

# **Case Study: A Restorative Justice System for Young Offenders in Northern Ireland**

## **Background**

The Belfast Agreement of April 1998 provided that a wide-ranging review of the criminal justice system in Northern Ireland would be carried out by the British Government. The Agreement also set out what the participants in the negotiations believed the aims of the system to be. These included the delivery of a fair and impartial system of justice, which is responsive to the community's concerns, encourages community involvement where appropriate, and has the confidence of all parts of the community. Research subsequently carried out as part of the review showed that 61% of Catholics were confident in the fairness of the criminal justice system overall, compared with 77% of Protestants.

The review was carried out between June 1998 and March 2000 by a Criminal Justice Review Group; this included both civil servants and a majority independent element drawn from the academic and research community and the legal profession. In addition to the evidence it gathered through formal and informal consultation processes, the Review Group commissioned a programme of research into both public attitudes in Northern Ireland and the experiences of other jurisdictions on a range of key issues. The comparative research was supplemented by a series of visits to other jurisdictions: Belgium, Canada, England and Wales, Germany, the Netherlands, New Zealand, the Republic of Ireland, Scotland, South Africa and the United States.

## **The Review Group's recommendations on restorative justice**

Amongst its many other proposals, the Review Group recommended in its report of March 2000 the development of restorative justice approaches for young offenders in Northern Ireland. The expression 'restorative justice' has been used to describe a variety of practices that have developed in many parts of the world since the early 1970s, and is not easy to define precisely. Typically, however, restorative approaches

strive to take account of, and to find an appropriate balance between, the interests of victims, offenders and the community as well as the public interest. They therefore bring the victim and offender more fully into the process of dealing with the offence than is the case with conventional criminal justice approaches. Participation by the victim and the offender must be voluntary, and the process is forward-looking, aiming to prevent future offending and reintegrate the offender back into the community. Approaches are often based on engaging with offenders to bring home the consequences of their actions and their impact on victims, and encouraging the provision of appropriate forms of reparation by offenders.

In its report the Review Group referred to restorative justice schemes in a number of countries, including England and Wales, Scotland, Canada, South Africa and the USA, as well as to two pilot schemes already operating in Northern Ireland. It drew particular attention, however, to the New Zealand family group conferencing model. It specifically recommended the development of an approach in Northern Ireland which like this was fully integrated into the juvenile justice system, and based on a conference model which would bring together the offender, the victim (if willing), and other professionals and family members.

### **The choice of New Zealand as a comparator**

The Review Group's recommendations were rooted in the research report on restorative justice which it had commissioned, as well as in the evidence it had gathered through consultation and from visits. The research report reviewed the available research on restorative justice and described and analysed practice in a number of other countries. In developing its response the Northern Ireland Office was thus starting from a sound evidential base: there were good reasons for believing that, in a global context, New Zealand offered a useful source of policy lessons for Northern Ireland.

The New Zealand family group conferencing model was well established, having originated with an Act of 1989 (subsequently amended). Whilst there had been no overall evaluation of its effectiveness aspects had been evaluated, and there was a great deal of experience of operating it and understanding of what led to better

outcomes in some areas than in others. Evidence from a number of evaluation studies showed that family group conferencing did reduce rates of re-offending, and thus offered a potentially effective model to transfer to other jurisdictions. The evidence about victims' levels of satisfaction with restorative processes was not all positive, but the studies attributed much of this to poor practice in the treatment of victims, which can be corrected, rather than to fundamental flaws in the processes themselves. Despite shortcomings, victims were more satisfied with restorative processes than with other approaches.

Although the social and political context from which the New Zealand scheme sprang was clearly very different from that in Northern Ireland, there was some common ground in the desire to produce a system that was fair to and seen to be fair by all sections of the community. In addition, both jurisdictions share a common law background and much cultural similarity.

### **What was done to learn from New Zealand**

In order to learn more about the New Zealand approach a group of four officials - two from the NIO Criminal Justice Policy Division, and one each from the Northern Ireland Court Service and the office of the Director of Public Prosecutions - travelled there for a ten-day study visit in December 2000. Despite reservations within the department about the size of the party and the length of the visit, those involved found that in the event both were fully justified; if anything it would have been beneficial to have devoted more resource to this stage of the work. The mixture of professional backgrounds and perspectives in the team was essential in capturing a comprehensive picture of the system's operation, and there was time to talk not only to policy makers and stakeholders but also to those involved in actual delivery of the service. The team found it easy to establish communications with their counterparts. They felt that people from different jurisdictions working in related areas and with a similar professional background shared a commonality of purpose; this bond may be particularly strong between common law jurisdictions.

Allowing more time would have permitted the system to have been observed in operation in more geographical areas and details to have been assimilated more

carefully, as well as enabling more realistic planning for the fatigue and disorientation inevitably associated with intercontinental travel. It would also have been helpful if a fifth member, from the Probation Service, had been able to accompany the team as originally planned; the addition of this different viewpoint may have meant that a vital element of the New Zealand system was not overlooked, as very nearly happened.

In retrospect, the team felt that they had not appreciated the magnitude of the task they were undertaking. A previous short visit to a conference in New Zealand in October 1998 by two representatives of the Review Group had generated enthusiasm for the relevance of the New Zealand experience to Northern Ireland, but had led to a feeling that it could be a relatively simple matter to abstract and import 'the New Zealand model'. In practice the visiting team found that they had not hitherto fully grasped the magnitude of the task involved in learning about all the detailed mechanisms of the system. Nor had they devoted as much time as they might have to preliminary reading; whilst this helped them to approach the issues with an open mind it also meant they were dependent on the goodwill of their interlocutors in explaining the basics of the system to them.

At the time of the visit the NIO was already committed to putting restorative justice principles at the heart of the criminal justice system for young offenders, and to an approach which strove so far as possible to divert young people away from the conventional criminal court system. The department's implicit objectives in pursuing this course are to reduce the rate of juvenile re-offending and to reduce the seriousness of subsequent offences, by avoiding actions which tend to exacerbate offending behaviour, and to increase victim satisfaction with the outcome of cases, without reducing the preventive effect of the system in relation to potential offenders. The diversionary approach is seen as essential in tackling the offending behaviour of young people in a constructive way which reduces the chances of future re-offending. To this end the department had already proposed a departure from the recommendation of the Review Group, which had wanted the introduction of only a court-based restorative justice process initially, with a diversionary approach, which would allow for the possibility of conferencing prior to appearance at court, being added later. The study visit bore out this view, and demonstrated to the team that the Review Group had not appreciated the centrality of the diversionary principle to the

New Zealand approach. In addition, it was recognised that there are resource benefits to introducing a system which does not require one or more appearances at court prior to (and possibly after) conferencing.

The system proposed for Northern Ireland differs from that in use in New Zealand in a number of respects. For example, less weight will be placed on the role of the wider family group in determining the outcome of a conference and supervising the young person's completion of the plan (which may involve community service, or other constructive uses of time) agreed on by the conference. This will, however, be countered by there being a greater role for the offender's 'significant others' to play in the process. A separate executive agency of NIO - the Youth Conferencing Agency - is proposed to take responsibility for the co-ordination of youth conferences. Despite the changes in emphasis or in operational detail needed to adapt the youth conference process to the social context and the configuration of government organisations in Northern Ireland, the proposed system is clearly modelled to a large extent on that in New Zealand.

Although the team that carried out the study visit did not carry out any formal debriefing or 'wash up' to pool their findings and consolidate the learning from the visit, most of the team members were immediately involved in the preparation of Instructions to Counsel for the drafting of the Justice (Northern Ireland) Bill, working on the Bill itself, and the development of the implementation plan. The team also kept in touch with contacts in New Zealand and referred back to them to clarify numerous points of detail as development work proceeded.

One critical event during development of the policy came when a key New Zealand contact - the former Chief Social Worker - happened to be in the UK for other reasons and took the time to look at the draft legislation and implementation plan. It was immediately apparent to him that the scheme made no provision for the assignment of a case-worker to facilitate (as opposed to supervising) the offender's compliance with the conference plan. This might involve things as simple as helping to arrange transport to organised sporting activities, if these were required by the plan. This aspect of the system had not been emphasised to the visitors by the New Zealand practitioners, perhaps because it was almost self-evident to those who were immersed

in the scheme. Even the mixed team that made the visit had not noticed the need for this role to be fulfilled, though it is possible that an experienced probation officer might have asked the pertinent questions. Given the difficulty of ensuring that a system has been understood in its entirety, the value of seeking this kind of feedback is clear. It can offer considerable assurance that important elements have not been inadvertently omitted or misinterpreted in the process of translating aspects of a system from one jurisdiction to another.

### **What can be learnt from this case?**

A number of useful points emerge from the experience of the Northern Ireland team in seeking to learn about practice in another jurisdiction. It should be noted, however, that this case exemplifies the most exhaustive and deliberative kind of policy making. The process leads from April 1998 to the publication of draft legislation in late 2001; it reflects a political commitment at the highest level to undertake a robust and fully researched review and to implement major changes in the light of its findings.

Although many of the lessons that can be learnt by other policy makers from this example will be of wide application, some will not be relevant to those working under great pressure of time or outside of the context of a major policy review.

### **Key lessons emerging from this case**

- Your choice of a comparator country is most likely to result in useful learning if it is based on expert knowledge. In this case the academic and research community were well aware of where innovative and effective schemes were already in effect, and the research commissioned by the Review Group provided a comprehensive scanning of the field before New Zealand was chosen for more detailed study.
- You should focus where possible on well-established policies or programmes. Because the New Zealand scheme had been in operation for ten years there was considerable practical experience on which to draw, and those interviewed were able to be objective about what worked well and what did

not. There was no difficulty in speaking to experts from outside of the criminal justice system who could provide a critical perspective.

- Evidence from evaluation studies may provide confirmation that the policy being examined is effective, and thus offers a potentially useful model for transfer to other jurisdictions. They may also point you towards aspects that might be improved, or where particular care is needed: learning need not just be about what other people did, but should also be about what did not work for them or what they could have done better. Furthermore, being aware of relevant evaluations will help your Ministers account for and defend their policy choices when called upon to do so.
- A visit to study the comparator system in the field, if you are able to make one, will prove an essential aid to learning about how it really works, and help dispel misunderstandings. Such a visit should be undertaken for a long enough period, and by a large enough team with sufficient breadth of experience and expertise, to capture all of the key information about the system under consideration. Undue economy at this stage may result in expensive mistakes later.
- When planning for a study visit you should also allocate sufficient time to prior background study, if best use is to be made of time in the field, and to the sharing and consolidation of learning by the team afterwards. Production of a formal report may not be necessary if findings are to be put to immediate use in some other way, but some pooling of knowledge will ensure that information is not lost and may generate fresh insights through discussion and debate amongst the team.
- Your plan for the visit itself should not only allow time for all the necessary meetings, observations and internal travel, but should also be realistic about the powers of endurance of team members. The visit will not prove good value for money if those concerned are too fatigued or disorientated properly to assimilate what they are being shown and told. It may be most effective for members of the party to travel separately, if this results in the least stressful arrangements.
- It will be difficult to be certain in advance of the complete list of people and places that should be visited. Arrange your itinerary so as to allow adequate opportunities to follow up leads and recommendations as they emerge.

- Some meetings will be necessary simply for reasons of protocol and managing relationships with influential stakeholders, and may be less productive than others in terms of actual learning; otherwise, you should take every opportunity to meet those at the 'front line', who are actually involved in the day to day delivery of the service or operation of the service concerned.
- It will be invaluable if you can establish the basis for longer-term relationships with key contacts, so that a dialogue can be sustained as policy development and implementation proceeds in the 'importing' administration: there will inevitably points to clarify or questions that were not asked at the time.
- In developing detailed proposals, it is important to be clear what the lessons learned from examination of the comparator actually are. Your aim is not to produce a carbon copy of somebody else's system but, taking account of innovative ideas and experience elsewhere, to set up a system that will work properly in its own environment and meet the policy objectives.
- Try if possible to create an opportunity to feed back the detailed proposals developed in the 'importing' administration to an informed commentator in the comparator administration. You will probably have to explain adjustments that have been made to fit the local context, but once these have been allowed for the outside observer may also spot some inadvertent omissions, distortions or misunderstandings of the comparator system that need to be corrected. A reciprocal visit, if at all feasible, may facilitate this process - and may, in the spirit of mutual learning, also have some benefits for the visitors.
- The time taken to develop and fully implement a policy, programme or service elsewhere is likely to be a useful guide to what is realistic in the 'importing' administration. Whilst it will be tempting to believe that time can be saved by learning from others' experience, you should not assume without good reason that the time-scale can be radically shortened: given the pressures to deliver results, this may be the hardest lesson of all to learn.

### **Further reading**

Criminal Justice Review Group (2000) Review of the Criminal Justice System in Northern Ireland, The Stationery Office, Belfast

Dignan, J. and Lowey, K. (2000), Restorative Justice Options for Northern Ireland: A Comparative Review (Research Report 10). Belfast: The Stationery Office.

Miers, D. (2001), An International Review of Restorative Justice, Home Office Crime Reduction Research Series Paper 10, London.

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