in Richardson's (2008) study Probation Officers were critical of the training they received in the use of risk assessment tools, Fernée and Burke's (2010) respondents were satisfied with the delivery and content of the diversity training. A point of contrast between the studies is that while Richardson (2008) did not evaluate the training given to Probation Officers, Fernée and Burke (2010) did. The dearth of research on training within the Probation Service is surprising bearing in mind that it has a

<sup>4</sup> University College Cork (UCC), University College Dublin (UCD) and Trinity College Dublin (TCD).

<sup>5</sup> Richardson's (2008) study is also reported in Fitzgibbon *et al.* (2010).

dedicated Training and Development Unit. Fernée and Burke's (2010) study raises interesting questions about how the Probation Service interacts with offenders from ethnic minority backgrounds. The authors note the strikingly low number of offenders from ethnic minority backgrounds on probation. They question whether this is due to lower levels of criminality among ethnic minority communities or to a possible misunderstanding on the part of the judiciary about the Probation Service's capacity to supervise ethnic minority offenders effectively.

Few studies focus specifically on the delivery, practice and performance of offender supervision. One exception, Wilson's (2004) research, examined both the experience of life-sentenced prisoners on supervised temporary release and the experiences of the Probation Officers who supervised them. Other studies that have provided important insights into offender supervision in Ireland include Healy's (2012a) analysis of Probation Officers' reports and probationers' experiences of probation, Bracken's (2010) study on risk assessment and Seymour's (2004) study of the impact of homelessness on offender supervision. Two important themes emerge from these studies. Firstly, probation practice is oriented towards welfare rather than surveillance (Wilson, 2004; Seymour, 2004; Healy, 2012a), and secondly, Probation Officers (Seymour, 2004; Healy, 2012a) prioritised the need to help offenders address their social and personal problems.

The role of tools and technologies in the delivery of offender supervision has received more research attention than any other issue in probation practice to date. This no doubt reflects a degree of consternation surrounding the introduction of risk assessment tools in 2004. The first risk assessment tool to be introduced in Ireland was the Level of Service Inventory-Revised (LSI-R), which was intended to inform the sentence recommendation as well as the supervision plan (Richardson, 2008). A number of studies (Richardson, 2008; Bracken, 2010) explore the extent to which the introduction of risk assessment tools has led to the prioritisation of risk. The findings are encouraging insofar as they illustrate a degree of resilience on the part of Irish Probation Officers in terms of negotiating the tension between clinical and actuarial assessment and ultimately erring on the side of professional judgement. However, these studies rely primarily on the attitudes and views of Probation Officers. No attempt is made to verify these views and attitudes independently by examining actual practice or by comparing clinical and actuarial risk assessments. Examples of more methodologic-

ally innovative and robust studies can be found in O'Dwyer's (2008) study on risk assessment of sex offenders and O'Leary and Halton's (2009) study evaluating inter-rater reliability in Probation Officers' use of risk assessment tools for young persons.

A number of publications address the issue of the management, supervision and regulation of probation practice, but few are based on empirical studies. While some studies highlight aspects of management practice such as the lack of quality control and adequate training in relation to risk assessment tools (Richardson, 2008; Bracken, 2010), O'Connell's (2006) study appears to be the only empirically based examination of the practice of professional staff supervision in the Probation Service to focus on the perception of professional supervision among Probation Officers. The majority of participants believed that supervision benefited them and the organisation, increased accountability levels, assisted with professional development and benefited their clients. Some participants had experienced very little effective supervision and others expressed negative views about supervision. One of the most striking findings was the lack of policy on supervision, as well as the lack of knowledge about policy on supervision. Overall the findings suggest that while supervision does happen, there is no training, consistency or standardisation in supervision methods within the Probation Service (O'Connell, 2006).

With the exception of Phillips's (2002) and Hollway *et al.*'s (2007) work, little research attention has been paid to the various rehabilitative programmes run by or on behalf of the Probation Service (Healy, 2009). Similarly, the role of the 'third sector' in offender supervision in Ireland is almost invisible. Apart from court-ordered supervisory sanctions, such as probation, CSOs and deferment of sentence orders, offenders are supervised in programmes delivered by a range of community, religious and voluntary organisations that are part-funded by the Probation Service. As yet, few studies have explored the backgrounds, qualifications or recruitment and training of those engaged in offender supervision in these projects (although see Petrus Consulting, 2008). Exceptions include an evaluation of the work of the Bedford Row Family Project (2007).

### **Practising offender supervision in Northern Ireland**

Similarly to the Republic of Ireland, there has been relatively limited empirical research on the practices or experiences of offender supervision

in Northern Ireland. The relative neglect of probation work in this jurisdiction is made starker by the fact that other areas of the criminal justice system have garnered considerable research attention. Under the broad theme of *transitional justice* a range of literature has explored the processes of transition of the criminal justice system and its constituent agencies to a post-conflict dispensation (McEvoy and Newburn, 2003). Here the focus has been on policing, prisons and imprisonment and community-based restorative justice (see for example Ellison and Smyth, 2000; McEvoy, 2001; Mulcahy, 2006; Moore and Scraton, 2009; Eriksson, 2009). However, perspectives on probation's role and work both during the political conflict and in the current era are notably lacking.

Exceptions to this overall trend include a historical account of probation in Northern Ireland published to mark the centenary of the Probation Act 1907 (Fulton and Parkhill, 2009). Also O'Mahony and Chapman's (2007) overview of the interrelationship between probation, community and the State points to the tensions inherent in probation work during the 'Troubles'. Carr and Maruna's (2012) ongoing oral-history project explores some of these tensions and the adoption of a 'neutrality' stance by probation, which, remarkably, enabled it to continue to work in communities that became off-limits for other criminal justice agencies. This study is based on interviews with probation staff who worked in the service between 1960 and the present, and explores the question of 'negotiated legitimacy'.

Other areas of practice that have been investigated include partnership-based working (Kremer, 2004; Murphy and Sweet, 2004), practice innovations (McCourt, 2005; Bailie, 2006; O'Neill, 2011) and offending behaviour programmes (Shevlin *et al.*, 2005; Jordan and O'Hare, 2007; McClinton, 2009). It is evident that in Northern Ireland there has been a shift from a long-standing emphasis on bespoke group-work programmes addressing specific aspects of offending – e.g. car crime (Muldoon and Devine, 2004) or sectarianism (Lindsay and Quinn, 2001) – towards the implementation of evidence-based programmes. This has undoubtedly been influenced by the wider 'effective practice' agenda (Chapman and Hough, 1998), which was particularly prominent in England and Wales in the 1990s. Broadly speaking, 'effective' or 'evidence-based' practice draws on research findings which suggest that particular approaches (predominantly cognitive behavioural) targeted towards risks of reoffending and delivered in certain conditions show



increased effectiveness (Lipsey *et al.*, 2007). While service delivery in Northern Ireland has clearly been influenced by these approaches, they have never been adopted in the same wholesale manner as in England and Wales.

Reports on the implementation of a range of programmes are provided by Shevlin *et al.* (2005), Jordan and O'Hare (2007) and McClinton (2009). Shevlin *et al.* (2005) report psychometric test results for men who successfully completed a domestic violence programme, while Jordan and O'Hare (2007) provide an account of a pilot implementation of the Cognitive Self-Change Programme introduced in Maghaberry prison in 2005. Participants began the programme in prison and continued as they transitioned to the community. Issues with programme attrition, particularly given the intensity of the requirements, are noted by the authors and are consistent with findings from research in other jurisdictions (Mair, 2004).

The introduction of assessment tools to measure risk of reoffending and risk of harm was prompted by changes to the legislative mandate of probation and the development of managerial frameworks within the service (Best, 2007). The Criminal Justice Act (NI) 1996 emphasised probation's public protection role alongside the more traditional rehabilitative ethos. Subsequent legislation, in particular the Criminal Justice (NI) Order, 2008, which introduced a range of public protection sentences (indeterminate and extended custodial sentences), has further accentuated probation's role in assessing risk of harm at the pre-sentence and parole application stages. The Assessment, Case Management and Evaluation (ACE) tool is a generic assessment tool and is supplemented by specialist tools based on the nature of the offences and initial assessed level of risk (Best, 2007)

The development of a specialist service for women subject to probation supervision has also garnered attention. The Inspire project based in central Belfast was established on a pilot basis following the publication of the *Draft Strategy for the Management of Female Offenders* (NIO, 2009).<sup>6</sup> As in other countries, women are a minority group in the criminal justice system: in Northern Ireland in 2006 they accounted for approximately 13% of all court appearances and 3% of prisoners (Easton and Matthews,

<sup>6</sup> The Draft Strategy was followed in 2010 by *Women's Offending Behaviour in Northern Ireland: A Strategy to Manage Women Offenders and Those Vulnerable to Offending Behaviour 2010–2013*, Belfast: Department of Justice.

2011). Recognising the specific needs of women in the criminal justice system, including their differential pathways towards offending and experiences of multiple disadvantage, Inspire aims to provide specialist assessments and link women with wider community resources (Baillie, 2006; O'Neill, 2011). A government-commissioned independent evaluation of the project reported positively on levels of engagement with women and attested to improvements in attitudes to offending and self-esteem (Easton and Matthews, 2011).

The question of the effectiveness of probation interventions has been explored in comparative analyses of reconviction data of offenders sentenced to prison and community sentences. Reconviction data are collected from the PSNI's Integrated Crime Information Service and analysed by the Northern Ireland Statistics and Research Agency (NISRA). These data have consistently demonstrated a significantly lower reconviction rate for offenders sentenced to community penalties compared to those sentenced to prison (Cooper, 2005). Data on people convicted of offences in 2002 showed that 36% of those subject to a community sentence were reconvicted within a two-year period, compared to 47% of those sentenced to custody (Ruddy and McMullan, 2007). Also, those made subject to a Custody Probation Order (requiring a period of post-custodial supervision) had a lower reconviction rate than those subject to custody only (36% compared to 51%) (Cooper, 2007). Further analysis of these data, in line with desistance maturation theories (Laub and Sampson, 2001), demonstrates that overall conviction rates reduce with age (Cooper, 2007).

### **Experiencing offender supervision in the Republic of Ireland**

The majority of people on probation express high levels of satisfaction with the supervision experience. A recent customer satisfaction survey conducted by the Probation Service (2011) revealed that around 80% were satisfied with the quality of the service. Healy's (2012a) in-depth study of attitudes to supervision found that probationers valued the practical assistance they received from their probation officers in the areas of employment, addiction and housing. Probationers who were currently offending were less positive, as were probationers who perceived supervision to be oriented towards surveillance rather 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). In a follow-up study conducted four years after the initial interviews, Healy (2012b) noted that probationers largely retained their favourable attitudes to supervision. In particular, they positively recalled being provided with opportunities to exercise agency, participate in strong therapeutic relationships, and engage in meaningful rehabilitation programmes. Just 27% were reimprisoned by the end of the follow-up period.

The popularity of the welfare model has waned in many Anglophone countries, where it has been superseded by a more punitive, risk-centred approach (Feeley and Simon, 1992). Although these trends are less evident in Ireland, there are signs that similar philosophies and practices are beginning to infiltrate probation work (see Bracken, 2010; Healy, 2012b). This is of concern since probationers do not appear to respond well to the new model. In England, where probation supervision consists primarily of monitoring and enforcement activities, Shapland *et al.* (2012) found that few probationers regarded their supervising officers as potential sources of assistance with personal problems, and almost half stated that they did not find the supervision experience helpful in any way.

Probationers' experiences with partner agencies are even less encouraging. Seymour and Costello (2005) found that many homeless offenders preferred to sleep rough rather than stay in hostels, which they described as having poor living conditions, overly strict rules and widespread drug use. Clients of methadone maintenance programmes have also expressed dissatisfaction with treatment services due to their perception that staff were unsupportive (Long, 2004). Despite claiming that methadone maintenance is critical for desistance, many long-term methadone users feel that they are unable to move on with their lives until their treatment ends (Healy, 2012b).

In general, reconviction rates among people under probation supervision are relatively low but tend not to differ significantly from prisoner reconviction rates once other factors are controlled (e.g. Kershaw *et al.*, 1999). Until recently, little was known about reoffending rates among Irish probationers. The Probation Service (2012a) recently published information about national reconviction rates for the first time. Of the 3,576 individuals who served either a Probation Order or a CSO in 2007, 37% were reconvicted within two years of sentencing. Reconviction rates were lowest among offenders who were older, female or under supervision for drugs or road traffic offences. Offenders on

probation (39.3%) had a higher rate of reconviction than offenders on CSOs (33.5%). Equivalent figures have not been published for the prison population, so it is not possible to directly compare outcomes across sentences. International evidence shows that probationers typically display high levels of compliance with their orders, along with significant reductions in criminal attitudes and personal difficulties (Rex *et al.*, 2003). In addition, offenders on community sanctions generally report more positive attitudes to the criminal justice system than prisoners (Killias *et al.*, 2000).

Although it is well established that desistance is facilitated by high-quality social bonds in work, family and community life, people under probation supervision often possess limited social resources (Laub and Sampson, 2003; Healy, 2012a). For example, the typical person on community service is 'a young, single male who is unemployed (or under-employed) with poor educational qualifications and vocational skills and is living in the parental home' (Walsh and Sexton, 1999, p. 97). In addition, Seymour and Costello (2005) reported that 9% of around 400 individuals referred to the Probation Service over a six-week period in 2003 were homeless. A Probation Service (2012b) survey of 2,963 adult probation case files revealed that 89% of probationers were classed by their supervising officers as engaging in problematic substance use. Given their social work qualifications, Probation Officers may be best placed to assist putative desisters with such problems (Healy, 2012b; Shapland *et al.*, 2012). Effective probation practice may ease the transition to a non-criminal lifestyle by helping probationers to resolve personal problems and overcome barriers to change (Healy, 2012a; see Farrall (2002) for similar findings in England and Wales).

While the work of the Probation Service can support the change process, it is important to remember that desistance also requires the (re)integration of ex-offenders into social and community life (Healy, 2012b). Surveys suggest that 60% of the Irish population would not like to live next door to an offender (Halman, 2001), indicating that putative desisters may not always be received positively by their communities. Since social recognition of a desistance attempt is believed to promote long-term change, stigmatisation and a negative social reaction may impede desistance (Maruna and Roy, 2007).

In addition, 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, although one survey found that just half of a non-random sample of 200 Irish employers would be willing to employ an ex-offender, and then only in low-level positions (Lawlor and McDonald, 2001). This finding is particularly worrying because the study was conducted at a time of economic prosperity in Ireland. In the economic recession the unemployment rate has risen rapidly, and it is likely that ex-offenders are experiencing even greater difficulties in finding work (see Healy, 2012b). On a more positive note, employers appear willing to consider employing ex-offenders when appropriate supports are provided by criminal justice agencies (Lawlor and McDonald, 2001). This suggests that there may be scope for increasing the levels of cooperation between employers, ex-offenders and criminal justice agencies.

Furthermore, the majority of probationers describe having satisfactory relationships with their families and children (Healy, 2012a). This is an important finding since strong family bonds are known to aid desistance from crime (Farrall, 2002). Evidence shows that imprisonment has a detrimental effect on the parent-child relationship as well as on family finances, behaviour and emotional wellbeing (King, 2002). 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.

### **Experiencing offender supervision in Northern Ireland**

Consistent with many jurisdictions, there is limited research on the *experiences* of offender supervision in Northern Ireland. Findings from a survey conducted by an independent consultancy (Rooke, 2005) showed that a high number of those surveyed (92%) were satisfied with the level of contact with their Probation Officer and the services provided by a range of specialist community-based organisations (76%). In line with findings from research on desistance and Trotter's (2006) work on engagement with 'involuntary' service users, the survey identified some important characteristics of supervising officers – e.g. 'being a good listener' and being 'reliable'. Interestingly, respondents to this survey noted that 'few users identified Probation interventions as the main influences on their likelihood to reoffend' (Rooke, 2005, p. 99). Family and the 'fear of prison' were cited as more important factors.

The PBNI carried out a further service user survey in 2009. A random sample of 193 people currently subject to probation supervision, selected from a total population of approximately 2,500, was interviewed (Doran *et al.*, 2010). The research replicated the previous survey in order to enable comparisons. Overall the findings reflect positively on the perceived quality of offender supervision. However, those who experienced a change in their supervising officer reported negatively on the experience, again suggesting the importance of relationship-based practice (Doran *et al.*, 2010).

Jordan and O'Hare's (2007) account of the pilot implementation of an offending behaviour programme notes difficulties with attrition, particularly in the community setting, attributable partly to the intensive nature of the programme. Critically, these authors also note the difficulties experienced by participants in implementing behavioural change in unchanged structural contexts.

As part of the evaluation of the pilot of the Inspire project, Easton and Matthews (2011) conducted 37 in-depth interviews with women who had been subject to probation supervision.<sup>7</sup> Consistent with international literature, the women on this project had life-time experiences of a range of mental health difficulties and problematic substance misuse. They had also experienced significant trauma in their lives, including childhood abuse and intimate partner violence (Carlen, 2002; Chesney-Lind and Pasko, 2004; Celinska and Siegal, 2010; Barry and McIvor, 2010; van Wormer, 2010). The tailored service was found to be appropriate to their needs, and the women in the main reported positively on the experience of service provision. Women also reported positive changes in attitudes to offending and improvements in self-esteem; however, the evaluation noted the need for further longitudinal research to explore the impact and effectiveness of the service over time.

The paucity of research on experiences of offender supervision is not unique to Ireland (North and South). However, given that probation services on the island have resisted some of the more punitive currents evident in other jurisdictions, this presents something of a missed opportunity since the retention of social work as the core qualification for Probation Officers reflects an ethos that is congruent with some of the

<sup>7</sup> A total of 309 women had been referred to the project in the period 27 October 2008 to 31 July 2010 (Easton and Matthews, 2011, p. 18).

findings from desistance-based research (Doran and Cooper, 2008; McNeill and Weaver, 2010).

## **Decision making and offender supervision in the Republic of Ireland**

Little attention has been paid to offender supervision in the context of decision-making processes at the sentencing and release stages of the criminal justice system. In its absence, it is useful to draw on studies that examine the operation of CSOs more generally, and those that examine judicial decision-making. Judicial sentencing practices are largely discretionary and widely inconsistent, particularly in the case of District Court judges (Hamilton, 2005; Maguire, 2010). Unsurprisingly, this approach also applies to the imposition of CSOs: for example, Walsh and Sexton (1999) reported a marked lack of consistency of approach across District Courts in their national survey.

Walsh and Sexton's report is the most extensive empirical study conducted on the operation of CSOs. One objective was to provide comprehensive data on the factors influencing the decision to impose a CSO, in addition to assessing the factors and procedure applicable to the court's decision-making. Though it is a valuable study, the factors influencing judicial decisions were not explored significantly. The most relevant finding for present purposes was that the decision by judges whether to impose a CSO was dealt with in a matter of minutes.

In 2003 the Irish Penal Reform Trust commissioned a study to identify how judges use sentencing options (IPRT, 2003). It revealed a lack of consistency in sentencing, which some solicitors admitted gave rise to 'judge-shopping' on behalf of clients. This research also found that the judges rarely provided an explanation for their decision, and when they did, they seldom made explicit connections between sentences and rationales. When rationales were presented no coherent policy was identifiable, leading the researchers to conclude that District Court judges do not share a common understanding of the purpose of imprisonment. Similar findings emerged from Maguire's (2008, 2010) research on levels of punitiveness and consistency in judicial sentencing practices. While high levels of inconsistency were found, Maguire (2010) noted that judges shared certain approaches when it came to sentencing drug-addicted and persistent offenders. While judges were willing to give the former a chance to rehabilitate, they took a retributive approach to persistent offenders

who in their opinion deserved imprisonment. The study also revealed considerable disagreement among District Court judges regarding the circumstances in which non-custodial penalties, including CSOs, should be imposed.

Healy and O'Donnell's (2010) empirical analysis, though geographically limited, provides insight into judicial decision-making at District Court level, where most decisions regarding CSOs are made. The study revealed the following factors as influential in the decision-making process – previous convictions, presence of intent and seriousness of the crime, together with the quality of the evidence. Furthermore, there was some evidence to suggest the influence of factors such as age, gender and perceived level of 'respectability' on judicial decision-making.

In terms of punishment rationales, the researchers found that rehabilitation and individual deterrence were predominant among the judges. Furthermore, there was evidence that the judges made full use of their discretion in order to impose disposals that aligned with their individualised theories of sentencing. Notwithstanding the prominence of the rehabilitative model, the study found that judges rarely imposed community-based supervision sentences. The researchers suggest several potential reasons for this, including: lack of faith in the utility of probation; the inappropriate nature of intensive intervention for minor or first-time offenders; lack of availability of suitable programmes at local level; or the idea that meaningful change cannot be imposed on an individual, but must come from within.

Under the Criminal Justice (Community Service) (Amendment) Act 2011, the decision of the judiciary in imposing a CSO must be informed by pre-trial assessment reports by the Probation Service, and for the most part, judges act on the basis of such reports (Walsh and Sexton, 1999). There is no format prescribed by legislation for a pre-sanction report, which gives a degree of discretion to the Probation Officer. This leads to a consideration of not just how decisions are made, but how professionals interact with one another in the delivery of offender supervision. Though there is a palpable lack of research in this area, the issue has arisen incidentally in a number of research studies.

Walsh and Sexton's research suggested that the styles of community service reports differed depending on the geographical location and the directions of the judge for whom the report was written. Probation Officers explained that some judges only wanted to know about the



suitability of the offender for a CSO and were not interested in detailed backgrounds. Although this study was on a very small scale, it suggests that interactions between the Probation Officers and members of the judiciary may have more influence on sentencing outcomes than previously considered. This is further demonstrated by Maguire's (2008, 2010) study, wherein District Court judges stated that they would seek guidance on sentencing from Probation Officers in the form of probation reports sooner than from case law.

In Seymour's (2005) study, it emerged that interagency cooperation, or the lack thereof, was a serious challenge faced by Probation Officers when working with homeless offenders. Bracken's (2010) study echoed these findings in more general terms, noting that Probation Officers experienced difficulties in getting accurate information from other key statutory agencies in a timely fashion, which meant that when carrying out risk assessments they often had to rely on information obtained from self-reports. Similarly, it emerged from McGagh's (2007) study that the relationship between Probation Officers and Community Service Supervisors could be improved, with the latter feeling that they should be accorded more respect and have more regular interaction with Probation Officers.

In the context of decision-making and interactions at the release stage of the criminal justice system, most recent developments have come in the form of legislative measures. Given the novelty of the measures, it is not surprising that little empirical research exists as to their impact. The key developments include a Restriction on Movement Order as an alternative to imprisonment, where a person is convicted of certain offences (mainly public order and assault offences) and is sentenced to imprisonment for three months or more. The order comes into force after the convicted person has served a custodial sentence, and compliance may be electronically monitored.<sup>8</sup> Furthermore, the court has the power to make a Monitoring Order or Protection of Persons Order while passing sentence on an offender convicted on indictment, which takes effect after release from prison.<sup>9</sup>

The post-imprisonment nature of Restriction on Movement Orders and Monitoring Orders suggests a risk management and crime control

<sup>8</sup> Criminal Justice Act 2006, s.101.

<sup>9</sup> Criminal Justice Act 2007, s.26.

ethos to offender supervision.<sup>10</sup> Further research is required into the decision-making processes underlying the operation of such orders in practice, particularly given their discretionary nature. Further research is also required into the decision-making processes surrounding the practice of electronic monitoring. Section 112 allows for such monitoring of offenders on either temporary release or release, and may be arranged by the Minister for Justice. No additional information is provided on the considerations to be taken into account. In addition, as Murphy (2008) points out, the section envisages the process being operated by the private sector, which would have implications for access to decision-making processes in this regard.

In addition to legislative developments, areas that warrant further research are the Drug Treatment Court Programme and the Community Return Scheme, the latter having never been the subject of empirical analysis.<sup>11</sup> The Community Return Scheme is an incentivised release programme allowing for the temporary release of prisoners serving between one and eight years in return for work on community service projects. This scheme, a joint initiative between the Prison and Probation Services, was introduced in response to a rise in prison numbers and followed from a recommendation made by a departmental review group (Department of Justice and Equality, 2011). The Probation Service's role in this programme is critical, assessing the suitability of eligible prisoners for release, including their potential risk and supervision and oversight of the community service placements.

## **Decision making and offender supervision in Northern Ireland**

Empirical research on *decision-making* pertaining to offender supervision is limited in Northern Ireland. However, some relevant insights into this area can be gleaned from PBNI's (2011a) *Best Practice Framework Incorporating Northern Ireland Standards*, which sets out key elements of practice and decision-making. These standards outline the parameters of

<sup>10</sup> For example, section 101(2) of the 2006 Act provides that an order may restrict the offender's movements to such extent as the court thinks fit, and goes on to include suggested conditions.

<sup>11</sup> The Drug Treatment Court programme has been the subject of two extensive reviews: one by the Court Service in 2002 (Farrell Grant Sparks Consulting, 2002), and the other by the Department of Justice, Equality and Law Reform in 2010. The latter study, in particular, calls for further analysis of the workings of the court in the present context.

probation roles and interfaces with other agencies including the Prosecution Service, courts and Parole Commissioners.

Recent legislative changes in Northern Ireland have expanded the role of probation within the criminal justice system. The Criminal Justice (NI) Order 2008 introduced provisions allowing for electronic monitoring of offenders and ‘public protection’ sentences, whereby extended or indeterminate custodial sentences can be imposed following a determination of ‘dangerousness’ by the court. In both cases the assessments provided by probation play an important role in the court’s decision making. In a further significant development, under the provisions of the Justice (NI) Act 2011, probation has been given a role at the pre-trial stage in assisting the Public Prosecution Service (PPS) to determine whether a conditional caution should be given and what conditions should attach. Under Article 78 of this legislation, PBNI may have a role in supervising and rehabilitating persons subject to conditional cautions. Tackling unnecessary delay within the criminal justice process has formed part of the impetus for the introduction of these diversionary measures, but as yet there is no publicly available research on their impact or effect.

The traditional role of the Probation Officer in providing assessments to the court at pre-sentence stage and prior to custodial release is critical in informing the decision-making processes of the relevant bodies. In line with the increased emphasis on public protection, greater attention has been placed on the evidence base informing assessments, particularly in relation to risk of serious harm (Criminal Justice Inspection Northern Ireland (CJINI), 2011; PBNI, 2011a; Fulton and Carr, 2013).

The ACE assessment tool provides a structured method to assess criminogenic needs and encompasses three domains: offending, personal and social. The standardised tool originally devised by Oxford University and Warwickshire Probation Service has been adapted for use in Northern Ireland (Best, 2007). Further assessment tools are used to assess risk of serious harm and, where relevant in the context of the Public Protection Arrangements for Northern Ireland (PPANI), are used across disciplines.

Alongside the use of structured assessment tools, the PBNI standards (2011a) provide clear guidance on the structure, format and expected content of a pre-sentence report (PSR). The main areas that the report should address include: relevant information on the offender’s background; an analysis of the offence(s) before the court and any patterns of previous offending; an assessment of the likelihood of reoffending and an

assessment of the risk of serious harm. PBNI (2011a) states that the conclusion of the PSR should be informed by assessed risk of reoffending and risk of serious harm, and where appropriate should set out a plan of intervention to address these areas.

There has been no published empirical research on the interface between sentencers and probation and the contribution that PSRs make to the sentencing process. The CJINI inspection commented positively on the overall quality of reports, but noted the increase in volume of reports requested by the courts and the 'widening net of PSR users' (CJINI, 2011, p. 9).

The sentencer surveys exploring perceptions of the utility of PSRs have pointed towards their important role in informing the sentencing decision-making process (CJINI, 2011; PBNI, 2011b). In 2010 65% of sentencers surveyed found PSRs of 'overall value of reaching a sentencing decision'; 83% were satisfied with the analysis of offender risk of reoffending and 62% with the analysis of the offender's risk to the public.<sup>12</sup> Noting the findings of this survey, the Criminal Justice Inspectorate (2011, p. 15) recommended that PBNI 'should survey other users of Pre-Sentence Reports in conjunction with the Sentencer survey'. In addition to their contribution at the pre-sentence stage, it is important to note that PSRs are used as baseline assessments to inform sentence plans, to measure subsequent progress and to inform post-custodial licence conditions (CJINI, 2011).

Enforcement of community sentences and licence conditions is a further important decision-making interface that has not been subject to research. The PBNI (2011a) practice standards note: 'A core element of PBNI's organisational purpose is to ensure offender compliance with the sentence of the court and to ensure the integrity of the Order or Licence' (Section 5.3). The standards set out a system of 'graduated sanctions' in relation to non-compliance. The types of action that can be taken by the supervising officer include: issuing a warning; making an application to insert additional requirements or conditions; increasing the level of contact; or initiating a breach or recall request. The importance of this element of decision-making is brought into sharper focus by the fact that the recent review of the prison system highlighted an increase in recalls to prison and the attendant impact on the custodial population as an area of concern (Owers *et al.*, 2011).

<sup>12</sup> This is based on the views of 19 respondents (a 38% response rate).

## **Conclusion**

This overview of research in the area of offender supervision in the Republic of Ireland and Northern Ireland provides a map of the territory of research in this area in recent years. Both jurisdictions, albeit for different reasons, have seen stagnation in criminal justice and penal policy. In this context probation has often been overlooked, and this is reflected by the comparative dearth of research in this area. This journal has provided a forum for the dissemination of information on practice developments in both the Republic of Ireland and Northern Ireland. Often accounts of practice provide rich detail on the context and practice of offender supervision that would not otherwise be publicly available. The range of contributions could be considered a 'shop-front' for probation practice that elsewhere has been frequently critiqued for not providing a fuller public account of its work (Maruna and King, 2008). While expositions of practice are important, many of the contributions on offender supervision tend towards descriptive accounts of practice rather than empirically based research.

The need for further empirical research is underlined by the expansion in probation's role, both North and South. In common with other countries there has been a growth in referrals to probation and in the numbers of people subject to supervision, whether as a result of a community-based penalty or under post-custodial licence conditions. This review has highlighted some of the varying impulses at play here, including the increased emphasis on public protection and attempts to reduce the prison population. The circulation of people through systems and the experiences, processes and decision-making involved are all areas that are worthy of further research attention.

The foregrounding of risk assessment and management follows similar trends in other jurisdictions. It is important to note, however, that probation in both the Republic of Ireland and Northern Ireland has to date resisted some of the more punitive trends seen further afield. For example, the same emphasis has not been placed on managerial approaches. Furthermore, probation remains grounded in a social-work orientation. This adds support to the case that the unique contours of these terrains deserve further exposition.

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