

## **Restorative justice in Ireland (up to date until March 2008)**

### **1. Introduction**

Restorative justice in Ireland exists on a statutory basis for juveniles. The Children Act 2001 provides the statutory base. One programme, embedded in the Garda Diversion Programme, is operated by An Garda Síochána (the national police force). It provides for restorative cautioning and conferencing. A second programme provides for family conferencing for court-referred cases involving the Probation Service.

Two pilot programmes, which are financed by the Department of Justice, Equality and Law Reform through the Probation Service, also provide for the application of restorative justice measures in cases of adult crime in Nenagh, Co. Tipperary and in Tallaght, Co. Dublin. The Nenagh pilot operates in a provincial, rural, District Court area. The Tallaght pilot, while based in a suburban setting, has been made available to other District Court areas in and around Dublin. These pilot programmes have no statutory basis.

Restorative practices, in a school setting, are also operated in some areas, including a small number of post-primary schools in the North West of Ireland, under the auspices of Donegal Vocational Education Committee.

In March 2007, the Minister for Justice, Equality and Law Reform established a National Commission for Restorative Justice, to consider the concept of restorative justice with regard to persons brought before the courts on criminal charges and to make recommendations as to its potential wider application in Ireland.

In making its recommendations to the Minister, the Commission will examine, *inter alia*, existing models of restorative justice, review contemporary developments in restorative justice in other jurisdictions, review research-based evidence and evaluation as to the effects of different restorative justice models and consider whether restorative justice models should be further developed in Ireland.

The Commission is expected to report to the Minister in the first half of 2009.

### **2. Legal base**

#### **2.1. Juvenile offenders**

The *Garda Diversion Programme* for juvenile offenders was originally established in 1963 and was put on a statutory basis by the Children Act, 2001. It is the most significant diversionary strategy for juveniles in conflict with the law and its objective is to divert young people from committing further offences.

In order to be accepted into the Programme, the offender must be under 18 years of age, accept responsibility for the behaviour concerned and consent to being cautioned and supervised, if appropriate. The juvenile is not brought before the courts and the matter is dealt with by way of informal or formal caution.

The Diversion Programme is used for all types of offences including robbery, assaults, possession of drugs, road traffic offences and sexual assaults, as well as offences of a less serious nature, such as under-age drinking and minor thefts.

The Programme uses a package of interventions designed to challenge juveniles' offending behaviour and measure their understanding of the consequences of the behaviour on their own lives, on the lives of those affected by the behaviour and on the community. It does so by engaging the support of the offender's family and the extended community, through schools and youth programmes, and by engaging any other appropriate intervention or assistance that may be beneficial.

In 2006, of 20,016 children accused of committing offences:

- 76% (15,129) received a caution for their behaviour
- 14% (2,828) were considered not suitable for inclusion in the programme and were recommended to be considered for prosecution

- 6% (1,280) required no further action.
- 4% (779) were awaiting a decision.

Of the cases pursued under the programme in 2006, 307 were restorative events, 293 of which were restorative cautions and 14 of which were restorative conferences. By the end of 2007 it is anticipated that the Garda Diversion Programme will have facilitated over 1,000 restorative events.

The Children Act 2001 also provides for family conferencing at the court stage, prior to sentencing. The Court may direct the Probation Service to arrange a family conference, in which case the court hearing is adjourned for 28 days to allow the conference take place. The Court can approve or amend any action plan agreed and order compliance. Where no plan is agreed, the Court may formulate one or resume prosecution proceedings. Where the Court is satisfied with compliance, it can dismiss the charge. Where it is dissatisfied, it may resume proceedings. A total of 133 conferences took place between the commencement of the programme in August 2004 to the end of 2007.

## **2.2. Adult offenders**

There is no corresponding statutory basis for restorative justice measures in the case of adult offenders. This is an area the National Commission for Restorative Justice will have to explore in particular detail.

However, there is scope for the prosecution authorities to divert cases from court in a limited number of circumstances on a discretionary basis. This discretion takes the form of the Garda Adult Cautioning Scheme. The scheme, which is not currently grounded in restorative justice principles, was introduced in February 2006 and 4,300 incidents were recorded where an adult caution was administered during 2006.

In addition, the two restorative justice pilot programmes mentioned in the introduction deal with adult offenders at the court stage.

The Nenagh Community Reparation Project began on a pilot basis in 1999. It is not an alternative to the criminal justice system but is an additional option available to the Court for persons who plead guilty to, or who are found guilty of, criminal offences. The restorative approach adopted involves victims, offenders, their families, supporters and community members responding to the hurt and harm caused by the crime and balancing the needs of the parties, while protecting the safety of the community. The focus is primarily community reparation, as opposed to mediation.

Since its introduction in 1999, up to the end of 2007, 105 cases were referred by the court to the project. Project records indicate that 18% of those dealt with under the programme re-offended.

The Tallaght Restorative Justice Services is a voluntary not-for-profit organisation managed by a partnership of stakeholders within the criminal justice system, including Tallaght District Court, the Probation Service, An Garda Síochána, Victim Support and community sector volunteers.

It offers two restorative justice programmes: offender reparation and victim/offender mediation. All cases are court-referred at pre-sentencing stage at the discretion of the Judge and the Court remains in charge of the process at all times. The Probation Service, An Garda Síochána, legal representatives and victim support interests may request the Court to consider the appropriateness of mediation or reparation in a particular case.

The Offender Reparation Programme provides participants with an opportunity to accept responsibility for their behaviour, to look at its effects on others and on the wider community, to address the consequences of their actions, to make positive changes in their lifestyle and to make reparation to the community. There were 94 referrals to the programme in 2006 and 87 offenders successfully completed their contracts. 73% of offenders were between the ages of 18 – 25 years and alcohol consumption was a factor in the vast majority of cases. Consequently, some 85% of offenders undertook some form of alcohol awareness programme as part of their response to the programme.

Victim/Offender Mediation provides an opportunity for victims and offenders to engage directly or indirectly in a process aimed at addressing the needs of the victim, while ensuring the offender is made fully aware of the impact of his/her behaviour. The intended outcome is that the offender apologises, makes reparation and agrees steps to help avoid further crime. Since establishment in 1999, some 100 cases have been referred for victim offender mediation.

### **3. Evaluation and future direction**

The National Commission on Restorative Justice is required, by its terms of reference, to conduct, *inter alia*, an examination of the present position of restorative justice in Ireland and abroad and to make recommendations to the Minister for Justice, Equality and Law Reform in relation to the future direction of restorative justice in Ireland.

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