

SUBMISSION TO THE JUDICIAL PLANNING WORKING GROUP IN RELATION TO THE TERMS OF REFERENCE OF THE
WORKING GROUP

The Probation Service welcomes the invitation by the Judicial Planning Working Group for a submission in relation to the Terms of Reference of the Working Group.

From the outset the Probation Service would like to stress its appreciation of the long and positive relationship it has experienced with members of the Judiciary, Presidents of the Courts, Courts Service staff and members of the legal profession both on a local and national level. The Probation Service looks forward to maintaining and building on these relationships going forward.

The Probation Service

The Probation Service is part of the Department of Justice with over 400 staff. The Service has offices in over forty locations in community and prison settings across the country.

The Probation Service is the lead Service in the assessment and management of offenders in the community in Ireland. At any one time, the Probation Service typically engages with approximately 10,000 offenders in the community, juveniles and adults, including those placed on Supervision directly by the Courts and those on post-custody supervision (life sentence prisoners on temporary release and persons subject to supervision under the Sex Offenders Act 2001). Prison based teams work with approximately half of the prison population.

The Probation Service works in partnership with criminal justice agencies, the Courts Service, the Irish Prison Service and An Garda Síochána, Irish Youth Justice Service, as well as other statutory and voluntary services and the community, to ensure professional and effective management of services and supports to bring about positive change in the behaviour of offenders.

The aim of the Probation Service is to increase public safety by the effective management of offenders, by reducing risk of reoffending and harm, challenging offending behaviour and facilitating

the integration of ex-offenders to reduce victimisation and hurt against all victims of crime including the general community.

The Probation Service, through its Young Persons Probation division, manages the implementation of court-based restorative justice options and sanctions provided in the Children Act 2001.

As part of their work, Young Person's Probation provides in-reach services to Oberstown Detention Centre to address offending, provide support to children and their families and to assist in their settlement in their community.

The Probation Service are responsible for the implementation of the vast majority of community based sanctions/elements of sanctions. The Probation Service are the lead Service in the management and supervision of community based Court Orders. In 2020, the Probation Service worked with over 15,000 offenders, which included the completion of over 11,500 assessment reports. The effective supervision of individuals subject to community sanctions is the cornerstone of the work of the Probation Service.

The Probation Service continues to prioritise multi-agency collaborations and is continually developing and improving its systems, processes and practices in line with new evidence and research. The Probation Service 2021-2023 Strategy Statement identifies its mission as the provision of services to the courts and wider criminal justice system through the delivery of effective community sanctions.

This submission pertains to points 3, 4, 8, 9 and 10 of the document provided for observations, on the basis that these were the more pertinent aspects of the document that the Probation Service felt we could contribute.

3. To consider, having regard to existing systems, the extent to which efficiencies in case management and working practices could help in meeting additional service demands and/or improving services and access to justice.

Timely access to justice can be a real issue affecting all, from victims of crime to accused persons, children and families, and the wider community. While services strive to improve access to justice, the Courts are limited by significant constraints, such as complex processes, personnel and

established practices. The Probation Service, for its part, is actively working to reduce delay, unnecessary adjournments and to promptly expedite implementation of Court orders.

The Probation Service prepares pre-sanction reports for the Courts to assist judges in determining appropriate sentences and prepares reports for the Parole Board.

In 2020, the Probation Service completed over 9,300 Probation Assessment Reports, over 2,100 Community Service Assessment Reports and 55 assessments for the Parole Board.

In early 2019, a sub- group was set up by the Criminal Justice strategic Committee, with a brief to review arrangements in the area of Pre-Sanction Assessment Reports (Probation Reports) and to report to it with any recommendations for improved effectiveness/efficiency.

The sub-group was chaired by a senior member of the Department of Justice and comprised of a range of stakeholders, including Her Honour Judge Rosemary Horgan, President of the District Court; Judge Karen O Connor of the Circuit Court and Judge Gráinne Malone of the District Court. Senior members of the Courts Service, An Garda Síochána, the Irish Prison Service, the DPP Office and the Probation Service were also members of the working group.

The group continued its work over a number of months and submitted a final report by the end of the year. The December 2019 “Report to the Criminal Justice Strategic committee, on Pre-Sanction Assessment Reports” was accepted by the CJSC. Several recommendations contained therein refer to practical suggestions and recommendations to improve the transmission of data and increased efficiency.

These recommendations require further consideration and actioning as appropriate. The recommendations cover the stakeholders involved in the process including the Judiciary, the Courts Service, the Office of the Director for Public Prosecution, An Garda Síochána, the Irish Prison Service and the Probation Service.

The following are, in aggregate, the recommendations made by the subgroup:

Judiciary:

- a) May order relevant information, and contact with victims in appropriate cases to be made available to the Probation Service;
- b) May direct the Courts Service to communicate case outcomes to the Probation Service.

Courts Service:

- a) Will work with the Probation Service in progressing electronic communications system and ensure the safe transmission of Court outcomes to the Probation Service.
- b) Will provide the Probation Service with relevant documentation and necessary information for compiling a PSAR.
- c) Will provide, where possible, office and I.T. facilities in Court buildings for Probation staff.

Probation Service:

- a) PSARs will be consistent nationwide and the Probation Service will review the format and content of District Court Probation reports and Community Service reports.
- b) The Probation Service will endeavour to compile PSARs within eight weeks, and within two weeks where the offender is in custody.
- c) The PSAR will, where appropriate, set out options surrounding Restorative Justice approaches.
- d) "Same day" Community Service reports will be provided, as required.

The Director of Public Prosecution:

- a) Will provide access to relevant information such as the Book of Evidence on an interim basis and Victim Impact statements in relevant cases.

An Garda Síochána:

- a) Will transmit electronically relevant and necessary information to the Probation Service.
- b) Will communicate outstanding warrant information to the Probation Service.
- c) Will develop systems to enhance communication with the Probation Service.

The Irish Prison Service (IPS):

- a) Will provide Probation staff with priority access or staff video link facilities to access prisoners for the facilitation of the completion of urgent custody reports.
- b) Will provide Probation staff with relevant prisoner information.

ICT Opportunities:

The potential ICT and virtual court aspects of Court settings is something that could be further explored in relation to the presence of the Probation Service in Courts, this would increase services to the Court in some areas and could represent a better utilisation of Probation Service resources.

Community Sanctions Bill:

A Community Sanctions Bill is currently in preparation to replace the Probation of Offender Act 1907. The new Bill will provide a structured series of community sanctions, unsupervised and supervised, confirm the principle of prison as a sanction of last resort in statute and underpin and strengthen the role of non-custodial sanctions, facilitate Restorative Justice actions in Courts and update Probation Service governance.

The new Community Sanctions Bill will, when enacted, will provide greater clarity and an enhanced range of non-custodial sanctions, contribute to the greater efficiency and working practice in Courts and provide robust and effective supervision options to achieve a reduction in the use of custody as a sanction.

4. To evaluate the estimated impact of the Covid-19 pandemic on court caseload in the short, medium, and long term and strategies for reducing waiting times to significantly improve on pre-Covid-19 levels.

The Covid-19 pandemic and consequent restrictions introduced by the Government have severely impacted the capacity of the Probation Service to implement Community Service in its usual efficient and timely manner. As a result a significant backlog of community Service orders to be completed has arisen which has given rise to particular pressure on Probation Service resources in enabling the orders to be completed.

The Probation Service has implemented a strategy on the lifting of restrictions to expedite the completion of outstanding Community Service Orders and deal with non-compliance where it arises as well as managing the incoming Community Service Orders where Courts have resumed normal business.

8. To make recommendations for developing judicial skills in areas such as white collar crime.

Opportunities for Collaboration on Training Inputs with the Judiciary:

Restorative Justice:

The National Commission on Restorative Justice in its 2009 report described 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”.

The Probation Service strongly supports, through its strategy and work plans, Restorative Justice practice in the work of the Probation Service in Courts and in the supervision in the community. The work of Young Persons’ Probation (YPP) is based on the Restorative Justice principles underpinning the Children Act 2001.

Key actions prioritised for the Probation Service include the targeted expansion of Restorative Justice Projects on a national basis and the wider application of Restorative Justice Models with a range of offenders, the promotion and delivery of restorative conferences both in a diversionary context (Children Act 2001) and as an intervention in the management and supervision of offenders.

It also includes the strengthening of direct services to victims which will enable timely response to requests for Victim/ Offender Mediation from the courts or directly from the victim. The Service also plans for targeted training to support specific initiatives and to strengthen the Restorative Practice culture in the Service and in the Criminal Justice System.

In the context of this commitment, the Probation Service would recommend training for the judiciary in restorative justice principles and skills to expand the use of Restorative Justice in Courts in the interests of victims, the wider community and also, those who offend.

Domestic Violence

The Probation Service currently contribute to the induction of new members of the judiciary on the work of the Probation Service. The Probation Service would welcome the opportunity to further develop this role and become involved in the provision of further training type events. Of particular

interest is the Probation Service's capacity to provide input to the judiciary and legal professionals in relation to pertinent issues such as Domestic Violence and related fields.

The Probation Service would be keen to facilitate such training and information sessions to assist the judiciary in informing their practice in dealing with these type of cases in Court.

There would also be particular value and merit for Judges to be provided with specialised training in issues arising in relation to child development for work in the Children Court, dealing with cases with child victims, coercive control and domestic violence issues, dynamics in dealing with family law and criminal law cases and regarding sexual offending and related factors in dealing with such cases. This training would enhance their knowledge, expertise and authority in dealing with conflicting submissions and in dealing with questionable assertions.

9. To make recommendations on relevant issues such as judicial workload, barriers to entry, efficiency gains, and speed of access to justice.

In recent years, the Probation Service has introduced same-day assessment of suitability for Community Service in all Courts across the country where a Probation Officer is in attendance. These same day assessments represented approximately 35% of all Community Service assessments in 2019 generating significant savings in Court time and adjournments.

The Probation Service is interested to explore, with appropriate access to office and I.T. facilities in Court buildings and necessary Probation Service staff capacity, whether the provision of same-day Community Service assessments can be increased thereby obviating the need for costly adjournments.

10. To consider the implications of Brexit on the courts in regard to judicial resources and potential increased workloads arising.

As Britain is no longer a member of the European Union its residents and citizens are not eligible to avail of the provisions of EC Framework Decision 947/2008 as transposed into Irish law in the Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019. The

legislation provides for the transfer and supervision of community sanctions and measures in jurisdictions in the European Union. It means that Orders made in Irish Courts supervised by the Probation Service can be implemented and supervised in another eligible jurisdiction where the person is allowed residency in the interests of their rehabilitation and resettlement, and vice-versa.

The inability to transfer supervision of community-based sanctions to the neighbouring jurisdictions of England and Wales, Scotland and, in particular, Northern Ireland, adds a layer of complexity and costs to the implementation of community sanctions in respect of persons from these jurisdictions in Irish Courts with an attendant higher risk of default, non-compliance and unenforceability. A reluctance to impose a community sanction in the case of a person from England and Wales, Scotland or Northern Ireland could risk an increase in the level of custodial sentences imposed that would otherwise not arise.

The Probation Service would welcome the development of appropriate arrangements with authorities in England and Wales, Scotland and, in particular, Northern Ireland to address this matter of concern.

Overview:

The Probation Service would like to highlight that in the event that the review leads to an increase in the members of the judiciary appointed to deal with criminal cases this would most likely have a significant increase in the work of the Probation Service. The likely increased numbers will place increased demands on the Probation Service for both the provision of reports and in carrying out the orders of the court. The first of these may become a limiting factor in increasing efficiencies if not addressed.