



In association with

RESTORATIVE JUSTICE SERVICES
Tallaght, Dublin 24

**An Evaluation of Higher Tariff
Offender Reparation Panels
Provided by
Restorative Justice Services**

Executive Summary Report

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This report presents the key findings of a small scale evaluation, undertaken by the School of Law, University College Cork, of Restorative Justice Service's Higher Tariff Offender Reparation Panel Programme, funded by the Probation Service.

Restorative Justice Services

Restorative Justice Services (RJS) is based in Tallaght, Dublin 24 and is one of two restorative justice service providers for adult offenders in Ireland. It provides pre sanction restorative justice interventions to the courts of Dublin and surrounding counties. It has been in receipt of District Court case referrals since 2000 and Circuit Court case referrals since 2013. In that time, it has worked with approximately 1,450 cases to date through its victim/offender mediation and offender reparation panel services. The Higher Tariff Offender Reparation Panel model is the subject of this report.

Restorative Justice: Offender Reparation Panels

Restorative justice is an informal justice mechanism whereby parties with a stake in an offence collectively resolve how to deal with its aftermath and its implications for the future. In line with this approach, restorative justice programmes promote dialogue between wrongdoers and harmed persons.

The idea for the reparation model was first piloted in Nenagh in 1999 as a community justice panel to deal with low level, public order offences. In 2004, Restorative Justice Services (RJS) designed their own version of the model known as Offender Reparation Panels.

RJS's Offender Reparation Panels bring together offenders, criminal justice professionals and volunteers in order to address the harm caused by the offending behaviour to both the victim and the community. The offender pleads guilty to the offence and consents to involvement in a restorative justice process. The Panels are held following a court referral, between conviction and sentence.

Initially, the offender meets with their RJS Caseworker, in order to gather information and to discuss the reparation panel process. The offender participates in two panel meetings in front of a Community Chair (volunteer) and criminal justice professionals i.e. members of the Probation Service and An Garda Síochána. At the first panel meeting, a reparation contract of actions is discussed, drawn up and agreed; the onus is on the offender to fulfill his/her contractual obligations before returning to court. The offender is free to leave the process at any stage. An identifiable victim is invited to join the process after the first panel meeting if they so wish. At the completion of the Panel process, the offender returns to court and it is the referring judge has the final say as to what criminal sanction, if any, will be applied.

Aims of the Study

The aim of this evaluation was to catalogue and consider the operation of RJS's Offender Reparation Panels in practice, in particular for Circuit Court cases. The study was specifically requested to address the following issues:

- ◆ the appropriateness of cases referred to date;

- ◆ the appropriateness of the approach taken by panels and whether a different approach (consistent with restorative justice principles and values) has been taken or is required;
- ◆ the appropriateness and adequacy of agreements reached in panels, whether different elements are required and the nature of such elements.

The study comprises (i) a literature review of international legal instruments and restorative justice in Ireland, taking into account best practice from other jurisdictions, in particular New Zealand, England and Wales, and (ii) a process study evaluation of Restorative Justice Service's provision of services, with a particular focus on Offender Reparation Panels referred by the Dublin Circuit Court.

Methodology

A varying methodology was used including:

- ◆ A desk-based review of the restorative justice models provided to adult offenders in Ireland and a limited number of other jurisdictions;
- ◆ A review of ten case files held by RJS in relation to both District and Circuit Court cases chosen at random from among those dealt with between May and July 2014;
- ◆ An analysis of ten RJS feedback forms from offender participants, randomly chosen;
- ◆ Observation of four District and Circuit Court panel meetings between March and April 2015; and
- ◆ One-to-one interviews with 12 key stakeholders connected with RJS between March and June 2015 including members of the District Court judiciary, the Probation Service, An Garda Síochána, RJS staff, Panel Chairs, representatives of Crime Victims Helpline and adult offender participants.

Ethical approval for this research was granted by the Social Research Ethics Committee of University College Cork.

Key Findings

The research indicates that Offender Reparation Panels are operating effectively and have many positive aspects. There is strong evidence that:

- ◆ offenders are actively and positively involved in the restorative process throughout all stages of the panel;
- ◆ strong relationships are built up between the RJS Caseworker and the offender through mutual engagement and developing trust;
- ◆ involvement has a positive impact on the relationship between An Garda Síochána and offenders;
- ◆ the successful operation of RJS Offender Reparation Panels is based on strong interagency collaboration, and this in turn, has strengthened the co-operation between these agencies on the ground in the areas of operation;
- ◆ there is clear buy-in into the concept of restorative justice from key stakeholders, including offenders; and

- ◆ Victim participation/input can be facilitated.

In addition to these general findings, the following specific findings arise from the operation of Offender Reparation Panels by RJS.

A. Appropriateness of cases referred

A study of the appropriateness of cases referred to Offender Reparation Panels might be expected to take into account a range of factors, including the public interest, in referring certain types of offence or offender. Given the small nature of this study, however, focus is here placed on the willingness to refer cases and their likelihood of success. To ensure appropriate cases are referred, it is also important that the process is carefully managed and the relevant parties willing to participate.

The increase in referrals from the District Court and the development of referrals from the Circuit Court indicate that the judiciary regard the Offender Reparation Panel mechanism provided by RJS as a suitable alternative to traditional sentencing options.

A review of the Circuit Court referrals indicates that:

- ◆ 50% of cases referred were for the dominant offence of assault causing harm.
- ◆ 30% of these cases were aggravated assaults; the offenders were each charged with a second offence of a production of an article.
- ◆ 30% of these offenders did not have any previous convictions.

Although this is to be expected in cases referred by the Circuit Criminal Court, it would appear that the offences and offenders being referred are of a relatively serious nature. Nevertheless, the rate and nature of the referrals indicate the willingness of the Circuit Court judiciary to refer more serious, higher tariff offences with identifiable victims to an Offender Reparation Panel.

As to the process, ensuring appropriate referrals continue to be made is critical to the ongoing effective operation of the service. Central to this will be ongoing information sharing between key stakeholders and the development of agreed criteria governing referrals which would function as a defined referral pathway. Although the research suggests that referrals tend to be drawn from a particular group of offences, no published criteria informs this referral process, which takes place in the absence of a legislative framework.

A review of Circuit Court referrals undertaken in this study found an 80% completion rate of the restorative justice process. This high rate of restorative justice process completion is demonstrative of the strong relationship of trust and engagement built between RJS and the offender throughout the restorative process. It may also be indicative of the offender's willingness to engage in the restorative justice process when faced with more serious charges before the Circuit Court. Reasons for non-completion in relation to referrals from both courts included: suitability of offender and failure to engage with RJS or the restorative process.

When a referral is made, RJS receive information from the Court; however the qualitative research and case file analysis found that this information transfer can sometimes be inconsistent and requests for additional information, clarification etc. can lead to delays in the panel process. On occasion, the reasons for repeat referrals by the Court can be unclear and because there is no standardized procedure for closing case files, information as to the final outcome is not recorded by RJS in every case.

Resolution 11 of the UN Basic Principles on the use of restorative justice in criminal matters in 2002 recommended that restorative justice guidelines and standards are established with legislative authority when necessary. Article 12.2 of the EU Directive for Victims 2012 also recommended the establishment of procedural guidelines on the conditions of referral into restorative justice services. The governments of New Zealand (in 2004) and England and Wales (in 2011) have issued further procedural guidelines to assist relevant stakeholders. In New Zealand, this includes the type of offence and the willingness of the victim and offender to participate.

B. Appropriateness of approach taken by panels

The Offender Reparation Panels operate under a clear framework. The research found that their operation was largely effective and consistent. RJS Caseworkers and panel members have all undergone training to assist them in the operation of panels.

However, both the qualitative research and panel observations suggest that discrepancies in the knowledge and actions of individual stakeholders can arise. The finalisation of RJS's policy and procedures relating to the Offender Reparation Panel model will help to build a solid foundation for its development and expansion.

Resolution 7 of the UN Basic Principles on the use of restorative justice in criminal matters 2002 recommended that the involvement of offenders in restorative justice processes is free and voluntary. Article 12.2 of the EU Directive for Victims 2012 reiterates this point. While qualitative research and panel observations clearly indicated that offenders consented to their involvement in the Offender Reparation Panels, their understanding appeared to be strongly facilitated by their RJS Caseworker. Ensuring an earlier understanding of the process, particularly at the point of referral, would be beneficial to the overall effectiveness of the process and this would require information to be provided in a form that is appropriate to offenders' literacy levels.

The research indicates that panels were able to have an important impact on offender participants, by helping them to address their offending and reflect on contributory factors such as addiction. The panel structure, as observed in the research, allows offenders to discuss, explore and commit to actions as part of their reparation contracts in an aim to reduce their own offending and repair the harm caused to the victim and/or their community. This happens in a safe and supported setting facilitated by RJS in conjunction with the Probation Service and An Garda Síochána.

Case file analysis focusing on the duration of Offender Reparation Panels indicated some variation in the length of the process, ranging from twelve up to forty three weeks for offender referred by the Circuit Court and who participated fully in the process. International best practice indicates that the restorative

justice process should be completed in a timely fashion. Admittedly, problems with completion were not wholly within the control of RJS and could arise from a variety of factors leading to delay. At the same time, it is important that the panels are operated in a flexible manner designed to meet the sometimes complex needs of offenders, especially in Circuit Court referrals.

The research found that a key difference between District Court and Circuit Court referrals was the increased likelihood of victim participation in the latter referrals. While the research suggests that Offender Reparation Panels provide victims with an opportunity for involvement in the process of repairing the harm caused, this has been slow to evolve because of the nature of referrals to date. Both in case analysis and interviews the research indicated that RJS now has the opportunity to strengthen victim involvement in the panel process. The question of how and when victims are contacted may have an impact on the likelihood of their involvement in the panel process. Guidelines for best practice in restorative justice indicate that full participation of the victim and offender should be encouraged. It is clear that the current policy of RJS giving victims a choice as to whether they have direct or indirect involvement in the process meets this objective.

C. Appropriateness and adequacy of agreements

The study suggests that the majority of agreements reached by the panels for both District and Circuit Court cases have been appropriate with regard to the type of offence committed and the final sanction received. A minor but noteworthy point is that the case study analysis of 20 case files carried out in this research found that drugs offences before the District Court have had more extensive panel agreements, which resulted in up to eight actions in contrast with drugs offences before the Circuit Court, which resulted in up to five actions.

Each agreement aims to repair the harm caused by the offence, taking into account the offender's personal circumstances, the offence committed and the affect the offence had on the victim/s. RJS Offender Reparation Panels also holds the offender accountable for the offence, which is in line with the guidelines for restorative justice best practice in New Zealand (in 2004). The types of actions included: meeting the victim or a victim representative, writing letters of apology to the victim (which are not always accepted by the victim) attending an addiction awareness/treatment programme, making a charitable donation etc. The agreements have to be appropriate, realistic and are to be completed to the satisfaction of the panel before the case returns to court for the final sentence. Should there be any reason for delay in this process, RJS communicates these reasons to the court.

The research found that the panel structure allowed some space for offenders to have direct involvement in formulating and agreeing their contracts. Panel observations and interviews highlighted the need for panels to be sensitive to the difficulties offenders may face in engaging in this, and it is clear that the RJS Caseworker is central to the effective operation of this process. The contract template currently being piloted by RJS will help in this regard.

Circuit Court referrals of cases of a more serious nature have the potential to raise additional personal issues faced by offenders that could usefully be dealt with through agreements. The research indicated

that the current network of organisations involved with offenders as part of their reparation contracts may need to be expanded to meet these changes.

Recommendations

Taking into account the findings of the study, the following recommendations are made under the following categories;

A. Criteria and Pathway for Referral

1) Developing referral criteria through strengthened stakeholder engagement

RJS should consider ways to raise awareness about the RJS Offender Reparation Panel among key Circuit Court stakeholders currently linked with RJS including: the judiciary, court service staff, legal practitioners, the Probation Service and Victim Support Services. This engagement should be focused on the development of agreed criteria governing referrals which would function as a defined referral pathway.

RJS should consider developing an information pack, including guidelines for restorative justice referral. This information pack could be shared and communicated with key stakeholders in District and Circuit Courts, the Probation Service and with panel members with a view to promoting greater consistency in the referral process.

2) Consistency of information received from the court

Efforts need to be made to capture restorative justice referral information with greater accuracy when transferring cases from District and Circuit Courts to RJS. In order to achieve this, the Probation Service should consider taking steps to ensure that all the necessary information is captured on the referral form in the Circuit Court and the Courts Service/the Probation Service (where applicable) should consider taking steps to ensure that all the necessary information is captured on the referral form in the District Court.

RJS should consider reviewing the specific information and types of reports (including Probation Report, Victim Impact Statements, Garda Précis and so on) that are required for the operation of panels. RJS should consider communicating their agreed “required information” with panel members and relevant agencies (including the Courts Service, the Probation Service and An Garda Síochána.)

3) Management of Outcome Data

RJS should consider developing a mechanism through which the closure procedure of case files can be incorporated into their written guidelines with a view to securing and recording the final court outcome in every case. This would help to keep track of restorative justice sentencing in both District and Circuit Courts and would be valuable in any future evaluations. Once the procedure has been finalised this should be communicated to the Probation Service, An Garda Síochána, District and Circuit Courts.

B. Appropriateness of approach taken by panels

4) Training of RJS Caseworkers and Panel members

RJS should finalise draft documentation on minimum quality standards for RJS Caseworkers as soon as practicable and communicate them to panel members.

RJS should consider seeking external training accreditation for all the training provided. This accreditation will ensure restorative justice standards are maintained as RJS continues to operate and expand their remit of services.

5) Offender Involvement

RJS should review their current information provision and consider developing materials that reflect the literacy skills of offenders being referred to them. This would require additional resources and funding.

RJS should ensure all information materials are shared with key stakeholders and that they are briefed on the difficulties offenders may have in understanding the concept of restorative justice.

6) Duration of Process

RJS should consider looking more closely at the efficiency of its process (i.e. the duration for both District and Circuit Court case referrals) and identify whether any further improvements can be made to its panel processes. This should be undertaken in conjunction with key stakeholders in both District and Circuit Courts.

Flexibility is also needed to allow the process to respond to possible additional complexities in referrals from the Circuit Court. RJS panels should continue to avail of the option of holding a third panel meeting if necessary and as already currently provided for within the wider Programme.

7) Victim involvement

RJS should consider developing information resources on its service for victims which could then be made available to key stakeholders who have direct contact with victims.

RJS should consider inviting victims into the restorative justice process at an earlier stage to ensure their voice is heard. They can be advised of how the Reparation Programme works and the different options that could facilitate their participation at a level they are comfortable with.

RJS should continue to give victims a choice to have direct or indirect involvement in the restorative justice process and ensure that they are considered active participants regardless of the type of involvement they choose. This should be communicated by RJS to all key stakeholders.

RJS should consider renaming “Offender Reparation Panels” as “Community Reparation Panels” or “Community Justice Panels” as part of this recategorisation process. This name change would promote inclusivity of all restorative justice stakeholders including: victim, offender, the community and the state.