



Law Society of Ireland

SUBMISSION OF THE
Law Society of Ireland

RESTORATIVE JUSTICE

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Introduction

1. The Law Society of Ireland welcomes the opportunity to submit its views regarding the possible expansion of a system of restorative justice in Ireland.
2. The Society has reviewed the Final Report of the National Commission on Restorative Justice¹ and notes the recent expansion of the restorative justice schemes which are currently operating in Ireland. The Society welcomes the opportunity to engage in a serious examination of whether, and in what circumstances, restorative justice could be successful in Ireland.
3. The Society believes that cross-agency and multi-disciplinary co-operation is vital to ensure the successful roll-out of restorative justice in Ireland. The Law Society would welcome the opportunity to participate fully in a National Restorative Justice Committee, as recommended by the National Commission on Restorative Justice,² which should provide direction and oversight in relation to this developing area of law. Solicitors who practice in criminal law have valuable experience and insights which they would happily make available to such a group.
4. While the Law Society welcomes debate as to restorative justice, it cautions against the introduction of a parallel justice system to the existing courts system. Such an initiative could interfere with the rights of people who are suspected of criminal activity, albeit of a minor nature. Accordingly, the Society recommends that future proposals:
 1. be based on an analysis of the impact of any such changes to criminal procedure in Ireland and the avoidance of any potential weakening of the constitutional rights of the accused,
 2. preserve the rights of accused people to be fully legally advised prior to partaking in any such scheme,
 3. are designed on the basis of evidence-based research and adequately resourcing, and
 4. are supported by an adequate information programme established to ensure that there is adequate knowledge amongst all criminal justice personnel as to the appropriateness and suitability of restorative justice options in particular circumstances.

¹ [National Commission on Restorative Justice Final Report](#), June 2009

² *Supra* at 23

Context

5. In Ireland, existing restorative justice initiatives lack a legislative basis and operate on a very geographically confined basis. In such circumstances consistency of approach is very difficult to achieve.
6. It is the Law Society's view that it is of utmost importance that the development of an alternative justice system to that which is currently in place sufficiently protects the rights of people to both fair procedures and due process.

The existing broad range of options for judges

7. The unique position of the District Court in Ireland must be considered in the context of a nationwide restorative justice system. This is due to its important limited and local jurisdiction. Judges can apply the following broad range of sanctions: fines, binding over to the peace, referral to probation service, suspended sentences, community service and referral to the drug treatment court. In addition, prior to a case reaching court, there are some additional options available through the adult caution scheme and the juvenile liaison scheme.
8. Restorative justice principles are already relied upon by the Probation Service in the preparation of their reports and by Judges of the District Court frequently enquiring as to whether compensation and/or apologies have been tendered to the victims.
9. The Law Society believes that the existing options could be strengthened through the allocation of adequate resources to the Probation Service and with the provision of further training to the judiciary in respect of the principles of restorative justice.

Recommendations of the Law Society of Ireland

Recommendation 1: Proposals should be based on an analysis of the impact of any such changes to criminal procedure in Ireland and the avoidance of any potential weakening of the constitutional rights of the accused

10. The Law Society believes that any deviation from the current model for criminal law procedures, including a restorative justice initiative, must consider the following constitutional and rule of law issues:
- Changes to the rights of the accused, in particular, the potential interference with constitutionally protected rights such as the right to silence, access to justice, justice administered in the public and, of course, the presumption of innocence.
 - The extent to which legal representation is a vital component in the deliberative process and sanctions process in which the accused engages.
 - The implications of an accused not being provided legal advice or representation throughout the process.
 - The admissibility of evidence in subsequent courts should the accused change their plea and the extent to which participation in a restorative justice process affects constitutionally protected rights in subsequent legal fora.
11. The introduction of a new model of restorative justice must ensure that there is no potential damage to the constitutionally protected rights of an accused.

Recommendation 2: Proposals must preserve the rights of accused people to be fully legally advised prior to partaking in any such scheme

12. It has been recommended that an accused would only be invited to engage with the restorative justice system on the basis of an agreement that they will plead guilty. Issues arise as regards the extent to which such a person receives legal advice prior to entering into such an agreement.
13. An accused is entitled to know the facts of the offence with which they are charged prior to being asked to plea; it is vital that the accused would have an opportunity to review this evidence with his legal advisors before being asked to enter a plea. Where an accused avails of this right they should not be precluded from subsequently engaging in a restorative justice scheme. This has been an issue as regards the adult caution scheme.

Recommendation 3: Proposals must be evidence-based and adequately resourced

14. Existing Irish initiatives, such as the Drug Treatment Courts, present important opportunities for evidence-based research which can contribute to a decision to introduce a nationwide scheme of restorative justice in Ireland.
15. The Society believes that a decision to expand the restorative justice schemes in Ireland must be predicated on evidence-based research which measures three important issues:
 - a. The impact of restorative justice schemes on crime and the potential improved outcomes for people (including the accused in terms of preventing future offences, the victims of crime and the community).
 - b. The impact of restorative justice schemes on the procedural rights of the accused.
 - c. The necessity for adequate resources.
16. The Society recommends that a blended research methodology be used to address these important issues including comparative, socio-legal and empirical research.

Recommendation 4: Proposals should be supported by an adequate information campaign to ensure that all criminal justice personnel are informed as to the appropriateness and suitability of restorative justice options

17. There is a dearth of knowledge and understanding about restorative justice amongst criminal justice system personnel. A 2010 survey of solicitors found that 75% of those questioned did not know what restorative justice involved.³ This gap in the knowledge of legal practitioners and also other key players and stakeholders within the Irish criminal justice system represents a major challenge in the effective establishment of a restorative justice system.
18. Efforts must be made to raise the profile and acceptance of restorative justice with all criminal justice system stakeholders, especially the public, prior to the nationwide implementation of such a scheme to ensure that confidence in the administration of justice is not damaged.

³ “Perceptions of Restorative Justice in Ireland: The Challenges of the Way Forward”, *Irish Probation Journal*, Vol 8, October 2011, 185, at page 187 to 188

Conclusion

19. The Law Society welcomes the initiative of the Joint Oireachtas Committee for Justice, Defence and Equality in its examination of whether the expansion of restorative justice schemes would be of value in Ireland, such as it has been in other parts of the world. The mere fact that restorative justice schemes appear to have operated successfully on an *ad hoc* basis on a very small scale in parts of Ireland does not automatically mean that they will be as effective or be successful on a nationwide basis.
20. The potential value of the restorative justice model to the Irish justice system deserves further exploration, taking into account local, national and international experiences.
21. The Law Society is available to contribute to the continued examination of the restorative justice model, taking advantage of the experience and expertise of its criminal law practitioners. We welcome the opportunity to collaborate with the Oireachtas Committee, Government Departments and Agencies on the matter as it progresses.

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