



Committee for Justice

# Report on Justice in the 21<sup>st</sup> Century: Innovative Approaches for the Criminal Justice System in Northern Ireland (NIA 313/11-16)

Together with Memoranda and Papers relating to the Report

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**THE REPORT REMAINS EMBARGOED UNTIL THE COMMENCEMENT OF DEBATE IN  
PLENARY ON TUESDAY 8 MARCH 2016**

Ordered by the Committee for Justice to be printed on 3 March 2016

## Powers and Membership

The Committee for Justice is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Standing Order 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Justice and has a role in the initiation of legislation.

The Committee has the power to:

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- consider relevant subordinate legislation and take the Committee stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on any matters brought to the Committee by the Minister of Justice.

### Membership

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The membership of the Committee during the current mandate has been as follows:

Mr Alastair Ross (Chairman) <sup>1</sup>

Mr Raymond McCartney (Deputy Chairman)

Mr Stewart Dickson

Mr Sammy Douglas<sup>2,3,4</sup>

Mr Paul Frew<sup>6</sup>

Mr Danny Kennedy<sup>5,11,13</sup>

Mr Séan Lynch

Mr Alban Maginness

Ms Bronwyn McGahan<sup>7,8,12</sup>

Mr Alex Attwood<sup>9,14</sup>

Mr Edwin Poots<sup>2,10</sup>

<sup>1</sup> With effect from 10 December 2014 Mr Alastair Ross replaced Mr Paul Givan as Chairman.

<sup>2</sup> With effect from 1 October 2012 Mr William Humphrey and Mr Alex Easton replaced Mr Peter Weir and Mr Sydney Anderson.

<sup>3</sup> With effect from 16 September 2013 Mr Sydney Anderson replaced Mr Alex Easton.

<sup>4</sup> With effect from 6 October 2014 Mr Sammy Douglas replaced Mr Sydney Anderson.

<sup>5</sup> With effect from 23 April 2012 Mr Tom Elliott replaced Mr Basil McCrea.

<sup>6</sup> With effect from 6 October 2014 Mr Paul Frew replaced Mr Jim Wells.

<sup>7</sup> With effect from 10 September 2012 Ms Rosaleen McCorley replaced Ms Jennifer McCann.

<sup>8</sup> With effect from 6 October 2014 Mr Chris Hazzard replaced Ms Rosaleen McCorley.

<sup>9</sup> With effect from 23 April 2012 Mr Patsy McGlone replaced Mr Colum Eastwood.

<sup>10</sup> With effect from 6 October 2014 Mr Edwin Poots replaced Mr William Humphrey.

<sup>11</sup> With effect from 30 June 2015 Mr Neil Somerville replaced Mr Tom Elliott

<sup>12</sup> With effect from 15 September 2015 Ms Bronwyn McGahan replaced Mr Chris Hazzard

<sup>13</sup> With effect from 30 November 2015 Mr Danny Kennedy replaced Mr Neil Somerville

<sup>14</sup> With effect from 8 February 2016 Mr Alex Attwood replaced Mr Patsy McGlone

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### List of abbreviations and acronyms used in the report

<b>ADR</b>	Alternative Dispute Resolution
<b>CJINI</b>	Criminal Justice Inspection Northern Ireland
<b>CJC</b>	Civil Justice Council
<b>CPS</b>	Crown Prosecution Service
<b>DoJ</b>	Department of Justice
<b>DTTO</b>	Drug Testing and Treatment Order
<b>HiiL</b>	Hague Institute for the Internationalisation of Law
<b>HMCTS</b>	HM Courts and Tribunals Service
<b>IT</b>	Information Technology
<b>LCJ</b>	Lord Chief Justice
<b>NICTs</b>	Northern Ireland Courts and Tribunal Service
<b>NOMS</b>	National Offender Management Service
<b>NYPD</b>	New York Police Department
<b>ODR</b>	Online Dispute Resolution



# Key finding / Recommendations

## Key findings/Recommendations

### Key Principles: Collaboration and Innovation

1. The Committee strongly encourages the next Committee for Justice to build on the strong foundations which have been laid for collaboration between those working in the various aspects of the criminal justice system, to continue to provide opportunities for innovative thinking on creative approaches to the many challenges faced, and to ensure progress on the recommendations in this report.

### Problem Solving Courts

2. The Committee is of the view that the underlying problems and root causes of offending behaviour in a range of areas such as alcohol and drug addiction must be tackled if reoffending rates are to be addressed; and believes that there is merit in exploring the introduction of problem-solving justice in Northern Ireland as an innovative and effective approach to the criminal justice system, particularly against a backdrop of increased budgetary pressure in the public sector.
3. The Committee considers that the recently announced rationalisation of the Court Estate by the Minister to the Assembly on [8 February 2016](#), whilst regrettable, provides an opportunity to think creatively about alternative uses for buildings once they cease to be fully functioning courthouses, including transformation into community justice centres which could house voluntary and citizen advisory organisations.
4. The Committee recommends that a commitment is included in the next Programme for Government for a pilot project of a problem-solving court solution taking account of particular pressures/challenges within the criminal justice system in Northern Ireland such as alcohol and drug addiction, or mental health issues. Key elements of the pilot project should include:
  - commitment from both justice and health sectors to the pilot project;
  - a collaborative joined-up approach between justice and health in terms of working together and information sharing;
  - flexibility and versatility within the model;
  - specific tailored orders/support packages for each individual being immediately available.
5. The Committee recommends that the current special listings arrangements for domestic violence cases at Londonderry Courthouse are further developed to fully encompass the problem-solving model, ensuring both criminal and civil cases are dealt with together.

### **Alternative Dispute Resolution**

6. The Committee is disappointed at the lack of progress made in relation to investigating and implementing alternative dispute resolution mechanisms, given the recommendations from the original Access to Justice Review which reported in 2011.
7. While the Committee is aware that online dispute resolution does not provide a one-size fits all remedy for disputes, it does believe that it can prove to be an efficient way to resolve low level case, and notes a number of examples where online dispute resolution is being employed effectively in a range of countries.
8. The Committee is of the view that an online dispute resolution mechanism would be beneficial and cost-effective for low value claims such as those in the Small Claims Court. The Committee therefore recommends that a commitment is included in the new Programme for Government for a pilot project of an online dispute resolution mechanism for low value civil claims, taking account of experience of using this type of approach in other jurisdictions and the private sector, and the relevant findings of Lord Justice Gillen's Review.
9. The Committee recommends that the findings of the pilot project inform the approach to implementing an online dispute resolution mechanism for small claims across the Courts, and identify other areas within the civil or criminal justice system which would benefit from this type of approach.

### **Justice in a Digital Age**

10. The Committee commends those organisations seeking to raise public awareness of the importance of online safety, particularly amongst children and young people with regard to social media, and also other vulnerable groups like the elderly with regard to safeguarding personal data.
11. The Committee also acknowledges the importance of collaboration across the criminal justice system in making better use of technology to respond to criminal activity, which ensures that progress in one area is not held back due to lack of progress in another.
12. The Committee is supportive of the proposals presented by Mr Gamble during its consideration of the Justice No.2 Bill, but recognises that this is a complex area of law and any changes will require careful consideration to ensure that there are no unintended consequences.
13. The Committee notes that the Minister of Justice was concerned that bringing forward amendments at Consideration Stage of the Justice No.2 Bill would result in changes being made to this important area of the law without the benefit of proper policy consideration and consultation and had asked instead that the Committee support the inclusion of the proposals in a policy consultation for future legislative change, as part of a wider review into a number

of related areas covering certain sexual offences and child protection.

14. The Committee agreed that it is content for the proposals to be included in the proposed policy consultation but indicated that it wishes to see them progressed as soon as possible and therefore wants to receive a briefing on the proposed consultation at the earliest opportunity.

#### Streamlining administrative processes

15. The Committee recommends that the Department of Justice undertakes work to determine how information technology can be better utilised with the Courts, both at an administrative level and during court hearings.

#### Youth Justice

16. The Committee acknowledges that stakeholders across the criminal justice system recognise that youth justice is a matter which requires ongoing prioritisation and reform. While the Committee accepts that progress has been made in early intervention work and diverting young people who commit low level offences out of the criminal justice system, the discussions at the Innovation Seminars clearly illustrated that much more needs to be done, and can be done, to address the underlying reasons for the offending behaviour in a holistic way. The key is early intervention and prevention work, which requires a collaborative approach between the Department of Justice and other Departments should as Education and Health.
17. The Committee recognises the value of a multi-agency/multi-disciplinary approach when addressing the needs of children and young people within the criminal justice system, including early intervention and programmes aimed at rehabilitation and reducing recidivism, and recommends that continued reform of youth justice, based on these principles, should be a key priority for the Department of Justice.
18. In the context of the problem-solving approach discussed elsewhere in this report, the Committee recommends that special attention should be given to diversionary disposals, including whether such disposals should attract a criminal record, the needs of victims, and the suitability of this approach for those who repeatedly offend.
19. The Committee also recommends that the Department takes forward ways to reform the Bail Act early in the next mandate to provide a legislative framework to enforce bail practices.

#### The Problem of Excessive Penalisation

20. The Committee is of the view that there is a need for a policy debate on the increasing use of criminal offences for non-compliance with legislation, the consequences of such an approach, and whether it is an effective enforcement method or whether administrative sanctions would be more appropriate.

- 21. The Committee also recommends that an exercise to review legislation should be undertaken to identify areas where existing legislation or criminal offences have become obsolete with a view to removing them.**

# Introduction

1. As a Statutory Committee of the Northern Ireland Assembly the Committee for Justice undertakes a scrutiny, policy development and consultation role with respect to the Department of Justice and plays a key role in the consideration and development of legislation. This results in a heavy workload which does not always allow time for consideration of new approaches and ways of 'doing things differently'. The Committee was keen to make time to engage and collaborate with the criminal justice sector, including the judiciary, legal profession and voluntary and community organisations to identify innovative approaches and discuss how they could apply within the Northern Ireland context.
2. In March 2015 the Committee for Justice agreed to hold a series of Justice Innovation Seminars to consider and discuss innovative approaches that could be adopted to improve the efficiency and effectiveness of the justice system in Northern Ireland. The seminars were designed to allow the Committee space for engagement with key stakeholders in the criminal justice sector; to bring together a wealth of knowledge to openly discuss; and to identify possible innovative changes that could be made to the justice system and identify new ideas for streamlining and delivering services differently.
3. The Committee viewed this as particularly important as the current budgetary constraints will necessitate the Department and the sector identifying and adopting new ways of working if services are to continue to be delivered to the required standard.
4. The Justice Innovation Seminars developed into a significant programme, which has included nine seminars delivered by local, national and international experts; a conference focused on Justice in the Digital Age; keynote events with Lord Justice Leveson, President of the Queen's Bench Division and Lord Neuberger, President of the Supreme Court of the United Kingdom; and visits to observe and discuss innovative criminal justice approaches in London, The Hague, New York and Glasgow.
5. This report identifies some of the emerging key learning points from the Justice Innovation Programme, and makes recommendations for the Department of Justice for inclusion in the next Programme for Government, and the successor Committee for Justice in the 2016 – 2021 mandate.

## **Key Principles: Collaboration & Innovation**

6. The Committee recognises that those working within the criminal justice system, whether judiciary, the legal profession or those working in voluntary and community organisations, all wish to contribute to making the system in Northern Ireland quicker, fairer, more accessible and ultimately one aims to protect the public, support victims and rehabilitate offenders.

7. The Committee appreciates that by working collaboratively with those who have the relevant expertise, evidence based initiatives can be developed focusing on what works. Collaboration and innovation have therefore been the fundamental characteristics of the Committee's Programme, to develop new ideas and approaches to age old problems, and identify innovative ways of improving outcomes.

8. The significance of collaboration was identified by Lord Justice Leveson in his [Review of Efficiency in Criminal Proceedings](#) published in 2015 when he stated:

"The most significant lesson learnt... has been that the criminal justice system is not, in reality, a single system: the police, the CPS, the defence community, HMCTS, the judiciary, the probation service and NOMS (to say nothing of the Ministry of Justice and the Home Office) all have different priorities and different financial imperatives with performance indicators (where they exist) that are not aligned. The only way of improving the end to end operation is to bring the different participants in these systems to debate and agree initiatives to improve the whole."

9. The Committee notes that given the relatively small size of Northern Ireland there is both the flexibility and capability to pilot new initiatives and policies. Against a backdrop of increased financial constraint within the public sector, such projects should prove to be both effective and efficient.

10. The Committee wishes to express its gratitude to those who have attended and participated in the Justice Innovation Programme and contributed to the development of increased working relationships between the judiciary, the legal profession and those working in voluntary and community sector organisations, and more innovative thinking.

**11. The Committee strongly encourages the next Committee for Justice to build on the strong foundations which have been laid for collaboration between those working in the various aspects of the criminal justice system, to continue to provide opportunities for innovative thinking on creative approaches to the many challenges faced, and to ensure progress on the recommendations in this Report.**

# Consideration of Innovative Approaches for the Criminal Justice System in Northern Ireland

## Problem solving courts

### Background

12. According to the [US Centre for Court Innovation](#), ‘problem-solving justice’ can trace its theoretical roots to innovations in policing, particularly community and problem-oriented policing, which attempted to replace traditional law enforcement’s focus on responding to individual offences with a focus on identifying and addressing patterns of crime, ameliorating the underlying conditions that fuel crime, and engaging the community as an active partner.
13. In the 1990s these new policing strategies helped to inspire similar approaches in the rest of the criminal justice system and gave rise to innovations like community prosecution, community courts, and problem-solving probation. These new experiments shared an emphasis on data analysis, community engagement, crime prevention, and problem solving. At their core was the idea that it was no longer enough just to arrest, process and adjudicate an offender, but that law enforcement, officers, prosecutors, judges and probation officers all needed to try to reduce recidivism, improve public confidence in justice, and prevent crime down the road.
14. In the United States of America the first drug court was created in Dade County, Florida in 1989, with the Midtown Community Court established in New York City in 1993. Over two thousand problem-solving courts have been created in the US since, including courts in the criminal, family and juvenile jurisdictions. The principle has now extended internationally to countries such as Chile, New Zealand and Canada.

### Committee consideration

15. A problem-solving approach to justice was a key theme through the Committee’s Justice Innovation Programme. Phil Bowen, Director of the Centre for Justice Innovation in London presented at the Justice Innovation Seminar on 22 October 2015. Members had previously met with Mr Bowen and other representatives from the Centre for Justice Innovation during their visit to London in June 2015. This visit was supplemented by two opportunities to observe problem-solving courts, the first in New York in January 2016, and the second at the Glasgow Drug Court in February 2016.
16. During the seminar Phil Bowen outlined that problem solving proposes that special regard should be given to shaping the justice system in such a way as to help increase the psychological well-being of those who come into contact with the system.



**Committee Members with Phil Bowen, Director Centre for Justice Innovation  
before his seminar on Problem-Solving Courts – October 2015**

17. The five principles of problem-solving courts are enhanced information, collaboration, procedural fairness, accountability and a focus on outcomes. Problem-solving justice sees contact with the justice system as an opportunity to address social problems and to strengthen the legitimacy of justice institutions. The approach can be applied to a number of different processes within the criminal justice system including community courts, drug courts, domestic abuse courts, mental health courts, veterans' courts and family drug and alcohol courts.
18. The key question for problem solving courts is "do they work?" Success measures include reduced offending, keeping victims safer, increased confidence and legitimacy in the criminal justice system and reduced use of prison.
19. Phil Bowen stated that drug courts are the most evaluated type of problem solving court. Comprehensive, multi-site and high quality work has been conducted (primarily in the USA) and shows that when a problem-solving approach is applied to domestic abuse courts there is a reduction in the number of cases that are dismissed, and an increase in the rate of guilty pleas.
20. Higher satisfaction levels with the court process have been recorded, among both victims and perpetrators, compared to traditional court. Combining meaningful sanctions with regular sentence supervision of perpetrator compliance can reduce repeat offending. This is especially important given the evidence that perpetrator programmes alone have limited rehabilitative value.
21. He also advised that success at the Red Hook Community Court has been five-fold with reduction in offending, rectified perceptions of inequality, increased public trust in the justice system and reduced number of people going to prison. The role of the judge is critical and has the greatest impact on perceptions of fairness.
22. A copy of Mr Bowen's presentation is available at Appendix 3.



23. In January 2016 three Committee Members had an opportunity to observe the work of problem-solving courts in Brooklyn, Red Hook and Brownsville. A report of this visit is available at Appendix 2.

### **Brooklyn Treatment Court**

24. [Brooklyn Treatment Court](#) was established to address the high prevalence of drug use in the local area which had consequently witnessed an increase in crime, an increase in numbers being sent to prison, increased overdoses and a breakdown in community structures. At the time the processes for dealing with the issues were not working and it was agreed that consideration should be given to addressing addiction problems in order to reduce recidivism and provide people with the help that they need.
25. Committee Members met with Judge Ferdinand who presides over the Brooklyn Treatment Court and Joe Madonia, Director of the Treatment Court, along with a member of staff from the Centre for Court Innovation. Judge Ferdinand and Mr Madonia explained the process a person would go through when they get arrested if there is a drugs problem. Following arrest the person would appear before a judge within 24 hours. They are subsequently referred by the judge to the Treatment Court for an appointment the following day where they are tested to get an accurate reading of drugs use. They are then interviewed by a clinician to discuss substance abuse, health issues, social care and employment status and this assessment can take up to two and a half hours.
26. A treatment plan is drafted and the offender returns to court where the judge, lawyer and district attorney agree the treatment plan which may include time limited residential treatment programmes. The offender must then plead guilty and if they complete the treatment plan the case is dismissed and the record is sealed. If the plan is not completed the offender is sentenced.
27. Judge Ferdinand explained the process for ongoing monitoring of treatment which includes regular appearances before the Judge (normally monthly, but at the Judge's discretion) when the person is tested. The Judge is also updated on progress of rehabilitation or any employment or training that is being undertaken and on transition into the community. If during the plan the offender encounters problems such as relapse, the Judge has the power to send the person to jail for short periods (usually 1-3 days) and allow further chances to follow the plan. Members were advised that approximately 90% of those going through the programme will have at least one sanction which may include adding additional time to the programme and being sent to prison for short periods. Approximately 50% will spend time in jail. The Judge outlined the importance of victim impact and giving the offender an opportunity to consider the impact of their actions on victims of crime.
28. Members heard that there is a 60-65% success rate in reducing drugs use through the programme which compares to a 21% success rate for those who take treatment voluntarily. Judge Ferdinand and Mr Madonia also outlined that reoffending rates have dropped considerably with only a 10% recidivism rate for those who have completed the treatment plan.

The Judge explained the importance of recognising the success of people in completing programmes and that regular graduation ceremonies are held in this respect.

### **Red Hook Community Justice Centre**

29. Members also had an opportunity to observe the work of the [Red Hook Community Justice Centre](#), guided by Viviana Gordon, the Centre's Deputy Director. This court takes cases for crimes which would attract a criminal sentence of up to one year in prison, and serves a population of approximately 240,000.
30. Operating in a similar way to the Brooklyn Treatment Court, Red Hook Community Justice Centre brings together social and health services in order to deal with the problem and also handles cases relating to anti-social behaviour, prostitution and theft. The Centre is able to process cases quickly and the Judge can refer offenders to other services contained within the Centre to ensure that actions are taken quickly. The Centre is able to undertake an assessment of social needs for each offender and recommend a programme and alternatives to prison for the majority of offenders with the latest statistics demonstrating that alternatives to jail were found in 78% of cases. This helps to reduce reoffending and provides an important service in the community.
31. Ms Gordon explained that in addition to the Court, the Centre undertakes a lot of other community based work including programmes in relation to domestic violence and drugs awareness and community programmes that seek to make public space accessible and safe for all. The Centre also provides education services, employment services and services for young people, including sports programmes. Another large part of the Centre's work is in helping people with housing problems, and it also runs a Youth Court to consider live cases of first-time juvenile offenders (aged 14-18).



**Committee Members meet with Judge Calabrese, pioneer of problem solving model in Red Hook Community Justice Centre – January 2016**

32. Members had the opportunity to meet Judge Calabrese who has presided over the Court for a number of years. He highlighted that millions had been saved by sending people to rehab and reducing reoffending, and observed that jail is the most expensive and least effective way, of dealing with addiction. Members discussed with Judge Calabrese the difference between processing and treatment, the use of sanctions in treatment and the power of dismissal as a reward for keeping to the programme.

### **Brownsville Community Justice Centre**

33. Members met with Mr James Broderick, Director of the [Brownsville Community Justice Centre](#) who advised that, although not yet in the position of having established a community court, the project currently runs diversionary and community programmes to build confidence in the justice system in advance of a court being established.
34. Once fully operation Brownsville Community Justice Centre will service a population of 110,000 people in a community where one of the biggest problems in the area is gun possession by young people.
35. Mr Broderick advised that Brownsville has established a Youth Court that hears over 150 cases a year. Cases are referred by Probation, NYPD and the Law Department and are mainly for issues such as larceny and possession of a weapon. There is a 92% compliance rate with the youth court and there has been a substantial reduction in reoffending for those who have undertaken this diversionary activity. Mr Broderick also told Members that the Centre is working with police to try and make the area more accessible and safer and to involve the police in some of the projects it is undertaking.

### **Domestic Violence Courts – New York**

36. Members had the opportunity to participate in a conference call with the Director of the [Domestic Violence Court](#), Rebecca Thomforde Hauser. Ms Hauser outlined that the Domestic Violence team deal with all gender related issues, including domestic violence, sexual assault and human trafficking. She also highlighted that they deal with the specific area of tribal justice. She advised that the Domestic Violence Court Model was accountability focussed, provided enhanced services for victims and perpetrators, increased victim safety and provided the opportunity to rehabilitate offenders. Ms Hauser also advised that in the courts one judge hears both the criminal and civil cases and is able to refer victims to health and social services.

### **Glasgow Drug Court**

37. In February 2016 a number of Committee Members participated in a one-day visit to Glasgow to learn more about the use of Drug Testing and Treatment Orders (DTTO) and the approach of the Glasgow Drug Court.
38. The DTTO is a community disposal which acts as a direct alternative to a custodial sentence and its purpose is to reduce or eliminate the use of illicit drugs; reduce the scale and frequency of drug related offending; supervise and review progress monthly, and provide the Courts with

evidence; offer treatment and counselling; and implement formal procedures when compliance fails.

39. The DTTO has been found to be particularly effective in making progress with adult drug misusing offenders in respect of positive changes in levels of reported drug misuse, and drug related offending from before, during, at completion of, and after treatment on order; and health related benefits as a result of receiving treatment, including reduction in harmful behaviour and drug related illnesses.
40. A person referred for a DTTO is required to make a significant commitment to become involved in a high level of intervention and demonstrate how this has impacted on their lives, and the lives of their families, and the community.
41. The Glasgow Drug Court first opened in 2001 as part of pilot project and became a permanent part of Glasgow Sheriff Court in March 2006. The Court supervises the treatment of drug-addicted offenders who commit crime to fund their habit and aims to break that cycle. The role of the Court is seen as an agent of positive change, rather than a neutral arbiter. Specialist Drug Court Sheriffs have, in addition to their existing powers, exclusive jurisdiction over the community based treatment orders made in the drug court.
42. The Drug Court Team works with offenders placed on DTTOs and includes nurses, social workers and addiction support workers. The team operates between 75 and 125 orders at any one time and the approach is holistic, involving treatment, advocacy and relapse prevention.
43. Members met with Thom McCullough, Drug Court Team Manager and Sheriff Wood, who was presiding in the Drug Court on the day of the visit. Sheriff Wood will follow a case through the whole system, with cases reviewed every month to ensure that breaches can be dealt with quickly. Like Red Hook, the Drug Court Team see service users immediately on referral from the court, and this includes an appointment with the Team doctor.



**Committee Members meet with Sheriff Lindsay Wood and Thom Gallacher, Drug Court Team Manager – February 2016**

44. The Drug Court Team advised that the problem solving approach is time, cost and labour intensive, particularly in the early stages and due to the multi-disciplinary approach which can more effectively respond to individual client needs. However, the approach is cost effective overall in that it reduces offending behaviour and reduces the associated costs of dealing with offending for criminal justice agencies including the police, the prosecution service, the Courts and the Prison Service.
45. Members observed the pre-review meeting during which key workers presented the latest reports to Sheriff Wood and discussed recommended next steps in advance of the afternoon Drug Court. This included information on recent testing results, a general update on progress and narrative on any other relevant factors. At this meeting Sheriff Wood indicated his likely intended approach in each case.
46. In the afternoon Members observed the Drug Court presided over by Sheriff Wood. Each of the individuals had legal representation that appeared to rely heavily on the reports prepared by the Drug Court Team when representing their clients.

#### **Department of Justice approach**

47. Recently, during Consideration Stage of the Justice No.2 Bill, debated in plenary on [10 February 2016](#), the Minister of Justice indicated his interest in new opportunities presented by broader problem-solving and community approaches. He indicated that he “would like to see more work done in future to explore the benefits of such an approach for our justice system... many of the problems in society that bring people into the justice system will require commitment from Health, Education and, sometimes, other partners as well. The development of a Programme for Government for the next mandate is the opportunity to think strategically about the outcomes that we want for society, and I believe that problem-solving approaches will have a role to play in that”.
48. In the same debate the Minister of Justice referred to the listing of domestic violence cases at Londonderry court, where the district judge has made listing arrangements in such a way as to ensure that support services are available for both perpetrators and victims. The special listing arrangements for Domestic Violence cases at Londonderry Magistrates Court began as a pilot scheme in November 2011, but have not yet been rolled out to other courts across Northern Ireland.

#### **Conclusion/Recommendation**

- 49. The Committee is of the view that the underlying problems and root causes of offending behaviour in a range of areas such as alcohol and drug addiction must be tackled if reoffending rates are to be addressed; and believes that there is merit in exploring the introduction of problem-solving justice in Northern Ireland as an innovative and effective approach to the criminal justice system, particularly against a backdrop of increased budgetary pressure in the public sector.**

50. Consistent themes which have emerged through its visits and the seminar by the Centre for Justice Innovation include:
- the requirement for significant upfront investment is mitigated through positive outcomes and reduced costs in other areas of the criminal justice system with additional benefits to health etc.;
  - the benefits of a multi-disciplinary health and justice collaborative approach which is truly integrated in terms of treatment and sharing information;
  - the need for a holistic approach which may go beyond treating the immediate need e.g. drug use, and consider associated areas like housing;
  - the importance of being able to engage immediately with a treatment order, and the ability to go straight from court to the first relevant appointment;
  - the importance of selecting members of the Judiciary who understand the value and benefits of problem-solving courts;
  - the opportunity to foster public confidence in the criminal justice system;
  - a reduction in repeat offending and substance misuse.
51. Indeed the Committee proposed amendments to Consideration Stage of the Justice No.2 Bill which would have enabled the Department of Justice to consider creating specific orders relating to offenders experiencing homelessness, mental health difficulties and drug or alcohol addiction, rather than simply a custodial sentence. During debate the Committee Chairman received an indication from the Minister of Justice that the development of the next Programme for Government would provide an opportunity to consider these issues in more depth, and therefore did not move the amendments.
- 52. The Committee considers that the recently announced rationalisation of the Court Estate by the Minister in plenary on [8 February 2016](#), whilst regrettable, provides an opportunity to think creatively about alternative uses for buildings once they cease to be fully functioning courthouses, including transformation into community justice centres which could house voluntary and citizen advisory organisations.**
- 53. The Committee recommends that a commitment is included in the next Programme for Government for a pilot project of a problem-solving court solution taking account of particular pressures/challenges within the criminal justice system in Northern Ireland such as alcohol and drug addiction, or mental health issues. Key elements of the pilot project should include:**
- commitment from both justice and health sectors to the pilot project;
  - a collaborative joined-up approach between justice and health in terms of working together and information sharing;
  - flexibility and versatility within the model;
  - specific tailored orders/support packages for each individual being immediately available.
- 54. The Committee recommends that the current special listings arrangements for domestic violence cases at Londonderry Courthouse are further developed to full encompass the problem-solving model, ensuring both criminal and civil cases are dealt with together.**

# Alternative Dispute Resolution

## **Background**

55. Alternative Dispute Resolution (ADR) formed part of the Department of Justice Access to Justice Review which reported in 2011. The report considered the principle forms of ADR which included mediation, conciliation, collaborative law and arbitration and the benefits which accrue from an ADR approach. These include parties remaining in control of the process with outcomes more likely to have their genuine consent; giving parties a sense of ownership through the voluntary nature of ADR mechanisms; greater flexibility over outcomes; being more conducive to sustaining working relationships between the parties in the future; operating within a timescale suitable to the parties; and being more cost-effective and reducing pressure on an overcrowded court system<sup>1</sup>.
56. The 2011 Access to Justice Review observed that, at that time, there were a wide variety of services being provided under the heading of alternative dispute resolution in Northern Ireland with disparate sources of private, public and charitable funding. The Review concluded that “the availability of a menu of ADR mechanisms for use in differing types of legal dispute enhances access to justice and should be promoted by the department and stakeholders in the justice system”.
57. It further noted that “ADR is suited to those cases where there is a reasonable prospect of the parties being able to seek an agreed way forward and where they both consent willingly to going through the process”.<sup>2</sup>
58. The follow-up [Access to Justice Review 2](#) report published in September 2015 included the following recommendation:
- “7.41 Developing effective alternatives to the courts, through diversion or alternative dispute resolution, is just as important as court reform. Such approaches will be more effective at addressing the underlying issues behind a legal dispute”.

## **Committee consideration**

59. Under the theme of Alternative Dispute Resolution the Committee looked specifically at the use of technology to facilitate mediation and online dispute resolution (ODR). [Online Dispute Resolution](#) (ODR) in its most general sense refers to the use of Information Technology (IT) and the Internet to help resolve disputes. Such methods are already being employed outside of the criminal justice system. For example the internet auction site eBay already avails of ODR to resolve disputes around feedback and disputes between buyers and sellers.

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<sup>1</sup> Department of Justice Access to Justice Review NI : The Report, August 2011, p.60-61

<sup>2</sup> Department of Justice Access to Justice Review NI : The Report, August 2011, p.62



60. During a two-day visit to London in June 2015 several Members of the Committee met with a number of organisations and members of the judiciary to explore and discuss innovative approaches to criminal justice, including digitisation of the courts. One such organisation was the Civil Justice Council (CJC), an Advisory Public Body established under the Civil Procedure Act 1997 with responsibility for overseeing and co-ordinating the modernisation of the civil justice system.
61. In February 2015 the CJC published a report on '[Online Dispute Resolution for Low Value Civil Claims](#)' (below £25k) which focused on the technology already available, legal and policy implications and identified areas of best practice. CJC describes the process of ODR as follows:  
*"When a conflict is handled using ODR, a traditional courtroom or hearing room is not employed. Instead, the process of settling a dispute is entirely or largely conducted across the Internet. In other words, dispute resolution services are made available as a type of online service. Many techniques fall under the umbrella of ODR. Sometimes human beings remain heavily involved, as when ODR systems provide facilities for judges, mediators, or negotiators to handle disputes by communicating electronically with parties and by reviewing documents in digital form. On other occasions, the assessment of a legal problem or the negotiation itself might be enabled by the ODR service without much or any expert intervention".*
62. During the meeting representatives from CJC suggested that implementing ODR would improve access to justice and reduce costs suggesting that the current system is too slow and too expensive for small claims. CJC outlined the possible process for taking a claim online including an online evaluation which would provide options and templates, an online facilitation which would seek to resolve the claim through mediation and negotiation, and finally an online court where a judge would decide online (with the possibility of the claim being transferred to a physical court).
63. Whilst in London Members also met with Lord Neuberger, President of the Supreme Court of the United Kingdom, Lord Kerr, Justice of the Supreme Court of the United Kingdom, and Ms Jenny Rowe, Chief Executive of the Supreme Court. Lord Neuberger outlined some of the innovative approaches that the Supreme Court has taken forward, including online access, a new case management process and IT training for Supreme Court judges.
64. Subsequently in July 2015 the Chairman and Deputy Chairman visited the Hague Institute for the Internationalisation of Law (HiiL) and met with Research Director Professor Maurits Barendrecht, and Peter van den Biggelaar, Director of the Dutch Legal Aid Board, to explore how online dispute resolution is being used effectively in the Netherlands.
65. Professor Barendrecht outlined the Rechtwijzer 2.0 platform which is currently used in the Netherlands for divorce and separation proceedings and was expected to be rolled out to both landlord/tenant disputes and employment disputes in autumn 2015. The Chairman and Deputy Chairman were informed of the process that clients undertake including the issues that need to be resolved before the process can be completed. The process for dispute resolution on issues that aren't agreed was outlined along with the cost to the client.



66. There was also discussion on how fairness can be ensured in an online dispute resolution platform with little legal input. Within the Rechtwijzer 2.0 platform this is addressed through an independent review mechanism which allows a legal review of the resolution. An expert panel and client focus group has been established to review data and consider feedback from clients. An aftercare programme which will review cases 2-3 years after completion to ensure that needs have been met has also been developed.
67. Further information on the visit to London and the visit to The Hague can be found at Appendix 2.
68. Professor Barendrecht was the keynote speaker for the Justice Innovation seminar on 24 September 2015 which offered a range of invited stakeholders the opportunity to discuss further the concept of online dispute resolution and digital courts, and consider how this approach might be applicable to the criminal justice system in Northern Ireland, and in what areas it might be most suitable.

#### **Department of Justice approach**

69. Following the Access to Justice Review in 2011 the Department intended to take forward, in conjunction with the Law Society, a Small Claims Court mediation pilot. Aims and objectives of the proposed pilot were agreed and telephone mediation was identified as the optimum operating model. In February 2016 the Department however advised the Committee that the [Review of Civil and Family Justice](#) announced in 2015 by Lord Justice Gillen will examine the use of mediation and other forms of ADR, including on-line options and the Small Claims Mediation Pilot would therefore not go ahead. According to the Department any future pilot would be designed around the Civil and Family Justice Review recommendations.
70. The aim of Lord Justice Gillen's Review, which is expected to conclude in September 2017, is to look fundamentally at current procedures for the administration of civil and family justice, with a view to improving access to justice; achieving better outcomes for court users, particularly for children and young people; creating a more responsive and proportionate system; and making better use of available resources, including through the use of new technologies and greater opportunities for digital working.
71. It has been decided that the Review will proceed from the premise that the courts should be reserved for business that cannot be resolved through alternative means. It is recognised that additional capacity outside the courts would need to be created for such alternative approaches to be successfully implemented, and the Review will seek to provide an evidence base and clear rationale for potential new working practices that might better meet customer expectations in a modern justice system. Amongst the areas to be covered by the Review are the use of mediation and other forms of alternative dispute resolution, including online options (for example, online dispute resolution) and invocation of modern technology into the court process.

### **Conclusion/Recommendation**

- 72. The Committee is disappointed at the lack of progress made in relation to investigating and implementing alternative dispute resolution mechanisms, given the recommendations from the original Access to Justice Review which reported in 2011.**
- 73. While the Committee is aware that online dispute resolution does not provide a ‘one-size fits all’ remedy for disputes, it does believe that it can prove to be an efficient way to resolve low level cases, and notes a number of examples where online dispute resolution is being employed effectively in a range of countries.**
- 74. The Committee is of the view that an online dispute resolution mechanism would be beneficial and cost-effective for low value claims such as those in the Small Claims Court. The Committee therefore recommends that a commitment is included in the new Programme for Government for a pilot project of an online dispute resolution mechanism for low value civil claims, taking account of experience of using this type of approach in other jurisdictions and the private sector, and the relevant findings of Lord Justice Gillen’s Review.**
- 75. The Committee recommends that the findings of the pilot project inform the approach to implementing an online dispute resolution mechanism for small claims across the Courts, and identify other areas within the civil or criminal justice system which would benefit from this type of approach.**

# Justice in a Digital Age

## Background

76. Exploring innovation within the criminal justice system provides an opportunity to identify ways in which its components can better respond to changing facets of society. The speed at which technology, and specifically the internet, has advanced is unprecedented, particularly in comparison to how long it took for the television to become commonplace in homes across the developed world.
77. The ways in which people connect with each other and can do their shopping are now totally unrecognisable to those available even a decade ago. Similarly technological developments present huge opportunities for law enforcement agencies who can share information at the touch of a button, whether that be warning retailers of a particular scam or crime gang, alerting motorists to a road traffic accident, or allowing citizens to engage with agencies in an instant.
78. However, the internet also provides a playground for criminality and harm and as criminals migrate to online crime it can be a struggle to bring criminals operating in a borderless digital world to justice. Cybercrime is estimated to cause the UK economy losses of £670m each year, and the costs are not solely financial. The issue of the use of social media and dangers to children was also highlighted in the Innovation Seminars on Youth Justice.

## Committee consideration

79. In this context the Committee considered the theme of 'Justice in a Digital Age' as part of its programme of Justice Innovation. This culminated in a significant event on 15 October 2015 held at W5 in the Odyssey Pavilion, which explored three specific aspects - social media, cybercrime, the dark web, and the legal response to changing technologies.



Committee Chairman, Alastair Ross MLA addresses delegates at the Committee's conference 'Justice in a Digital Age' – October 2015

80. Jim Gamble, Chief Executive of the INEQE Group, Wayne Denner, the Digital Ninja, and D/Supt Rachel Shields of the PSNI and Chair of the Safeguarding Board discussed social media and internet protection, alongside issues of reputation, wellbeing and employability.
81. Olivier Burgersdijk, Head of Strategy at Europol's European Cybercrime Centre, DCI Dougie Grant, Head of the PSNI Cybercrime Unit and Dr Ruth McAlister, Lecturer in Criminology addressed delegates on the issues of Cybercrime and Emerging Threats, and a local perspective on Cybercrime.
82. The Lord Chief Justice discussed the legal response to changing technologies and posed the question of whether the current law provides a sufficient response to criminal online behaviour. He suggested that the criminality of online behaviours must be acknowledged; law enforcement agencies must be equipped with the power and resources to detect and investigate such activity; and that any legal developments should not unduly suppress the services and networks which often become passive facilitators of criminality, nor suppress lawful freedom of expression.
83. In his concluding remarks he commented:  
"There is a technological 'space race' between cyber-criminals and those who keep the public safe. The impression is that we have been reactive to those who commit crimes. We need to change that approach but that cannot in my view be successfully done solely on a national basis."
84. The digital conference was recorded and is available to view online at:  
<http://www.niassembly.gov.uk/assembly-business/committees/2016-2017/justice-2/seminars-on-innovation-in-the-criminal-justice-system/>
85. After the event the Committee invited Mr Gamble to give oral evidence on his proposed legislative changes at its meeting on 5 November 2015 after which it intended to consider whether to take them forward as amendments to the Justice No.2 Bill.
86. Following the evidence session the Committee agreed to seek the written views of the Department of Justice, the PSNI, the Public Prosecution Service and the NI Human Rights Commission to assist its consideration of the proposals. The Committee considered the proposed legislative changes and the responses from the organisations, which highlighted a range of issues that would need to be taken into account if any legislative changes were being considered, at its meeting on [7 January 2016](#).
87. The first proposal suggested an amendment to the current law so that a child or young person under the age of 18 who takes, makes, distributes or possesses an image of themselves will commit no criminal offence unless it is done with malicious intent. The Protection of Children (Northern Ireland Order) 1978 as amended by the Sexual Offences (Northern Ireland) Order 2008 currently makes it an offence for a person below the age of 18 to take, make, show,

distribute or possess an image of themselves. Mr Gamble expressed the view that the current law discourages young people from coming forward quickly when they have shared an image of themselves with another and fear it may be shared with others and believes that decriminalising will encourage children, who find themselves in circumstances of crisis, to come forward.

88. The second proposal related to an amendment to the existing Protection from Harassment (Northern Ireland) Order 1997, or the creation of a new law to deal with the aggravated impact when an individual or individuals use the anonymity provided by the Internet and/ or the ability to create multiple online accounts to harass another person. In Mr Gamble's view the law as currently configured and the policies as currently applied are not working, illustrated by the fact that there is not a substantial number of individuals being prosecuted for harassment.
89. The third proposal would have created a new law to prohibit an individual of 18 or above, who masquerades as someone below that age and engages online with an individual they know or believe to be, under the age of 18. An individual who did so would commit a criminal offence unless they can prove that they did so with reasonable cause or lawful authority. In reasonable cause defences, the burden of proof will shift to the alleged offender.

#### **Department of Justice approach**

90. In their written responses to the first of Mr Gamble's proposals, both the Department of Justice and the PSNI highlighted that the public interest test applied by the PPS provides a large degree of protection against the unnecessary and inappropriate criminalisation of a young person for distributing a self-image and such a set of circumstances would rarely, if ever, result in a decision to prosecute. The PSNI however indicated that it believes the proposal is worthy of further discussion to ensure that all agencies continue to have the best legal framework for safeguarding of young people. The PPS believes that the current law works well and to decriminalise the offences around self-images would allow for young people to distribute images of themselves unsolicited to others which can be distressing.
91. All three organisations had concerns about requiring the prosecution to prove a malicious intent as this would present an evidential hurdle which could prove difficult to overcome. The NIHRC outlined that international human rights law has realised that in certain circumstances children should not be criminalised for sharing images of themselves for private use with consent but highlighted that this is a complex area and there may be other ways to address the issue through guidance from the Director of Public Prosecutions.
92. With regard to the second proposal the Department of Justice, the PSNI and the PPS all expressed the view that the current law on harassment is already sufficient to protect against this type of behaviour and there is no need for further legislation in this area. The PPS also highlighted that if a court found that further distress had been caused to a victim by the use of anonymity or multiple accounts this could be considered an aggravating factor when passing sentence. The NIHRC also noted that the Judicial Studies Board Sentencing Guidelines on offences within the Protection from Harassment (NI) Order 1997 recognises 'creating

email/website accounts purporting to the victim' as an aggravating factor and suggests that the issue could be addressed through the Sentencing Guidelines.

93. In response to the third proposal the Department of Justice, the PSNI and the PPS indicated that there is no offence that would currently directly cover this situation and wished to consider it in more detail. The PSNI was of the view that the scope of the offence should be defined as per offences under the Sexual Offences Order 2008 in terms of the ages of those involved and the nature of the offences arising. The PPS stated that careful consideration would need to be given to guard against overlapping or causing confusion with the 'grooming offences' contained within the Sexual Offences Order 2008. The NIHRC stated that the proposal would reverse the burden of proof and criminally penalise the act of masquerading as an 18 year old to an under 18 year old, regardless of whether it results from criminal intent or from negligence. Such departures from the presumption of innocence, as protected by ECHR Article 6(2) are permissible in certain circumstances but ECtHR has held that departures from the presumption of innocence must be confined within reasonable limits which take account of the importance of what is at stake while maintaining the rights of the defence (*Salabiaku v France* (1988) para 28).

#### **Conclusion/Recommendation**

94. The Committee is very aware that the development of the internet has created challenges for the law and believes that it is essential that the law responds and adapts to these challenges and provides the law enforcement agencies with sufficient and proper tools to tackle new and emerging types of criminal behaviour. The Committee Conference on 'Justice in a Digital Age' very successfully provided a forum to discuss these issues and identify potential solutions.
- 95. The Committee commends those organisations seeking to raise public awareness of the importance of online safety, particularly amongst children and young people with regard to social media, and also other vulnerable groups like the elderly with regard to safeguarding personal data.**
- 96. The Committee also acknowledges the importance of collaboration across the criminal justice system in making better use of technology to respond to criminal activity, which ensures that progress in one area is not held back due to lack of progress in another.**
- 97. The Committee is supportive of the proposals presented by Mr Gamble during its consideration of the Justice No.2 Bill, but recognises that this is a complex area of law and any changes will require careful consideration to ensure that there are no unintended consequences.**
- 98. The Committee notes that the Minister of Justice was concerned that bringing forward amendments at Consideration Stage of the Justice No.2 Bill would result in changes being made to this important area of the law without the benefit of proper policy consideration and consultation and had asked instead that the Committee support the inclusion of the proposals in a policy consultation for future legislative change, as part of a wider review into a number**

of related areas covering certain sexual offences and child protection.

99. The Committee agreed that it is content for the proposals to be included in the proposed policy consultation but indicated that it wishes to see them progressed as soon as possible and therefore wants to receive a briefing on the proposed consultation at the earliest opportunity.

## Streamlining administrative processes within the criminal justice system

### Background

100. During a visit to London in June 2015 Members of the Committee met with Lord Justice Leveson, President of the Queen’s Bench and discussed with him the outcome of his [Review of Efficiency in Criminal Proceedings](#), published in January 2015.



Committee Members meet with Lord Leveson, President of the Queen’s Bench in London, June 2015

### Committee Consideration

101. In November 2015 the Committee hosted an evening with Lord Justice Leveson at which he spoke on his review into the efficiency of criminal proceedings which reported in January 2015. The purpose of the review was to “demonstrate ways in which, consistent with the interests of justice, it might be possible to streamline the disposal of criminal cases thereby reducing the cost of criminal proceedings for all public bodies”.
102. This included a consideration of how current practice and procedures from charge to conviction or acquittal could be improved with the use of technology both to minimise the number of such hearings, or alternatively conducted without requiring the physical attendance of advocates. A key principle of Lord Justice Leveson’s review was to focus on changes that could be achieved without requiring legislative change, but which make better use of technological and other advances.
103. Lord Justice Leveson made a number of recommendations with regard to the role of information technology within the criminal justice system including the need for high quality equipment and appropriate training; moving to a position where interlocutory hearings occur out of court, with the utilisation of audio and video hearings; and the enhancement of IT within the courts to ensure that digital evidence can be presented easily and without the delay or complications associated with present attempts to do so.



#### **Conclusion/Recommendation**

- 104. The Committee recommends that the Department of Justice undertakes work to determine how information technology can be better utilised with the Courts, both at an administrative level and during court hearings.**

## Youth Justice

### Background

105. The [2010 Hillsborough Agreement](#) included a recommendation to review how children and young people are processed at all stages of the criminal justice system, including detention, to ensure compliance with international obligations and best practice.
106. The Review of Youth Justice was published in 2011 and recommended the development of an early intervention and prevention strategy; a presumption that low level offending should be dealt with by parents, school and communities through a police disposal; further development of the Youth Conferencing approach; and that policy and legislation relating to the rehabilitation of offenders should be overhauled and reflect the principles of proportionality, transparency and fairness.
107. The Committee has consistently monitored the implementation of the recommendations of the Youth Justice Review on a regular basis, most recently at its meeting on [28 January 2016](#).

### Committee consideration

108. The Lord Chief Justice, Sir Declan Morgan QC, delivered the keynote address at the Committee's first Justice Innovation seminar in April 2015 which focused on innovations that have the potential to speed up or otherwise improve the youth justice system.



**Lord Chief Justice, Sir Declan Morgan QC with Committee Chairman Alastair Ross MLA on the occasion of the first Justice Innovation Seminar on 23 April 2015**

109. The LCJ initially highlighted the issues of delay in the youth justice system and suggested that the proposed Department of Justice statutory time limit of 120 days should be progressively reduced to around 50 days.

110. He went on to discuss youth diversionary disposals and suggested that where the young person accepts their guilt, demonstrates their remorse and engages in a reparative process, a criminal record may not be necessary, or only necessary for a short period. Details of the offence would still be maintained on the criminal history database and be accessible to police, which would allow the relevancy of the offence to be considered in enhanced disclosures. The Lord Chief Justice referred to a pilot project in Hull, in which young people are offered diversion and multiagency involvement at the start of the process, which if accepted, results in no criminal record.
111. In concluding the LCJ posed a number of questions to be asked of the youth justice system:
- Are there still cases coming to court that could be disposed of through diversion, given the high number of court-ordered youth conferences?
  - Is the existing menu of diversionary disposals sufficient, and should such disposals always attract a criminal record?
  - How often should diversion be offered to those who re-offend?
  - How might we take better account of the needs of younger or otherwise more vulnerable young people, for instance by using a multi-agency approach?
  - What more could we be doing to get youth cases into court and disposed of more swiftly?
  - How do we ensure we have a youth justice system that is proportionate and fair to all participants, including victims, witnesses and young people who offend?
112. The theme of youth justice was then taken up again by the Bar of Northern Ireland, which provided the keynote address at the seminar which took place in May 2015. Practicing barristers provided perspectives from the defence and the prosecution side in relation to youth justice cases and suggested changes that could be adopted.
113. The third seminar, which took place in June 2015, was led by the Law Society which took a slightly different approach to the experience of children and young people in the criminal justice system by considering initiatives in Children's Order Public Law Proceedings. This offered those attending an opportunity to discuss the particular challenges faced by children and young people in the care system, and issues arising through fostering and adoption. The value of early intervention and a multi-agency approach covering health, education, social services and the criminal justice system was highlighted.

#### **Department of Justice approach to Youth Justice**

114. At its meeting on 28 January 2016 the Committee for Justice received an oral briefing the Criminal Justice Inspection Northern Ireland on the CJINI Second Report on the Youth Justice Review and noted that 59% of the recommendations were considered achieved by the end of 2015.
115. CJINI highlighted that significant achievements included that no child under 18 years was held in an adult prison in the four years up to the final report in 2015; fewer children were committed to youth custody; and the age and offending profile of those who were committed to youth

custody meant that the most difficult and disturbed young people were being dealt with. Good work had also been undertaken with Youth Engagement Clinics, youth diversion, restorative justice, and the improved identification and support for children at risk.

116. CJINI also outlined the difficulty maintaining momentum in implementing recommendations, particularly those that required a more collaborative approach between the Department of Justice and other Northern Ireland Executive Agencies.
117. Recommendations that had not been achieved included the introduction of statutory time limits; developing a multi-disciplinary model of practice for children in need, and putting those arrangements on a statutory footing; and legal reform of bail which is required for changes to how young people on bail were dealt with.
118. Department of Justice officials are scheduled to attend a meeting of the Committee for Justice on 3 March 2016 to provide an update on a Scoping Study on Children in the Justice System, announced by the Minister of Justice by way of an Oral Statement to the Assembly on 19 May 2015. The Scoping Study has been building on some of the procedural and structural changes already achieved through the Youth Justice Review, and is viewed as important for the implementation of some of the more complex recommendations which require partnership working and buy-in across organisations and other Government Departments.
119. The Minister of Justice intends to make an oral statement to the Assembly on Monday 14 March 2016 to outline the nature of the proposals arising from the Scoping Study and provide direction on how they will be taken forward. He also intends to seek cross-Executive support in his task.

### **Conclusion/Recommendation**

120. The Committee has consistently monitored the implementation of the recommendations of the Youth Justice Review, on a regular basis, most recently at its meeting on [28 January 2016](#).
121. **The Committee acknowledges that stakeholders across the criminal justice system recognise that youth justice is a matter which requires ongoing prioritisation and reform. While the Committee accepts that progress has been made in early intervention work and diverting young people who commit low level offences out of the criminal justice system, the discussions at the Innovation Seminars clearly illustrated that much more needs to be done, and can be done, to address the underlying reasons for the offending behaviour in a holistic way. The key is early intervention and prevention work, which requires a collaborative approach between the Department of Justice and other Departments should as Education and Health.**

- 122. The Committee recognises the value of a multi-agency/multi-disciplinary approach when addressing the needs of children and young people within the criminal justice system, including early intervention and programmes aimed at rehabilitation and reducing recidivism, and recommends that continued reform of youth justice, based on these principles, should be a key priority for the Department of Justice.**
- 123. In the context of the problem-solving approach discussed elsewhere in this report, the Committee recommends that special attention should be given to diversionary disposals, including whether such disposals should attract a criminal record, the needs of victims, and the suitability of this approach for those who repeatedly offend.**
- 124. The Committee also recommends that the Department takes forward ways to reform the Bail Act early in the next mandate to provide a legislative framework to enforce bail practices.**

# The Problem of Excessive Penalisation

## Background

125. The Attorney General for Northern Ireland, Mr John Larkin QC, provided the keynote address at the justice innovation seminar in February 2016. He introduced a new area for consideration under the umbrella of justice innovation by suggesting that, in some instances, excessive penalisation can be a problem.
126. The Attorney General highlighted that when developing new legislation there can be a temptation by Departments to include criminal sanctions for non-compliance, as a way of enforcing adherence to the legislation. He outlined that approximately 65 new criminal offences had been created from the start of the mandate until the end of 2015 and cited by way of example the Reservoirs Bill which created no less than 23 statutory obligations underpinned by criminal sanction.
127. The Attorney General expressed the view that these can sometimes have unintended consequences and discussion took place around the possibilities of an increased number of people having a criminal record, with the resultant implications, based on an offence that may not necessarily be perceived as criminal in nature. The increased number of criminal offences also has implications for the law enforcement agencies such as the PSNI, the PPS and the Courts in terms of time and increased costs.
128. The Attorney General suggested that consideration should be given to whether administrative sanctions would be more appropriate to enforce legislation. He also highlighted that there was a number of very old and obsolete offences and pieces of legislation still in place that could be reviewed and removed.



Committee Members pictured with the Attorney General for Northern Ireland, Mr John Larkin QC before his seminar on  
The Problem of Excessive Penalisation – February 2016

### **Conclusion/Recommendation**

129. The Committee notes with interest the observations of the Attorney General for Northern Ireland regarding the issue of excessive penalisation, and that given the volume of legislation which has progressed through the Assembly between January and March 2016, that this is likely to have increased.
- 130. The Committee is of the view that there is a need for a policy debate on the increasing use of criminal offences for non-compliance with legislation, the consequences of such an approach, and whether it is an effective enforcement method or whether administrative sanctions would be more appropriate.**
- 131. The Committee also recommends that an exercise to review legislation should be undertaken to identify areas where existing legislation or criminal offences have become obsolete with a view to removing them.**

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## Seminars

Date of Seminar	Title of Seminar	Venue	Key Note Speaker/ Organisation
23 April 2015	Innovation in the Criminal Justice System – Youth Justice	Room 115, Parliament Buildings, Stormont	Lord Chief Justice, Sir Declan Morgan QC
21 May 2015	Innovation in the Criminal Justice System – Youth Justice	Room 115, Parliament Buildings, Stormont	The Bar Council
18 June 2015	Initiative in Children’s Order Public Law Proceedings	Room 115, Parliament Buildings	Law Society for Northern Ireland
24 September 2015	Digital Courts and On-line Dispute Resolution	Senate Chamber, Parliament Buildings	Professor Maurits Barendrecht, The Hague Institute for the Internationalisation of Law
22 October 2015	Innovation in the Justice System – Problem Solving Courts	Senate Chamber, Parliament Buildings, Stormont	Phil Bowen, Director of the Centre for Justice Innovation

19 November 2015	Developing Digital Justice for Northern Ireland: Challenges and Opportunities	Ulster University, Jordanstown Campus	Dr Eugene McNamee and Dr Grainne McKeever, Ulster University
4 February 2016	Is Excessive Penalisation a Problem?	Senate Chamber, Parliament Buildings, Stormont	The Attorney General for Northern Ireland, Mr John Larkin QC

### **Stakeholder Events/ Conference**

Date of Stakeholder Event/ Conference	Title of Event	Venue	Key Note Speaker/ Organisation
15 October 2015	Justice in a Digital Age Conference	W5, Odyssey Pavilion, Belfast	<p>Jim Gamble – Chief Executive of INEQE Group</p> <p>Wayne Denner – The Digital Ninja</p> <p>D/Supt Rachel Shields, PSNI and Chair of the Safeguarding Board</p> <p>Olivier Burgersdijk – Head of Strategy at Europol's European Cybercrime Centre</p> <p>DCI Dougie Grant – Head of PSNI's Cybercrime Unit</p>

			Dr Ruth McAlister, Lecturer in Criminology Lord Chief Justice Peter Girvan BL
26 November 2015	Discussion on the Recent Report into the Efficiency in Criminal Proceedings in England and Wales	Long Gallery, Parliament Buildings	Rt Hon Sir Brian Leveson, President of the Queen's Bench
3 March 2016	Discussion on Justice Innovation including Rule of Law, Human Rights and the Supreme Court	Royal Courts of Justice, Belfast	Lord Neuberger, President of the Supreme Court of the United Kingdom

## Visits

Date of Visit	Reason for Visit	Location	Host of Visit
25-26 June 2015	To explore and discuss innovative approaches currently being used or piloted in England and Wales in the areas of youth justice, digitisation of the courts and social media.	Centre for Innovation, Royal Courts of Justice, London	The Civil Justice Council The Centre for Justice Innovation The Lord Chief Justice and Sir Brian Leveson, President of the Queen's Bench Mr Bob Neill MP, Chair of the House

			of Commons Justice Committee Lord Neuberger and Lord Kerr, the Supreme Court
7-8 July 2015	To explore an overview of the work of HiiL in the area of innovation in the justice system and the work of Europol and in particular its work on combatting cybercrime	Hague Institute for the Internationalisation of Law (HiiL), Holland	Europol The Hague Institute for the Internationalisation of Law (HiiL) The Dutch Legal Aid Board The Dutch Council of the Judiciary
20-22 January 2016	To gain a better understanding of how problem solving courts operate and the benefits of them in providing positive outcomes for individuals, victims and communities.	Center for Court Innovation, Brooklyn, New York	Center for Court Innovation Consulate General of Ireland/NI Bureau Red Hook Community Justice Centre
11 February 2016	To view the use of Drug Testing and Treatment Orders (DTTOs) at the Drug Court	Glasgow Drug Court	Thom Gallacher, Drug Court Team Manager Sherriff Lindsay Wood

## **REPORT ON THE COMMITTEE FOR JUSTICE VISIT TO LONDON TO LOOK AT INNOVATIVE APPROACHES TO THE JUSTICE SYSTEM**

### **Introduction**

The purpose of the visit was to build on the Justice Seminars the Committee is currently holding to identify and discuss innovative approaches that could be adopted to improve the efficiency and effectiveness of the justice system in Northern Ireland.

Three seminars have taken place with the Lord Chief Justice, the Bar Council and the Law Society delivering the keynote speeches and the Committee plans to hold further seminars after summer recess.

The Committee wished to explore and discuss innovative approaches currently being used or piloted in England and Wales in the areas of youth justice, digitisation of the courts and social media.

The Committee undertook a 2-day visit to London from 25-26 June 2015. The following Committee Members participated in the visit:

- Mr Alastair Ross MLA (Chairman)
- Mr Raymond McCartney (Deputy Chairman) MLA
- Mr Sammy Douglas MLA
- Mr Tom Elliott MP MLA
- Mr Paul Frew MLA
- Mr Alban Maginness MLA

### **Programme briefings**

During the visit the Committee met with:

- The Civil Justice Council
- The Centre for Justice Innovation
- The Lord Chief Justice and Sir Brian Leveson, President of the Queen's Bench
- Mr Bob Neill MP, Chair of the House of Commons Justice Committee
- Lord Neuberger and Lord Kerr, the Supreme Court

### **Meeting with the Civil Justice Council – Royal Courts of Justice**

- Peter Farr – Secretary to the Civil Justice Council
- Andrea Dowsett – Assistant Secretary
- Elizabeth Silver – Council Member (Business)
- Rebecca Scott – Council Member (Lay Advice Sector)

Peter outlined the role of the Civil Justice Council and some of the work that it has undertaken. He explained that their role was to make the justice system more accessible and to make proposals for research.

There was then a discussion on two areas that the Civil Justice Council had completed reports on – Online Dispute Resolution (ODR) and Litigants in Person.

**ODR** – The CJC outlined some of the findings of its report into Online Dispute Resolution for civil claims below £25k, focussing on what technology there is, the legal and policy implications and looking at best practice. The Council outlined that places like the Netherlands and Canada are ahead of the curve in relation to online dispute resolution.

There was discussion around the need for ODR, as the system was too slow and too expensive for small claims and that ODR would improve access to justice and reduce cost.

The Council outlined the possible process for taking a claim online, this included an online evaluation which would provide options and templates, an online facilitation which would seek to resolve the claim through mediation and negotiation and finally an online court where a judge would decide online (with the possibility of the claim being transferred to a physical court).

There was discussion on the following issues –

- How this fits into an overall reform of the system
- Need for training for judges
- Role of claims management companies
- Could it be seen as an inferior form of justice
- Interpretation issues
- The need for primary legislation
- Changing Technology
- Cost/Benefit Analysis results
- Particular areas suitable for ODR
- Benefits of a Pilot Scheme

**Litigants in Person (LiPs)** - The Council outlined that the biggest issue concerning LiPs is the increase in the number of family clients. The Council outlined a number of initiatives that had been taken forward to provide information to LiPs, including an internet court navigation tool that guides litigants in person through the process. The Council also advised that there were extended levels of advice to LiPs in relation to housing and bankruptcy. In a pilot in parts of London a LiPs liaison judge had been appointed in each court.

There was discussion on the following issues –

- The sharp increase in the number of LiPs, particularly in the Family Courts
- Need for Court advice and signposting
- Role of diversionary sentences

- Housing, eviction and debt cases
- The fixed costs of negligence cases

### **Meeting with the Centre for Justice Innovation - Kean House, Kean St**

- Phil Bowen - Director
- Anton Shelupanov – Deputy Director
- Joanne Thomas – Innovative Practice Manager
- Stephen Whitehead – Better Courts Programme Manager

The Director of the Centre for Justice Innovation (CJI), Phil Bowen, outlined the history and work of the CJI and explained some of the current trends in the UK and worldwide in relation to levels of crime and youth justice.

CJI outlined the benefits of community and drug courts, domestic violence courts, specialist centres for vulnerable people and integrated courts. CJI gave Members a presentation and there were discussion around the following points.

#### **Fairness in Policing**

- How this is the role of every justice agency
- The links between how forces treat staff and how they treat the public
- The role of court advice service in helping before and after court appearances

#### **Youth Justice**

- Fewer young people are committing crime
- The use of point of arrest diversions
- Problem solving youth courts
- Keeping younger prisoners closer to home

#### **Changing Crime Mix**

- More complex to investigate
- Interpersonal crime up – rape and domestic violence
- Inadequate information sharing identified in reviews of domestic abuse homicides
- Use of specialist centres for vulnerable people
- Use of ‘one family, one judge’ courts in the US, Australia and New Zealand

#### **Prison Population**

- In Germany, Finland and Czech Republic crime is down but prison population is up
- Use of problem solving courts were sentences and services are targeted to resolve the underlying problems that have caused the offending behaviour
- Use of Drug courts and need for follow-up in court
- Drug treatment testing orders
- Pilot in relation to sobriety bracelets in parts of London (Croydon and Camberwell Courts) – 94% compliance with orders – to encourage behaviour change



- Use of electronic monitoring in Portugal
- The Violence Reduction Unit set up in Scotland
- The use of re-entry courts in the US
- The 'Swift and Certain Justice' programme in Hawaii

#### Devolution

- Need to bring decision making closer to communities
- Case study in New York, which devolved youth custody to city level and saw costs and numbers go down.
- The work of CJI in encouraging frontline innovators

The PowerPoint presentation delivered by CJI is attached at **Tab 1**.

#### **Meeting with the Lord Chief Justice and the President of the Queen's Bench**

- **Lord Thomas of Cwmgiedd**
- **Sir Brian Leveson**

The Committee discussed a number of issues with Lord Thomas and Sir Brian Leveson, including innovation in the justice system, the speeding up of justice and Sir Brian Leveson's report on the Review of Efficiency in Criminal Proceedings.

There was a general discussion around changing technology and social media and its effects on the justice system, the need for judges to be trained on the use of technology and the implications of changing technology.

There was also discussion around Sir Brian Leveson's Report including the input from stakeholders into the Report, the need for solicitors/barristers to earn their money in less time and improve efficiency, the need for a common platform for IT (there was discussion around the possibility of piloting the system in Northern Ireland due to the size of the jurisdiction). There was also discussion around some of the implications of innovation in relation to human rights and the possible effects of innovation on youth justice and those with mental health concerns.

There was discussion around some innovative ideas such as summer jurisdiction, a single family system and the use of online courts for non-victim crimes.

#### **Informal dinner with the Bob Neill MP – Chair of the House of Commons Justice Committee**

The Committee met with the newly appointed Chair of the House of Commons Justice Committee, Bob Neill MP and the Clerk of the Committee over dinner in Westminster to discuss justice priorities and issues of interest to both committees.

## **Meeting with the Supreme Court – The Supreme Court**

- **Lord Neuberger**
- **Lord Kerr**
- **Jenny Rowe – Chief Executive**

The Committee met with Lord Neuberger and Lord Kerr to discuss innovation in the justice system. Lord Neuberger outlined some of the innovative approaches that the Supreme Court has taken forward, including online access, a new case management process and IT training for Supreme Court judges.

Members discussed the impact of social media on the justice process and the need for legislation to be adaptable to cope with changing technologies. There was discussion around the balance between freedom of information with freedom of expression.

There was also discussion on innovative approaches that could be taken forward in Northern Ireland, including use of diversions and the use of online courts.

# **REPORT ON THE VISIT TO THE HAGUE TO LOOK AT INNOVATION IN THE JUSTICE SYSTEM**

## **Introduction**

The purpose of the visit was to build on the Justice Seminars the Committee is currently holding to identify and discuss innovative approaches that could be adopted to improve the efficiency and effectiveness of the justice system in Northern Ireland.

Three seminars have taken place with the Lord Chief Justice, the Bar Council and the Law Society delivering the keynote speeches and the Committee plans to hold further seminars after summer recess.

The Committee undertook a 2-day visit to London from 25-26 June to explore and discuss innovative approaches currently being used or piloted in England and Wales in the areas of youth justice, digitisation of the courts and social media.

The Committee agreed that the Chairman and the Deputy Chairman should visit the Netherlands to primarily look at its use of online dispute resolution. The visit took place on 7 to 8 July 2015.

The following Committee Members participated in the visit:

- Mr Alastair Ross MLA (Chairman)
- Mr Raymond McCartney MLA (Deputy Chairman)

## **Programme briefings**

During the visit the Committee met with:

- Europol
- The Hague Institute for the Internationalisation of Law (HiiL)
- The Dutch Legal Aid Board
- The Dutch Council of the Judiciary

At his request, Mr David Lavery, Director of Access to Justice in the Department of Justice participated in the briefings with HiiL, the Legal Aid Board and the Council of the Judiciary.

## **Meeting with Europol – Eisenhowerlaan, The Hague**

- Will van Gemert – Deputy Director
- Philipp Amman – European Cybercrime Centre
- UK Liaison Bureau

Philipp and Will gave the Chairman and Deputy Chairman a presentation on the work of Europol and in particular its work on combatting cybercrime in Europe and its links with other agencies to allow global enforcement against those committing cybercrime.

There was discussion around various new technologies and the efforts of Europol in combatting ever changing technologies and the need for staff at Europol to be innovative in identifying cybercrime and enforcement of EU law. There was discussion around the use of the 'deep web' and the 'dark web' by criminals and how criminals will use 'unstable' and less regulated jurisdictions as a base for cybercrime attacks.

There was discussion around the necessary links that Europol have needed to establish with key partners such as the private sector, academia and other law enforcement agencies.

There was also discussion around Europol's links with EU countries through its network of Liaison Bureaus. The Director of the UK Liaison Bureau gave an overview of its role and how it engages with police forces across the UK. The Director of the UK Liaison Bureau highlighted the importance of establishing lines of communication from police forces to Europol to allow its expertise to be used in local efforts to combat cybercrime.

There was a discussion around the challenges for law enforcement including the cross-border nature of cybercrime, how to identify a person behind a keyboard, the different legal frameworks across jurisdictions and the need for increased expertise in the area of cybercrime.

### **Meeting with HiiL and the Dutch Legal Aid Board - Bezuidenhoutseweg, Den Haag**

- Professor Maurits Barendrecht – Research Director HiiL
- Peter van den Biggelaar – Director, Legal Aid Board

Professor Barendrecht gave the Chairman and Deputy Chairman an overview of the work of HiiL in the area of innovation in the justice system. Professor Barendrecht outlined some projects that were being led by HiiL and outlined the importance of innovation being linked to early intervention and the necessity to link costs with benefits.

Peter van den Biggelaar gave an overview of the Dutch Legal Aid Board, including governance, budget and remit. There was discussion around the process that the Dutch Legal Aid Board went through to be independent from the Dutch Government and outlined the Dutch fixed fee system. There was also discussion around transparency around eligibility for legal aid and how this can allow better planning and budgeting as the Dutch Legal Aid Board are able to establish a % of population that is eligible for legal aid.

## **Rechtwijzer 2.0**

Professor Barendrecht delivered a presentation on the Rechtwijzer 2.0 platform for online dispute resolution. Currently the Rechtwijzer 2.0 platform is used for divorce and separation in the Netherlands and will be rolled out to landlord/tenant disputes and employment disputes in the autumn. The platform is also due to go live in British Columbia and England in 2015.

Professor Barendrecht went through the process that clients would go through and outlined 20 issues that need to be resolved in order for the process to be completed. He also outlined the process for dispute resolution on issues that aren't agreed. Peter outlined that the cost to the client of going through the process is a maximum of €1275, which includes an independent legal review (€300) and formalisation in court (€285). Peter outlined that around 40% of clients are eligible for legal aid, which would pay around 90% of the cost.

There was discussion around the cost of setting up the platform. The Dutch Legal Aid Board advised that it would cost around €200,000 to set up the system (a Silicon Valley company called Modria) with an additional €90 fee per case going to developers. There was also discussion on how the platform could be adapted to allow a greater range of disputes to be considered. Peter outlined his view that this was an efficient use of resources in the majority of cases, but for complex cases it was not as suitable.

There was also considerable discussion on how you can ensure fairness in an online dispute resolution platform with little legal input. Maurits and Peter outlined the independent review mechanism that allows a legal review of the resolution to ensure fairness. They also advised that they have set up an expert panel and client focus groups which review data and consider feedback from clients. They also advised that they are developing an aftercare programme that will review cases 2-3 years after completion to ensure that needs where met.

## **Meeting with the Dutch Council of the Judiciary – Rechtspraak, Den Haag**

- **Kees Strong – Member of the Council**
- **Frans van Dijk – Director of the Council**
- **Dr Suzan Verberk – Research Co-ordinator**

The Chairman and Deputy Chairman met with the Council of the Judiciary over lunch. The Director of the Council gave a presentation to the Chairman and Deputy Chairman outlining the governance and budget arrangements for the judicial system in the Netherlands.

There was discussion on a number of issues including

- the training and appointment of judges
- the responsibilities of the Council for the Judiciary
- the rationalisation of the courts estate

- the role of the judiciary in relation to new legislation
- use of social media
- innovation in the judicial system
- the use of online courts

## **Committee for Justice Visit to Brooklyn, New York 21-22 January 2016**

### **Background**

As part of its consideration of innovation in the justice system, the Committee for Justice has been looking at the issue of problem solving courts. This issue was first raised during a Committee visit to London in June 2015 when it met with the Centre for Court Innovation. In October 2015, the Committee invited the Director of the Centre for Justice Innovation, Mr Phil Bowen, to come to Belfast to lead one of the Committee's Justice Innovation Seminars which would focus on problem solving courts. During the visit Mr Bowen invited the Committee to visit its sister organisation, the Centre for Court Innovation, to look at a number of different types of problem solving courts that have been running for a number of years. The Committee agreed to undertake this visit and the programme is outlined below.

Thursday 21 January	
10.00 - 12.30	Brooklyn Treatment Centre
2.00 – 5.00	Red Hook Community Justice Centre
Friday 22 January	
9.30 – 12.30	Brownsville Community Justice Centre
2.00 – 3.00	Domestic Violence Court - Midtown

### **Problem Solving Courts**

Problem-solving justice can trace its theoretical roots to innovations in policing, particularly community and problem-oriented policing, which attempted to replace traditional law enforcement's focus on responding to individual offences with a focus on identifying and addressing patterns of crime, ameliorating the underlying conditions that fuel crime, and engaging the community as an active partner.

In the 1990s these new policing strategies helped inspire similar approaches in the rest of the criminal justice system, and gave rise to innovations like community prosecution, community courts, and problem-solving probation. These new experiments shared an emphasis on data analysis, community engagement, crime prevention, and problem solving. At their core was the idea that it was no longer enough just to arrest, process, and adjudicate an offender, but law enforcement officers, prosecutors, judges, and probation officers also needed to try to reduce recidivism, improve public confidence in justice, and prevent crime down the road.

Today there are over 2,500 problem-solving courts in the United States, and a growing body of research literature has begun to validate their effectiveness. A study into the effectiveness of problem solving courts can be found at:

<http://www.ndci.org/publications/painting-current-picture>

Further information on problem solving courts can be found at:

<http://www.courtinnovation.org/research/principles-problem-solving-justice>

**Visit to Brooklyn Treatment Court – Brooklyn Supreme and Family Court, 320 Jay Street**

The Committee met with Judge Ferdinand who presides over the Brooklyn Treatment Court and Joe Madonia, the Director of the Treatment Court. Committee Members also met with a number of staff from the Centre for Court Innovation.

During an initial briefing with Judge Ferdinand and Joe Madonia, they explained to Members how the drug court works and that it is for people who have committed a felony that would normally attract a sentence of less than 2 years. They explained that the Court had been in operation in Brooklyn since 1996 and seeks to combine the criminal system with the public health and social services systems.

They explained one of the reasons for starting the drugs court was the high prevalence of drugs use in the area. This led to a number of different problems including increase in crime to pay for people's addictions, an increase in people being sent to prison, a breakdown in community structures and increased overdoses. At the time the processes for dealing with the issues were not working and they agreed to look at addressing addiction problems in order to reduce recidivism and provide people with the help that they need.

They went on to explain the process that a person would go through when they get arrested if there is a drugs problem.

- Arrest
- Within 24 hours they appear before a judge
- They are then referred by the judge to the Treatment Court the next day where they are tested to get an accurate read of drugs use – supervised toxicology
- They are interviewed by a clinician to discuss substance abuse, health issues, social care and employment status – assessment takes around 2.5 hours
- A treatment plan is then drafted which is a public health issue not a criminal justice issue
- Offender then appears back in court, where the judge, lawyer and district attorney agree the treatment plan – this may include residential treatment programmes that are time limited
- The offender then needs to plead guilty – if they complete the treatment plan the case is dismissed and record sealed, if they don't complete the plan the offender is sentenced.

Judge Ferdinand explained the process for ongoing monitoring of treatment which includes regular appearances before the judge (normally monthly, but at the Judge's discretion) when they are tested and the Judge is updated on progress. This will include how rehabilitation is going, what employment or training is being undertaken and transition into the community. If during the plan there are relapses or problems, the judge has the power to send the person to jail for short periods (usually 1-3 days) and allow further chances to follow the plan. The judge explains that around 90% of those going through the programme will have at least 1 sanction – this may include adding additional time to the programme and being sent to prison for short periods. Around 50% will spend some time in jail. The Judge outlined the importance of victim impact and how the offender needs to consider the impact of their actions on victims of crime.

The Judge explained that the speed of the process and regular updates allows people to get help at the earliest opportunity rather than waiting for long periods until court case etc. The Judge and Joe Madonia outlined that there is a 60-65% success rate in getting people off drugs through the programme which compares to 21% success of those who take treatment voluntarily. They also outlined that reoffending rates have dropped considerably with only a 10% recidivism rate for those



who have completed the treatment plan. The Judge explained the importance of recognising the success of people in completing programmes and they have regular graduation ceremonies to celebrate those who have completed the programme. The Judge advised that they have around 450 active clients.

Committee Members questioned how a dealer and a user are differentiated in the system and were advised that usually big dealers will not be addicted to the drug. The dealers that they come across are small level who deal solely to fund their addiction if the amounts are small enough they will come through the Treatment Centre. Dealing of larger amounts would not fall under a felony of less than 2 years. They also advised if there is a link with guns and/or violence they would not be eligible for Treatment Court.

Members asked further questions in relation to domestic violence and how it is considered in relation to eligibility for drugs treatment. The Judge advised that where the spouse has expressed a desire that the offender undertakes the programme they will accept that person. There was also discussion in relation to the Veterans Treatment Court and the Driving Under the Influence Court that they run.

Following the briefing, Members were taken on a tour of the treatment centre, including the drugs testing lab, the education suite and the social services team. Members then had the opportunity to sit in Judge Ferdinand's court as she considered a number of cases. Members also had the opportunity to speak with the District Attorney and with Judge Ferdinand following the rulings made.

Further information on the Brooklyn Drugs Court can be found at:

<https://www.nycourts.gov/courts/2jd/brooklyntreatment/about.shtml>

### **Visit to Red Hook Community Justice Centre – 88 Visitation Place, Brooklyn**

Members initially met with Viviana Gordon, the Deputy Director of the Centre. Viviana gave the Committee an overview of the Red Hook area and highlighted some of the issues that it has been facing over the past 20 years or so. Viviana showed Members clippings from newspapers and magazines showing that Red Hook was known as the crack cocaine capital of the United States in the early 90's and was rife with gang problems. She went on to explain that a large freeway was built through the area which left Red Hook feeling isolated from the rest of Brooklyn.

There are approximately 240,000 people that live in the Red Hook area and are covered by the Community Justice Centre. The Court takes cases where crimes would attract up to 1 year in prison.

Viviana outlined that the Court works much in the same way as the Brooklyn Treatment Court in bringing all social and health services together in order to deal with the problem. However this court deals with all types of civil cases, not just drugs related. This would include anti-social behaviour, prostitution and theft. The Centre is able to deal with cases quickly and the Judge can refer offenders to other services contained within the Centre to ensure that actions are taken quickly. The Centre is able to undertake an assessment of social needs for each offender and recommend a programme and alternatives to prison for the majority of offenders. Viviana outlined that the latest

statistics showed that they were able to find alternatives to jail in 78% of cases. This helps to reduce reoffending and provides an important service in the community.

Viviana explained that in addition to the Court, the Centre undertakes a lot of other community based work including programmes in relation to domestic violence and drugs awareness. The Centre also holds a number of community programmes that seek to make public space accessible and safe for all. The Centre also provides education services, employment services and services for young people, including sports programmes.

A large part of the work of the Centre is in helping people with housing problems. Although this is not strictly within the remit of the Centre, the judge took this work on due to the number of complaints from residents of public housing in the Red Hook area. The Centre seeks to help those in public housing get the necessary repairs to ensure that houses are safe for people to live in.

The Centre also runs a Youth Court which is a teen run court (14-18) which considers live cases of first-time juvenile offenders. It usually takes very minor cases such as truancy, possession of knife etc. The offender has to agree to this and the sanction will be a community based diversion. Young people are recruited and trained from local schools.

Following the briefing, Members where taken on a tour of the Centre and visited a number of different programmes, including the employment services, the education suite, the district attorney's office and the housing office. Following the tour, Members were taken into the court room to watch proceedings of a number of cases.

Members then had the opportunity to meet Judge Calabrese who presides over the Court and has done for a number of years. He highlighted some of the statistics in relation to the Community Court. He highlighted that millions had been saved by sending people to rehab and reducing reoffending, he stated that jail is the most expensive and least effective way of dealing with addiction. Members discussed with Judge Calabrese the difference between processing and treatment, the use of sanctions in treatment and the power of dismissal as a reward for keeping to the programme.



Members with Judge Calabrese - the man who pioneered the problem solving model in red hook community justice centre

Further information on Red Hook Community Justice Centre can be found at:

<http://www.courtinnovation.org/project/red-hook-community-justice-center>

### **Visit to Brownsville Community Justice Centre – 519 Rockaway Avenue, Brooklyn**

Members met with James Broderick, the Director of the Centre. James advised the Members that this project had only been set up a few years ago and was not yet in the position of having established a community court. The project was currently running diversionary programmes and community programmes to build confidence in the justice system in advance of a court being established. James advised that they are in the process of bidding for a building that would become the Centre and had the space for a court room. He stated that they had managed to raise \$23m in capital to fund a court and Centre.

James gave the Committee an overview of the Brownsville area and outlined that Brownsville was the district with the highest crime levels and highest public housing levels in all of New York. There are a total of 110,000 people living in a 2 square mile area. He said one of the biggest problems in the area is gun possession by young people. He stated it was not unusual to have 13, 14, and 15 year olds that have access to a gun and produced statistics in relation to the number of murders in the district. Four young people had been shot while on programmes with the Centre.

James stated that there are major safety issues within the district with young people unable to cross certain roads or else they will be beaten or shot at. He stated that at present young people have nothing to lose and will therefore make rash decisions and the purpose of the Centre is to try and bring hope to young people.

James outlined some of the work it has undertaken to make areas safer including community farms and the use of community murals. The Centre is also working with police to try and make the area more accessible and safer for police and to try and involve the police in some of the projects it is undertaking.

Brownsville has established a Youth Court that trains 75 young people each year and hears over 150 cases. Cases are referred by Probation, NYPD and the Law Department and are mainly for issues such as Larceny and Possession of a Weapon. There is a 92% compliance rate with the youth court and there has been a substantial reduction in reoffending for those who have went through this diversion.

Members asked James questions in relation to the work carried out and engagement with schools, how the centre and its work is funded and the links with local police and the legal profession.

James took Members on a tour of the area outlining where there are problems with street violence and showing Members some of the projects it has undertaken. James also took Members to the building that the Centre is hoping to buy to establish a court. James invited Members to come back when the Court has opened to look at progress.

Further information on Brownsville Community justice Centre can be found at:

<http://www.courtinnovation.org/project/brownsville-community-justice-center>

## **Domestic Violence Courts – Centre for Court Innovation, 8<sup>th</sup> Avenue, New York**

Members then went to the Headquarters of the Centre for Court innovation to meet with its Domestic Violence team. The Committee had a Conference call with the Director of the Domestic Violence Court, Rebecca Thomforde Hauser. Rebecca outlined that the Domestic Violence team deal with all gender related issues, including domestic violence, sexual assault and human trafficking. They also deal with the specific area of tribal justice.

Rebecca outlined that the Domestic Violence Court Model was accountability focussed and provided enhanced services for victims and perpetrators. Rebecca highlighted that the Courts provided increased victim safety and provided the opportunity to rehabilitate offenders. Rebecca outlined that in the courts one judge hears both the criminal and civil cases and is able to refer victims to health and social services.

Members asked questions in relation to human trafficking, training for court staff in dealing with these issues, instances of male victims and the role of victims in the case.

Further information on the work of the Centre for Court Innovation in relation to Domestic Violence can be found at:

<http://www.courtinnovation.org/topic/domestic-violence>

## **REPORT ON THE COMMITTEE FOR JUSTICE VISIT TO THE GLASGOW DRUG COURT**

### **Background**

The purpose of the visit was to build on the Committee's Justice Innovation Programme of seminars and visits, which has sought to identify and discuss innovative approaches that could be adopted to improve the efficiency and the effectiveness of the justice system in Northern Ireland.

The following Committee Members participated in the 1-day visit to the Glasgow Drug Court on Thursday 11 February 2016:

- Mr Alastair Ross MLA (Chairman)
- Mr Danny Kennedy MLA
- Mr Alban Maginness MLA

The visit was specifically designed for Members to learn more about the use of Drug Testing and Treatment Orders (DTTOs) and the Glasgow Drug Court approach.

### **Drug Testing and Treatment Orders**

The emphasis of a DTTO is on drugs treatment as the primary means of reducing offending behaviour rather than the specific offence focused approach of a probation order. The Order is a direct alternative to custody. The purpose of the DTTO is to:

- Reduce or eliminate the use of illicit drugs
- Reduce the scale and frequency of drug related offending
- Supervise and review progress monthly and provide Courts with evidence
- Offer treatment and counselling
- Implement formal procedures when compliance fails

The DTTO is a community disposal, which is particularly effective in making progress with adult drug misusing offenders in respect of:

- Positive changes in levels of reported drug misuse from before, during, at completion of, and after treatment on order
- Positive changes in the scale and frequency of drug related offending from before, during, at completion of, and after treatment on order.
- Health related benefits as a result of receiving treatment, including reduction in harmful behaviour and drug related illnesses, particularly blood borne viruses such as HIV, Hepatitis B, Hepatitis C, etc.

The service user is required to make a significant commitment to become involved in a high level of intervention and demonstrate how this has impacted upon their lives, the lives of their families and the community.

More information on DTTOs including guidance for the schemes can be found at:

## **Glasgow Drug Court**

The Glasgow Drug Court first opened in 2001. It was originally established as a pilot project and became a permanent part of Glasgow Sheriff Court in March 2006.

The court supervises the treatment of drug-addicted offenders who commit crime to fund their habit and aims to break that cycle. It has at its heart a particular conception of the role of court as not solely neutral arbiters but agents of positive change.

The objectives of the court are:

- To reduce the level of drug related offending behaviour
- To reduce or eliminate an offenders dependence on or propensity to misuse drugs
- To fast track treatment and provide rapid access to support services
- To maintain public confidence in the ability of the Service to deal with the causes of crime associated with drug misuse

The Specialist Drug Court Sheriffs have, in addition to their existing powers, exclusive jurisdiction over the community based treatment orders made in the drug court.

## **Programme**

In the morning Members received a briefing from Mr Thom Gallacher, Drug Court Team Manager, and members of the Drug Court Team on their work with offenders placed on DTTOs. Members then moved to the Drug Court to observe the pre-review meeting between the Drug Court Team and Sheriff Wood, prior to the afternoon Drug Court. A question and answer session between Members and Sheriff Wood took place following the pre-review meeting. Over lunch Members met with other members of the Drug Court Team including nurses, social workers and addiction support workers, who all engage with service users placed on DTTOs. Members then observed the Drug Court in the afternoon, following which a final question and answer session took place with Sheriff Wood.

## **Discussion**

Members were informed funding is received directly from the Scottish Government Justice budget. The Drug Court Team operates between 75 to 125 orders at any one time. The approach of the Drug Court Team is holistic and involves treatment, advocacy and relapse prevention. Each person given a DTTO and who presents to the Drug Court Team is allocated a social worker, an addiction worker and a key nurse.

Sheriff Wood will follow cases through the whole system. There are breaches and cases are reviewed every month so these can be dealt with quickly. Sanctions available include the option of custody. Given the length of time offenders have generally been addicted to drugs (up to 20 years) relapses are expected and dealt with and there isn't an expectation that people will be totally drug free at the end of the DTTO. There is however an expectation that drug-using behaviour will have changed significantly and related reoffending substantially

reduced. 75% of those who complete the DTTO have changed their drug-using behaviour. The team deals primarily with drug users, rather than dealers and have experienced problems in the past when dealers have been involved in the programme. The main problem drugs are heroin, cocaine and benzene.

Following satisfactory completion of the DTTO the charge is “admonished”, in that the offender is set free, although the conviction is still recorded. The Team, along with Sheriff Wood are currently considering ways to acknowledge completion of a DTTO, which usually lasts about 18 months.

Sheriffs either self-select, or are selected, to preside over the Drug Court, and Sheriff Wood has been in post since 2003.

Members recalled the immediacy of the process in Red Hook and were informed that the Drug Court Team see service users straight from court. During the Drug Court Members witnessed offenders being asked to report to the Drug Court Team immediately. This was called a ‘new start’ appointment and involves an immediate appointment with the Team doctor.

Members asked whether people remained in the communities in which they are at high risk of re-offending. The team recognised that peer group association is one of the biggest risks but highlighted that drugs are available everywhere and indicated that work is put in to develop a robust relapse prevention plan for each individual. Support is also provided to assist accessing alternative housing and accommodation arrangements if necessary. The team uses the cognitive behaviour model to provide problem solving and coping skills.

The Drug Court Team advised that problem solving courts are time, cost and labour intensive, particularly in the early stages and due to the multi-disciplinary approach which can more effectively respond to individual client needs. Overall it is however cost effective by reducing offending behaviour and the associated costs of dealing with this for the criminal justice agencies including the police, the prosecution service, the Courts and the Prison Service.

Following the visit to Red Hook the Chairman highlighted the importance of the judge having an understanding of the medial impact of drug use, and the intervention, including the physical and mental health conditions which require treatment alongside addiction. The Drug Team highlighted the importance of the pre-review meeting with the Sheriff, during which key workers can discuss progress and treatment options. The Team also advised that there is a “Development Day” each year for information exchange between the Drug Court Team and the Sheriffs presiding at the Drug Court.

Members were advised that the key issues for nursing staff are Hepatitis C, HIV, drug-related illness, trauma and mental health. They were also advised that violent offenders can be eligible to go through the programme if the behaviour was in the past or related to drug use.

There are no statistics available regarding the efficacy of work with ethnic minorities as this group only presents in very small numbers to the Drug Court Team. Similarly the number of women accessing DTTOs is low as there are initiatives, like the ‘Tomorrow’s Women Project’ trying to discourage women from going into custody

## **Pre-Review meeting**

During the pre-review meeting Members observed the key workers presenting the latest reports and discussing recommendations with Sheriff Wood in advance of the afternoon Drug Court. This included information on recent testing results, a general update on progress and narrative on any other relevant factors. At this meeting Sheriff Wood indicated his likely intended approach in each case.

## **Drug Court**

In the afternoon Members observed the Drug Court, presided over by Sheriff Wood. Each of the individuals had legal representation that appeared to rely heavily on the reports prepared by the Drug Court Team when representing their clients. Sheriff Wood approached each case as outlined during the morning pre-review meeting.

## **Post-Court**

Following the Drug Court Members had an opportunity to discuss their observations with Sheriff Wood and Thom Gallacher.



**Alban Maginness MLA, Danny Kennedy MLA, Sheriff Lindsay Wood, Alastair Ross MLA, Thom Gallacher**

## **Key Components to the Success of the Model**

The following key components were identified by the Drug Court Team and Sheriff Wood as being necessary for the success of the model:

- A multi-agency health and justice collaborative approach
- A truly integrated, multi-disciplinary team
- Access by all members of the team to a single information system
- Flexibility and versatility within the model
- Specific tailored order/support packages for each individual



- The immediacy of the order – with the Glasgow Drug Court the offender leaves the court and immediately attends an appointment with the Drug Court Team the same day – the building is adjacent to the Court House - a medical takes place and the programme is started.

## **Outcomes**

- Drug Court Orders in Glasgow have been shown to effect positive change in levels of reported drug misuse from before, during, at completion of and after treatment order.
- Positive changes in the scale and frequency of drug related offending before, during, at completion and after treatment order.
- Despite having extensive prior criminal histories almost half of those who completed the order had no further convictions within 2 years.

WAYNE  
DENNER



**WHAT DOES YOUR  
ONLINE REPUTATION  
SAY ABOUT YOU?**



Who am I?



750M sent per day



350M sent per day



90M sent per day

30 Billion WhatsApps  
sent per day



WAYNE  
DENNER

# Remember the cringey photo album..



WAYNE  
DENNER



93%



WAYNE  
DENNER



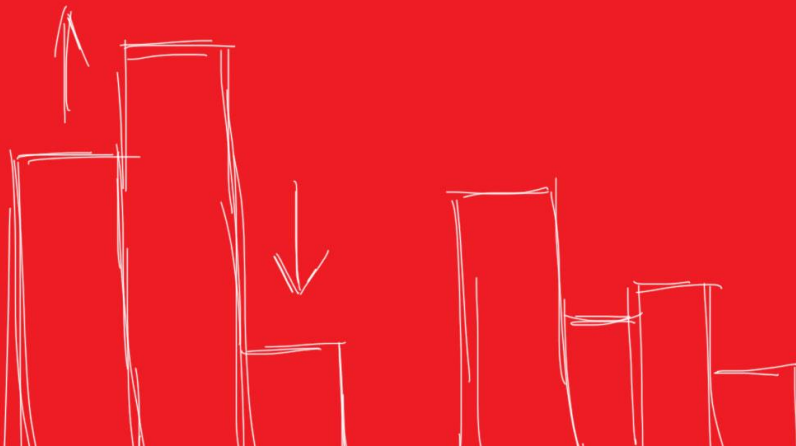
79% HAVE HIRED  
VIA LINKEDIN



Wayne Denner  
Digital Ninja



69% of employers have  
rejected candidates  
based on their social  
media activity



WAYNE  
DENNER

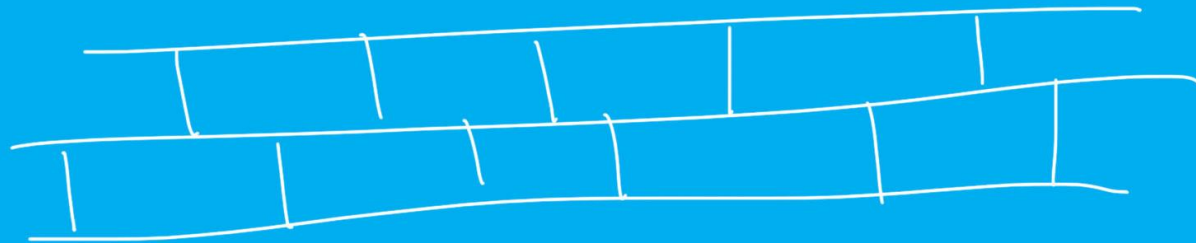




35%



WAYNE  
DENNER



# What Goes Online Stays Online



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DENNER



83% DRUG USE,  
70% BY 'SEXUAL  
POSTS' AND 44%  
BY ALCOHOL  
RELATED POSTS.



Wayne Garner  
Digital Ninja



Don't look guilty by  
association



WAYNE  
DENNER



**Your Social Media has  
REAL Consequences**



**WAYNE  
DENNER**



# Give a good account of Yourself Online



WAYNE  
DENNER



## 3 Tips

Google Yourself,  
Think Privacy,  
Generate Positive  
Content



WAYNE  
DENNER



# Me on Social Media



WAYNE  
DENNER

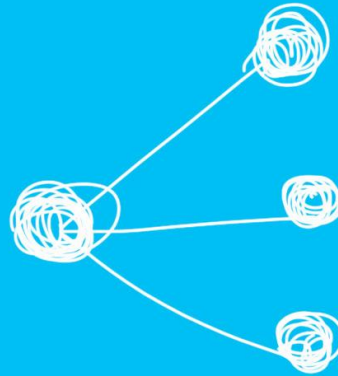


Me on the Web

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WAYNE  
DENNER



# Be Share Aware



WAYNE  
DENNER



You Control Social Media,  
Don't let it Control you



WAYNE  
DENNER

# YOUR DIGITAL CV



Wendy Denner  
Digital Ninja

Twitter:

@waynedenner

Facebook:

talk2wayne

WEB:

[www.waynedenner.com](http://www.waynedenner.com)



EUROPEAN CYBERCRIME CENTRE



# Cybercrime and emerging threats

**Northern Ireland Assembly  
Committee for Justice**

**Justice in a digital age**

*Belfast*

*15 October 2015*

# IOCTA 2015

- Annual threat assessment by Europol's EC3
- Informs decision making on prioritisation
- High-tech crimes
- Child sexual exploitation
- Payment fraud
- Abuse of Darknet
- Digital crime facilitators



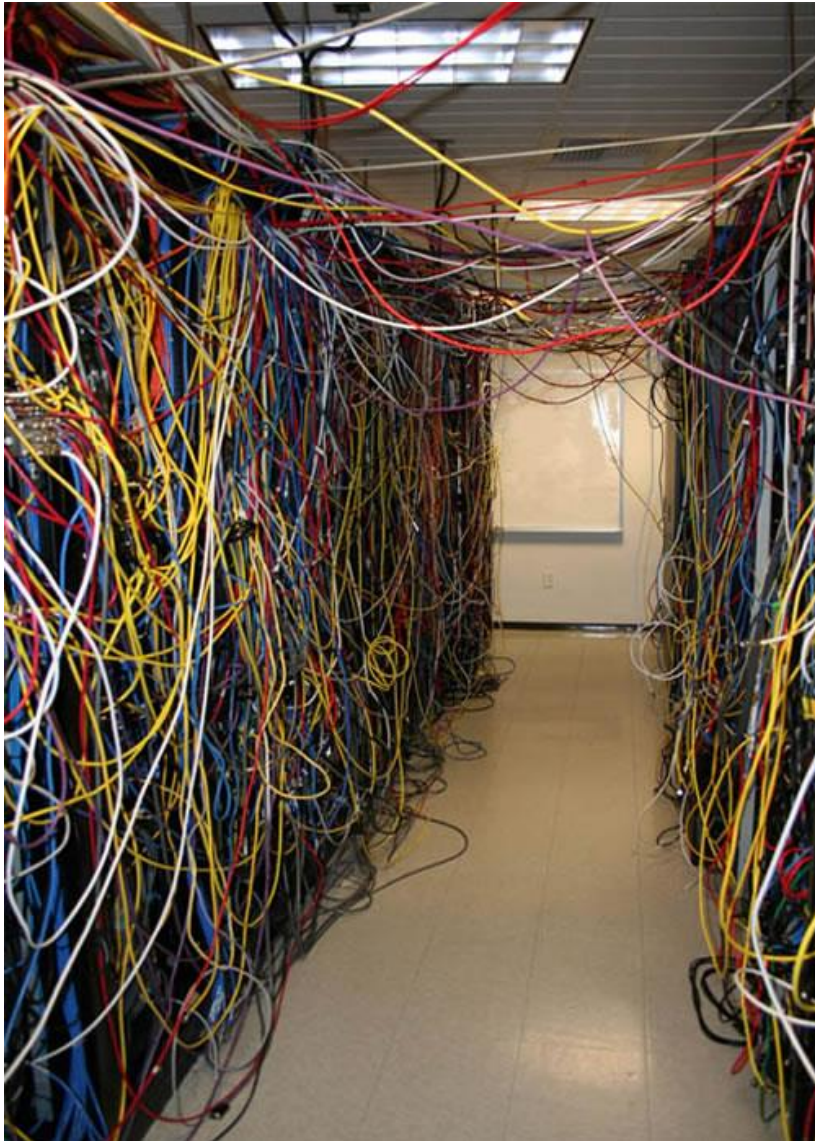


# Aggressive - Confrontational





# Failing security



- Lack of digital hygiene
- Lack of security features in new devices and software
- Absence of minimum security standards

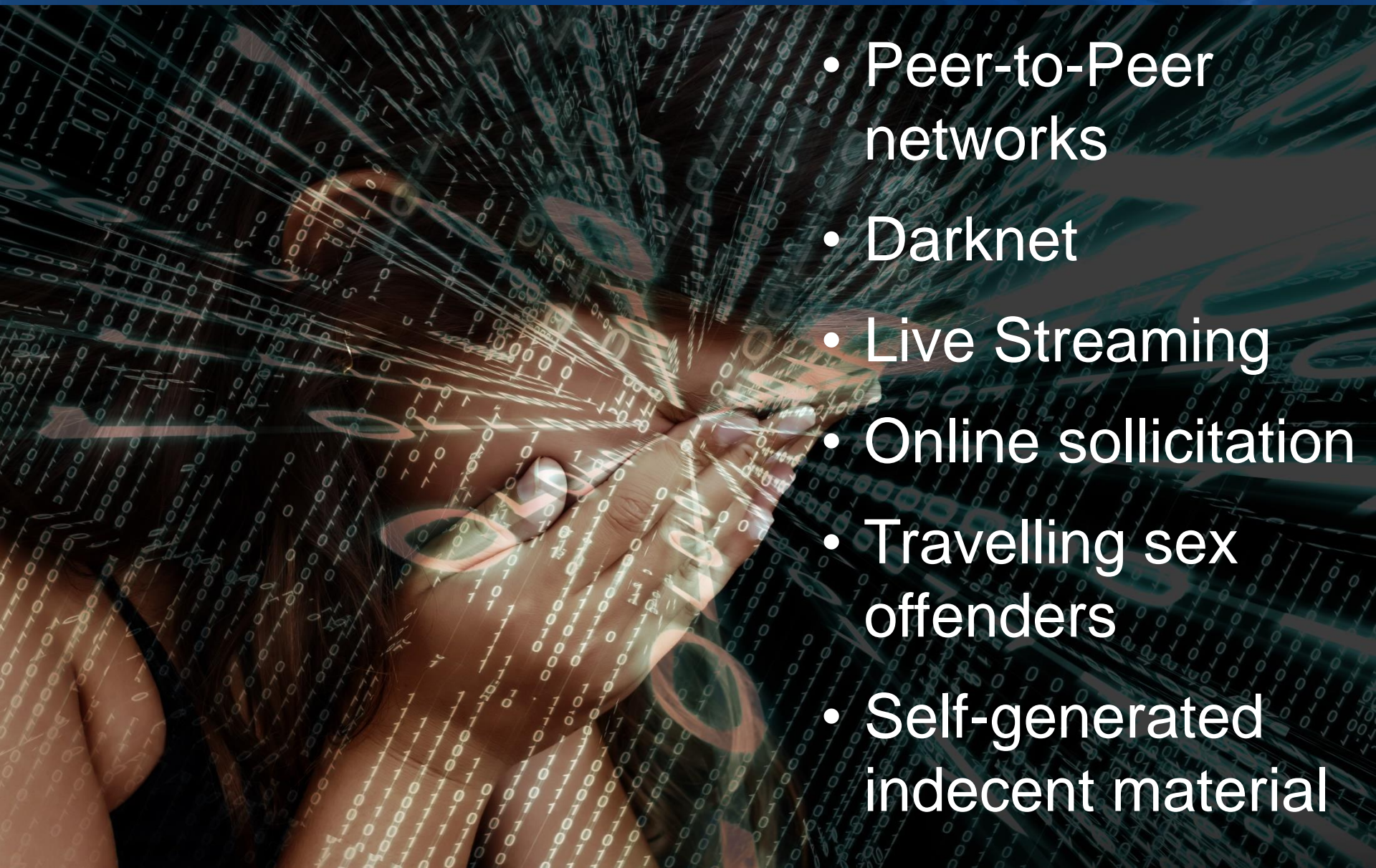
# Malware

- Ransomware
- Remote access tools
- Banking malware
- ATM Malware
- Exploit kits
- Mobile malware





# Child sexual exploitation

- 
- Peer-to-Peer networks
  - Darknet
  - Live Streaming
  - Online solicitation
  - Travelling sex offenders
  - Self-generated indecent material



# Payment Fraud

The background of the slide is a close-up, slightly blurred image of a blue credit card. A gold-colored microchip is visible on the left side. To the right of the chip, the numbers '4973' are embossed in a silver color. The top of the slide has a dark blue header with the title 'Payment Fraud' in white.

**Carding sites**  
**Online purchases**  
**Security requirements**  
**ATM malware**  
**Skimming**

# Social engineering



# Data breaches and attacks

- Data theft
- DDoS attacks
- Advanced persistent threats
- Critical infrastructure



# Increased need for Anonymity

- Darknet
- Encryption of files and communication
- Anonymous payment systems



# Abuse of Virtual Currencies

**Bitcoin:**  
#1 digital  
currency for  
cybercriminals

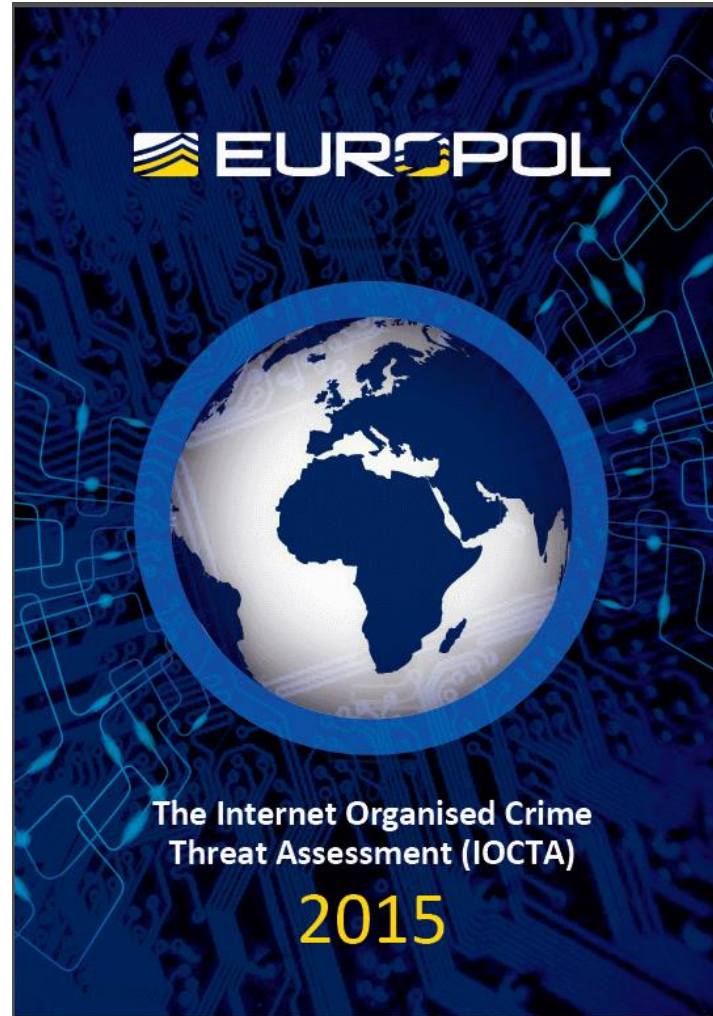


# Future orientation

- Coordinated and targeted investigations
- Building partnerships
- Capacity building & Training
- Prevention
- Policy/Legislation



# Available online



The background of the slide is a deep blue. In the center, there is a glowing image of the Earth, showing the continents of Europe and Africa. The Earth is surrounded by several concentric, semi-transparent blue rings that suggest orbital paths or data trajectories. A horizontal, semi-transparent dark blue band runs across the middle of the image, serving as a backdrop for the text.

**Thank you**



## PROBLEM-COURTS: A PRIMER ON THE THEORY AND PRACTICE

### PROBLEM-SOLVING JUSTICE

Problem-solving justice is a strand of theory and practice in international jurisprudence. Problem solving justice borrows heavily from theories of therapeutic jurisprudence,<sup>i</sup> the idea that the substantive rules, legal procedures, and the role of legal actors can produce therapeutic or anti-therapeutic responses from those involved in the justice system. Therapeutic jurisprudence proposes that special regard should be given to shaping the justice system in such a way as to help increase the psychological well-being of those who come into contact with the system. In the criminal field, following the introduction of problem oriented policing<sup>ii</sup> problem-solving justice sees contact with the criminal justice system as an opportunity to combine “punishment and help” to reduce crime and to strengthen the legitimacy of justice institutions.<sup>iii</sup>

### PROBLEM-SOLVING COURTS

#### Origins and growth of the problem-solving court movement

Perhaps the most prominent form of problem-solving justice is the problem-solving court, which originated in the USA. The growth of problem-solving courts across the United States has been swift since the creation of the first drug court in Dade County, Florida, in 1989, and the Midtown Community Court in New York City in 1993. Following the creation of those first courts nearly twenty years ago, problem-solving courts have spread across the country and entered new jurisdictions. At present, there are well over two thousand problem-solving courts in the US. As well as simple growth in numbers, the problem-solving court model has been adapted to address different populations and the US has seen a growing rise in the number of dedicated domestic violence courts and, lately, the beginning emergence of courts dedicated to managing the oft-intertwined problems of criminality and mental health and the courts focusing on the needs of veterans and homeless defendants.

Problem-solving courts now exist all over the world. In particular, drug courts have spread to Barbados, Bermuda, Brazil, Canada, Cayman Islands, Chile, Jamaica, Mexico, Trinidad and Tobago, New Zealand, Norway, Scotland, and Ireland. In other instances, countries have been directly inspired by the US problem-solving court movement, as in the example of the Collingwood Community Justice Centre in Australia and the Downtown Community Court in Vancouver Canada, based on the Red Hook Community Justice Center in New York. There are domestic violence courts in Australia, New Zealand and Canada. Within some community courts, there have been separate days for the hearing of juvenile cases with specialised services provided, to recognise juveniles differing needs.

#### Common components of problem-solving courts

The way that problem-solving courts implement the principles of problem-solving differs significantly from court to court and model to model in but all of them include a number of the following elements:

*Enhanced information*

- **Targeting:** Most problem-solving courts (with the exception of some community courts) focus on a specific issue. That can be defined by an underlying problem (such as drug addiction) or a form of crime (domestic abuse) or a type of defendant (homelessness or veterans). In order to do this, most problem-solving courts have a set of targeting criteria, often brokered with and shared across a multi-agency team (see below).
- **Specialised assessment:** Problem-solving courts tend to have developed their own assessment capabilities or evolved existing tools to more specifically diagnose the risks, needs and assets of their client groups.

#### *Collaboration*

- **Specialisation:** Problem-solving courts tend to place a high level of emphasis on ensuring that client group cases are heard in specialised settings with specially trained court staff, probation staff, social and health worker staff and judges trained in the particular needs, risks and assets of the client group.
- **Pre-hearing collaborative meetings:** Problem-solving courts often use multi-agency pre-hearing meetings to ensure there is a collaborative approach to the case, both prior to disposal and in subsequent review hearings.
- **Effective case management:** Placing an emphasis on the accountability of the client to meet the court's conditions and expectations, problem-solving courts tend to have a comprehensive, multi-agency case management tools to ensure that rounded and full information is available on the progress of clients throughout their court case.

#### *Fairness*

- **Clear understanding:** Problem-solving courts tend to make efforts to clearly explain the court and non-court processes, the options available, the consequences of actions and decisions.
- **Respectful treatment:** Problem-solving courts attempt to emphasise that all those engaged in the process treat each other with respect, upholding the worth, autonomy and dignity of each individual.
- **Neutrality:** Problem-solving courts tend to emphasise that decisions are made and seen to be made with impartiality, transparency and neutrality.
- **Voice:** Problem-solving courts tend to involve clients in the process and make sure they feel that they have a voice that is listened to and which can make a difference to the decisions made.

#### *Accountability*

- **Judicial monitoring:** Problem-solving courts utilise the authority of the court and judicial behaviour to motivate clients through a structured regime which emphasises accountability and certainty about the sanctions and rewards for progress. The monitoring needs to be regular, consistent and informed. This can take place either before a sentence or other disposal is made or can be incorporated into a disposal.
- **Legal leverage:** Problem-solving courts often hold significant legal leverage over clients as part of holding them accountable, for example retaining the option to vary their sentence depending on progress against an agreed plan.

#### *Focus on outcomes*

- **Strengths-based programming:** Many problem-solving courts utilise a menu of programmes and interventions to tackle the root causes of the problems in hand. Adapting risk-need responsivity evidence to incorporate a framework which places an emphasis on client agency and desistance as well, problem-solving courts tend to work with clients to help them out of their pattern of behaviour.
- **Rewarding success:** Problem-solving courts mark and celebrate the success of clients.
- **Monitoring outcomes:** Problem-solving courts take an interest in measuring the outcomes they generate for their client groups.
- **Reflecting on outcomes:** Problem-solving courts reflect on the outcomes they are generating as part of a continuous improvement ethos.
- **Shaping new services and innovation:** Through a process of self-reflection, including user insight, and an understanding of evidence and outcomes, problem-solving courts seek to improve themselves by providing a better service to their clients, their communities and their stakeholders.

### **Evidence base on problem-solving courts**

There is considerable evidence now on the impact of problem-solving courts. Drug courts are the most evaluated type of problem-solving court, on which comprehensive, multi-site and high quality work has been conducted (primarily in the USA). This evidence, by and large, demonstrates that where properly implemented, drug courts can reduce re-offending and substance misuse.<sup>iv</sup> There have been efforts to develop comprehensive youth problem-solving courts (sometimes called juvenile courts in the USA).<sup>v</sup> There are now many juvenile drug courts in the USA, evaluations of which have shown they have “reported positive results, including reduced recidivism and greatly reduced substance use/abuse for juvenile drug participants.”<sup>vi</sup>

Evaluations of community courts are far more limited but generally present a positive picture (with the notable exception of the community court in North Liverpool (see below). Evaluations have shown that they can reduce community crime levels, increase community confidence and lower reoffending, across adults, juveniles, gender and race lines.<sup>vii</sup> Domestic violence courts have a more mixed evidence base. There is positive evidence of reduced reoffending though it is not as comprehensive as it has been for drug courts. However, where monitoring is effectively established and where victim safety is emphasized, the evidence is generally positive as regards to victim safety and satisfaction.<sup>viii</sup>

In more recent years, there has been extensive work on what elements of the problem-solving model drive the positive results. The emerging picture is that the role of the judge in promoting procedural fairness and accountability has a particularly powerful role in delivering the desired outcomes.

### **PROBLEM-SOLVING COURTS IN THE UK**

#### **Problem-solving elements of the ‘mainstream’ system**

In line with most common law countries in the Western developed world, problem-solving at court exists in many areas of current practice in England and Wales. For example, in the adult system, every defendant considered for a community sentence, or who are on the cusp of the custodial threshold, in England and Wales is assessed by probation court staff using OASyS. Courts are

then provided with a court report based on this assessment. With the use of consistent assessment through OASys, offenders' risks and needs are identified and evidence-based programmes are recommended by probation to the courts. This Risk-Need Responsivity is another crucial tool used in problem-solving courts, which use their sentencing powers not only to deal with the case but the underlying issues like drug addiction that bring people into court in the first place. Perhaps the most widespread problem-solving reform with a clear association with the US problem-solving court model has been the creation and implementation of court-mandated drug treatment. The Drug Rehabilitation Requirement (DRR) mandates treatment and testing as the courts regularly review offender progress on the order. As in adult court, youth courts already possesses some of the attributes of a problem-solving justice system— from pre-sentence assessment of defendants receiving community sentences by Youth Offending Teams to the use of judicial monitoring in some cases.

### **Problem-solving court pilots**

However, alongside these mainstream attempts to implement problem-solving, there have also been attempts to create more comprehensive and dedicated problem-solving court models. In 2003, the principle of domestic violence courts, which holds that these particular types of cases should be treated in a specialised way (as well as resolved more quickly), was endorsed by Government in their strategic plan, 'Safety and Justice: The Government's Proposals on Domestic Violence.' There are now 137 domestic violence courts in England and Wales, and two in Scotland. There have been pilots established to develop a more intensive drug court model in west London, Glasgow and Leeds.

There has been one attempt to comprehensively replicate the community court model, In North Liverpool, which in turn inspired 11 small scale pilots of aspects of the community court model. While North Liverpool was closed due to financial and operational reasons, some of the pilots have survived with adapted successor models, in Plymouth, Stockport and Sefton, providing at court support and advice. The Plymouth Community Advice and Support service (CASS) is the most established model, and our recent evaluation showed that it addressing significant unmet needs of people who are coming to court, has adopted a practice which strongly suggests that it is making an impact on improving compliance with court orders and that the clients who engage with the service feel like they are being treated more fairly.<sup>ix</sup>

On the civil side, London's Family Drug and Alcohol Court (FDAC) was established in 2006. Brunel University has published two evaluations of FDAC, one in 2011 and a second in 2014.<sup>x</sup> The most recent evaluation, which compared 90 FDAC cases with a comparison group of 106 cases from mainstream care proceedings, found evidence that FDAC was producing encouraging results. Key impacts included increased likelihood of cessation of drug use and reunification with families, lower proportions of families experience relapse or further neglect abuse. It also found that FDAC was cost effective on arrange of measures, including direct cost savings. It is now being replicated across the country.

### **About the Centre**

The Centre for Justice Innovation is a research and development charity.

Our vision is to work toward a justice system which reduces crime and in which all the people of Britain can place their trust. We seek deliver that by introducing and supporting new ideas, new projects and new practice in the British criminal justice system. We are an initiative of the Center for Court Innovation, a New York based not-for-profit



## ENDNOTES

<sup>i</sup> The Center for Therapeutic Justice describes therapeutic justice as meaning that “any involvement, and all contact with the criminal justice system, would offer an opportunity for education, healing, and restoration for the victim, the offender, the community, and the criminal justice system staff.”

<sup>ii</sup> Berman & Feinblatt, ‘Good Courts’, 2005

<sup>iii</sup> Donoghue, ‘Transforming Criminal justice? Problem-solving and court specialisation,’ Routledge, 2014

<sup>iv</sup> See Belenko, Steven, ‘Research on Drug Courts: A Critical Review: 1998’, New York: The National Center on Addiction and Substance Abuse At Columbia University, 1998, Gondolf, Edward W., ‘The Impact Of Mandatory on Batterer Program Compliance,’ Court Review, 1998, Sviridoff, M., D. Rottman, B. Ostrom and R. Curtis, ‘Dispensing Justice Locally: The Implementation and Effects of the Midtown Community Court,’ Harwood Academic Publishers, Amsterdam, 2000; Barnoski, R., and Aos, S, ‘Washington State’s Drug Courts for Adult Defendants: Outcome Evaluation And Cost Benefit Analysis, Washington State Institute for Public Policy, 2003; Rempel, M, Fox-Kralstein, D, ‘The New York State Adult Drug Court Evaluation; Policies, Participants And Impacts’, Center for Court Innovation, 2005; Rossman, Shelli B., Roman, John K., Zweig, Janine M., Rempel, M., and Lindquist, Christine H., ‘The Multi-Site Adult Drug Court Evaluation,’ National Institute of Justice, 2011.

<sup>v</sup> It is worth pointing out that there is a type of problem-solving justice programme, ‘teen courts’, within the problem-solving movement which are not fully constituted courts, but instead a peer to peer diversion programme.

<sup>vi</sup> Van Wormer & Lutze, ‘Exploring the Evidence: The Value of Juvenile Drug Courts’, Juvenile and Family Justice Today, 2011, accessed at <http://www.courtswv.gov/lower-courts/juvenile-drug/Exploring-the-Evidence.pdf>

<sup>vii</sup> Goldkamp, J., D. Weiland, and C. Irons-Guynn, ‘Developing an Evaluation Plan for Community Courts: Assessing the Hartford Community Court Model,’ Crime And Justice Research Institute, 2000; Sviridoff, M., D. Rottman, B. Ostrom and R. Curtis, ‘Dispensing Justice Locally: The Implementation and Effects of the Midtown Community Court,’ Harwood Academic Publishers, Amsterdam, 2000; Sviridoff, M., D. Rottman, R. Weidner, F. Cheesman, R. Curtis, R. Hansen, and B. Ostrom, ‘Dispensing Justice Locally: The Impacts, Cost and Benefits of the Midtown Community Court’, Center for Court Innovation, 2001; Kralstein, Dana, ‘Community Court Research: A Literature Review’, Center for Court Innovation, 2005; Frazer, Somjen M, ‘The Impact of Community Court Model on Defendant Perceptions of Fairness: A Case Study at The Red Hook Community Justice Center’, Center for Court Innovation, 2006; ‘A Community Court grows in Brooklyn: a comprehensive evaluation of the Red Hook Community Justice Center,’ National Center For State Courts, 2013

<sup>viii</sup> Gondolf, Edward W., ‘The Impact Of Mandatory on Batterer Program Compliance,’ Court Review, 1998; Keilitz, S.’ ‘Specialization of Domestic Violence Courts: A National Survey’, Williamsburg, VA: National Center for State Courts, 2000; Labriola, M. Davis, R, and Rempel, M, ‘Testing the Effectiveness of Batterer Programs and Judicial Monitoring: Results from a Randomized Trial at the Bronx Misdemeanor Domestic Violence Court,’ Center for Court Innovation, 2005; Petrucci, C., ‘Respect as a Component in the Judge-Defendant Interaction in a Specialized Domestic Violence Court that utilizes Therapeutic Jurisprudence’, Criminal Law Bulletin, 38 (2); Ventura, Lois A. & Davis, Gabrielle, ‘Domestic Violence: Court Case Conviction And Recidivism,’ 2005; Cissner, A., Labriola, M., Rempel, M., ‘Testing the Effects of New York’s Domestic Violence Courts’, the Center for Court Innovation, 2013

<sup>ix</sup> Whitehead, S., ‘Better Courts Case Study: Plymouth Community Advice and Support Service,’ Centre for Justice Innovation, 2015

<sup>x</sup> Harwin, J., Ryan, M., & Tunnard J, with Pokhrel, S., Alrouh, B., Matias C., & MomenianSchneider, S. (2011). The Family Drug & Alcohol Court (FDAC) Evaluation Project Final Report (London: Brunel University). Retrieved from [http://www.brunel.ac.uk/\\_\\_data/assets/pdf\\_file/0017/91340/fdac\\_final\\_report.pdf](http://www.brunel.ac.uk/__data/assets/pdf_file/0017/91340/fdac_final_report.pdf) 11. Harwin, J., Alrouh, B., Ryan, M., & Tunnard, J. (2014). Changing Lifestyles, Keeping Children Safe: an evaluation of the first Family Drug and Alcohol Court (FDAC) in care proceedings (London: Brunel University). Retrieved from [http://www.brunel.ac.uk/\\_\\_data/assets/pdf\\_file/0007/366370/FDAC\\_May2014\\_FinalReport\\_V2.pdf](http://www.brunel.ac.uk/__data/assets/pdf_file/0007/366370/FDAC_May2014_FinalReport_V2.pdf)

# Centre for Justice Innovation

Problem solving courts

# What we are going to cover

- **Background on the Centre**
- **What are problem solving courts?**
- **Do they work?**
- **How do we build them?**

# Everyone has a view on crime and justice

"There is evidence that forming strong and intimate bonds with others, especially family members, appears to help desistance from crime."

*Ministry of Justice*

"All these people (drug users) would be helped by a properly enforced law which punished them for doing it, because the fewer would do it, and they'd be rescued from it."

*Peter Hitchens*

"We'll axe holiday camp perks in jail so lazy lags must work for privileges."

*Chris Grayling, Lord Chancellor*

"We could cut crime dramatically by locking up more serious, repeat offenders."

"Cut police numbers and employ more social workers."

*Centre for Crime and Justice Studies*

**There are, and have always been, a cacophony of views about how to discharge public safety duty effectively...**

"...are they are poor? Do we really want to go back to the days of the debtors' prisons?"

*Howard League*

"Despite the boot camp model's potential, there is little evidence that it reduces recidivism or has other lingering effects on participants once the residential phase ends."

*Professor Muscar*

"...need to accept that what works... is a measure of summary power with right of... Anything else is the theory, loved by much of the political and legal establishment but utterly useless to the ordinary citizen on the street."

*Prime Minister Tony Blair*

"Threatening offenders with 'a day or two in... they breach a... order would... re-offending.'"

*Social Justice*

## 1. The outcomes of English criminal justice system are poor

- The UK is a "high crime country" with a very high risk of common crime compared to large European Union countries;
- England and Wales has an imprisonment rate of 149 per 100,000 of the population. France has an imprisonment rate of 102 per 100,000 and Germany has a rate of 81 per 100,000;
- Since 2002, the overall proven re-offending rate for adult and juvenile offenders has remained fairly stable, fluctuating between around 26% and 29%.

**... and there are facts on the ground to suggest that our criminal justice system could be more effective and fairer.**

## 2. The impact of crime and criminal justice outcomes is disproportionately distributed

- Being young, non-white and from a deprived area increases the chance of being a victim of crime by 65%;
- 8% of women in England and Wales will experience domestic violence in any given year;
- 26% of the prison population are BME, compared to 10% of the general population who are from a BME group.

## 4. The current system is inefficient... and not designed to deal with changing nature of crime

- In 2014, the National Audit Office suggested the “criminal justice system had slow, bureaucratic and complicated processes and... inadequate understanding of what works.”
- Crime is down but changing. Domestic and sexual abuse and fraud are rising and take the longest to prosecute and resolve. There is, according to one Ministry insider, an explosion in “new crime and we aren’t set up to tackle it.”

## 3. There are concerns about the fairness of the criminal justice system

“While those with money can secure the finest legal provision in the world, the reality in our courts for many of our citizens is that the justice system is failing them. Badly. There are 2 nations in our justice system at present.”

Lord Chancellor Michael Gove, 2015

## PROBLEM SOLVING

Our justice system should seek to address and resolve the problems of those who come into contact with it, rather than simply process people. In doing so, our justice system can reduce the social and economic cost of crime.

## FAIRNESS

Fairness is the cornerstone of a justice system which has public legitimacy. Our justice system should treat everyone fairly, ensuring that it is fair and feels fair to whoever comes into contact with it.

# OUR VISION

## EVIDENCE

We believe that practice change and policy reform needs to be evidence-led. Our system ought to reflect the latest understanding of the best available evidence.

## ACCOUNTABILITY

Our justice system should guarantee that people are held accountable if they break the law, especially to victims who have suffered as a consequence.

# What we are going to cover

- **Background on the Centre**
- **What are problem solving courts?**
- **Do they work?**
- **How do we build them?**

# Problem solving: The theory

- Problem solving: the substantive rules, legal procedures, and the role of legal actors can produce therapeutic or anti-therapeutic responses from those involved in the justice system.
- Problem solving proposes that special regard should be given to shaping the justice system in such a way as to help increase the psychological well-being of those who come into contact with the system.
- Problem-solving justice sees contact with the justice system as an opportunity to address social problems and to strengthen the legitimacy of justice institutions.



# Fairness: The theory

- Procedural vs. distributive justice: There is evidence that the process is more influential than winning or losing.
- People know they will sometimes lose, but they are more likely to accept it if the process was fair.
- The key drivers of procedural fairness are :
  - Voice
  - Respect
  - Neutrality
  - Understanding
  - Helpfulness

# Fairness: The theory

From the Red Hook Community Court ethnography (Lee et al. 2013):

“I went to Brooklyn Criminal court before Red Hook, horrible place, horrible. They should do a tour there... I wouldn't wish that place on my enemy.

Red Hook is 100 times better...(The judge) allows you to speak. I don't get the feeling that he's one of those judges that that looks down on people. To me, he's fair...

I learned that there's two different types of ways that courts treat people. You have these obnoxious goons and then you have those that look at you like, ok, you made a mistake.”

# Accountability: The theory

- Good parenting model not applied in criminal justice:

“If you don’t clean up your room right now, there is a 40% chance that a month from now, I will ground you for two years.”

• *Criminologist James Q. Wilson*

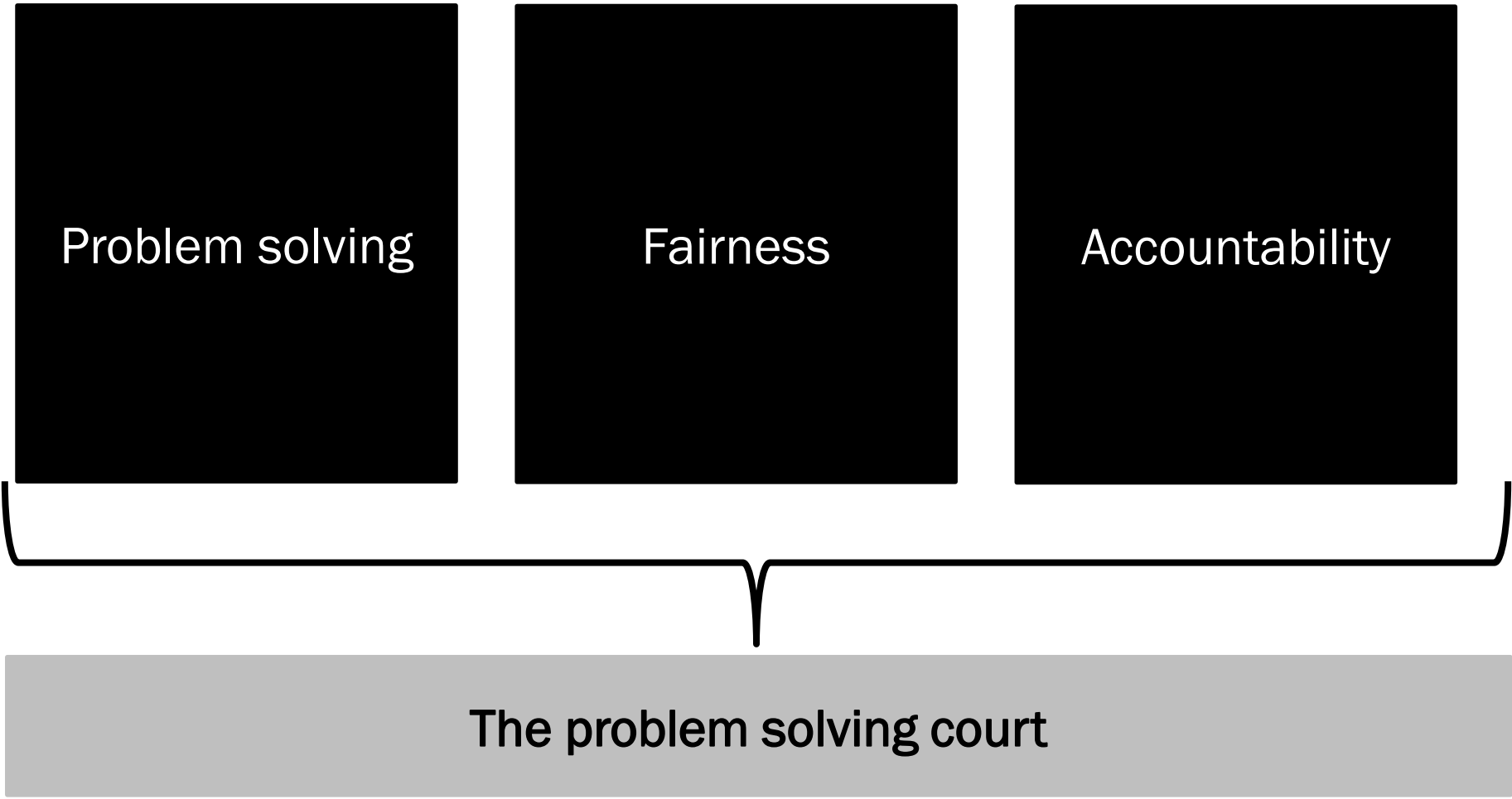
- Treatment in a rules bound framework does as well as voluntary treatment
- Specific groups of offenders respond better when the rules are few and clear and where they are applied swiftly and with celerity.

# The theory comes together in problem solving courts

Problem solving

Fairness

Accountability



The problem solving court

# Problem solving courts: the practice principles

The five principles of problem-solving courts

- Enhanced information
- Collaboration
- Procedural fairness
- Accountability
- Focus on outcomes

# Problem solving courts: Spread and specialisation

## Types of problem solving courts

- Community courts
- Drug courts
- Domestic abuse courts
- Mental health courts
- Veterans courts
- Family Drug and Alcohol courts

# Problem solving courts: Growth

## US Origins

- Creation of the first drug court in Dade County, Florida, in 1989, and the Midtown Community Court in New York City in 1993.
- Over two thousand problem-solving courts in the US, including courts in the criminal, family and juvenile jurisdictions.

# Problem solving courts: Growth

## International growth

- *Drug courts*: drug courts have spread to Barbados, Bermuda, Brazil, Canada, Cayman Islands, Chile, Jamaica, Mexico, New Zealand, Norway and Trinidad and Tobago.
- *Community Courts*: Collingwood Community Justice Centre in Australia and the Downtown Community Court in Vancouver Canada, based on the Red Hook Community Justice Center in New York.
- *Domestic abuse courts*: There are also domestic abuse courts in Australia, New Zealand and Canada.



# Problem solving courts



# What we are going to cover

- **Background on the Centre**
- **What are problem solving courts?**
- **Do they work?**
- **How do we build them?**

# Problem solving courts: Do they work?

## A number of success measures

- Do they reduce re-offending?
- Do they keep victims safer?
- Do they increase confidence and legitimacy in the justice system?
- Do they reduce the use of prison?

# Community courts

## Red Hook Community Court

- Reduced re-offending
- Rectified perceptions of inequality
- Increased public trust in the justice system;
- Reduced number of people going to prison
- Role of judge has the greatest impact on perceptions of fairness



# Community courts



# Drug courts

- Drug courts are the most evaluated type of problem-solving court
- Comprehensive, multi-site and high quality work has been conducted (primarily in the USA).

**“ Nationally, drug courts appear to reduce recidivism... We identified 30 evaluations... and found that adult drug courts, on average, have been shown to reduce recidivism rates by 13.3 percent”**

- Drug courts can reduce re-offending and substance misuse



# Domestic abuse courts

Studies show domestic abuse courts

- Can reduce the number of cases that are dismissed and increase the rate of guilty pleas;
- Record higher levels of satisfaction with the court process – among both victims and perpetrators – compared to traditional court
- Can reduce repeat offending by domestic violence perpetrators, by yoking together meaningful sanctions with regular sentencer supervision of perpetrator compliance. This is especially important given the evidence that perpetrator programmes alone have limited rehabilitative value.

# Cutting-edge courts

## HOPE programme

- Makes monitoring rules simpler and easier to enforce
- Clear about exact sanction for non-compliance
- Imposes sanction swiftly (within days)
- Make sanction small and return to community supervision.

## Results

- 55 percent less likely to be arrested for a new crime
- 72 percent less likely to use drugs
- Served 48 percent fewer days in prison

# Cutting-edge courts

## Integrated domestic abuse courts

- Hearing criminal, family and civil matters together
- ‘one judge, one family’ model.

## Results

- The evidence on these is encouraging— a number of evaluations have recorded that integrated courts:
  - increase convictions
  - Increase witness participation,
  - lower re-offending,
  - enforce protection orders more
  - significantly reduced average case processing time

# Criticisms

- Problem solving courts are criticized for ‘net-widening’
  - Coercing and enforcing coercion into treatment
  - Increasing harmful contact with CJS
- Problem solving courts require patient implementation with active support of local agencies and judiciary
  - Colorado drug courts
  - Eventual closure of North Liverpool community court
- Failures of translation
  - Not every problem in USA ‘solved’ by a problem solving court needs to be solved in the UK in that way

# What we are going to cover

- **Background on the Centre**
- **What are problem solving courts?**
- **Do they work?**
- **How do we build them?**

# FROM THE GROUND UP: LESSONS ABOUT INITIATING AND RUNNING DEMONSTRATION PROJECTS

From the Centre's publication, 'From the Ground Up', lessons grouped under three headings:

- Getting It Started
- Getting it Right
- Keeping it Going



# FROM THE GROUND UP: LESSONS ABOUT INITIATING AND RUNNING DEMONSTRATION PROJECTS

## •Getting It Started

- Scan**- utilise the information around you especially understanding localities
- Define**- be clear about what problem you are tackling
- Focus**- be clear about the theory behind your interventions & how you will judge success
- Test It**- Outside scrutiny helps

# FROM THE GROUND UP: LESSONS ABOUT INITIATING AND RUNNING DEMONSTRATION PROJECTS

- **Getting it Right**

- **Clear wins-** Identify mutual wins that partners can agree on delivering
- **Trust the frontline-** Staff respond well to allowing them to take risks
- **Accountability-** Demand accountability in program design and within the project
- **Self reflection-** the process of learning from trial and error needs to be systematised

# FROM THE GROUND UP: LESSONS ABOUT INITIATING AND RUNNING DEMONSTRATION PROJECTS

## Keeping it Going

- **Think sustainability at the start-** Don't succumb to dependency or pilotitis
- **Champions-** Locate credible voices to support your efforts
- **Manage the politics-** be careful who you want on your bandwagon

## Links to Justice Innovation Approaches

Brooklyn Treatment Court	<a href="https://www.nycourts.gov/courts/2jd/brooklyntreatment/about.shtml">https://www.nycourts.gov/courts/2jd/brooklyntreatment/about.shtml</a>
Brownsville Community Justice Center	<a href="http://www.courtinnovation.org/project/brownsville-community-justice-center">http://www.courtinnovation.org/project/brownsville-community-justice-center</a>
Center for Court Innovation	<a href="http://www.courtinnovation.org/">http://www.courtinnovation.org/</a>
Domestic Violence Courts, New York	<a href="http://www.courtinnovation.org/topic/domestic-violence">http://www.courtinnovation.org/topic/domestic-violence</a>
Glasgow Drug Court	<a href="http://www.gov.scot/Resource/Doc/47133/0029644.pdf">http://www.gov.scot/Resource/Doc/47133/0029644.pdf</a>
The Hague Institute for the Internationalisation of Law	<a href="http://www.hiil.org/">http://www.hiil.org/</a>
Online Dispute Resolution for Low Value Civil Claims, Civil Justice Council, January 2015	<a href="https://www.judiciary.gov.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version.pdf">https://www.judiciary.gov.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version.pdf</a>
Red Hook Community Justice Center	<a href="http://www.courtinnovation.org/project/red-hook-community-justice-center">http://www.courtinnovation.org/project/red-hook-community-justice-center</a>
Review of Efficiency in Criminal Justice Proceedings, Lord Leveson, January 2015	<a href="https://www.judiciary.gov.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf">https://www.judiciary.gov.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf</a>