



Law Society of Ireland

Submission to Joint Oireachtas Committee on Justice, Defence and Equality Community Courts Initiative

28th January, 2014

The Law Society of Ireland (the 'Society') welcomes the opportunity to submit its views regarding the possible introduction of a community courts initiative in Ireland.

The Society commends the Joint Oireachtas Committee for its initiative in dusting down the 2007 Report of the National Crime Council *Problem Solving Justice: The Case for Community Courts in Ireland*. The success of community courts in parts of the United States and in England and Wales justifies a serious examination of whether community courts could also be successful in Ireland.

The Society would welcome the opportunity to participate fully in an implementation group as recommended in Chapter 5 of the National Crime Council's Report.¹ Solicitors who practice in criminal law have valuable experience and insights which they would happily make available to such a group.

While the Society welcomes debate as to community courts, which both tackle the crime problem and offer alternative sanctions, nevertheless, the Society cautions against the introduction of a new court system. Such an initiative could interfere with the rights of people who are suspected of criminal activity, albeit of a minor nature. Accordingly, the Society welcomes the consideration of a community court model provided it is;

- (1) based on an analysis of the impact of any such changes to criminal procedure in Ireland and the avoidance of any potential weakening of the constitutional rights of the accused,
- (2) designed on the basis of evidence-based research and
- (3) adequately resourced.

Background

The community court model commenced in New York in 1993 and its success as an anti-crime mechanism and resolution model has resulted in its adoption in a number of jurisdictions over the past number of years. While the community courts 'share with traditional courts the goals of ensuring community safety',² it is of utmost importance that the development of an alternative justice system to that which is currently in place sufficiently protects the rights of people to both fair procedures and due process.

¹ National Crime Council *Problem Solving Justice: The Case for Community Courts in Ireland* (2007) at 52

² *Ibid* at 16

The existing broad range of options for judges

The National Crime Council's Report states that the current system is not able to deal proactively with underlying problems of offenders because of the limited range of sanctions. The Report stated that the current system does not have a "range of problem solving options such as speedy access to social and other services"³ and that by their very nature the community courts model facilitates a broader variety of sanction. While the Society welcomes the fact that the Government is considering alternative options, the existing broad range of options already available to judges should be recognised. Judges can apply the following broad range of sanctions; fines, binding over to the peace, referral to probation service, suspended sentences, community service and referral to the drug treatment court. In addition, prior to a case reaching court, there are some additional options available through the adult caution scheme and the juvenile liaison scheme. The Law Society believes that the existing options could be strengthened through the allocation of adequate resources to the probation service and other community initiatives such as Community Restorative Justice Ireland.

Law Society Recommendations

The Society welcomes the consideration of a community court model provided it is;

- (1) based on an analysis of the impact of any such changes to criminal procedure in Ireland and the avoidance of any potential weakening of the constitutional rights of the accused,
- (2) designed on the basis of evidence-based research and
- (3) adequately resourced.

(1) An analysis of the impact of any such changes to criminal procedure in Ireland and the avoidance of any potential weakening of the constitutional rights of the accused

The Society believes that any deviation from the current criminal procedural model, including a community court initiative, must consider the following constitutional and rule of law issues:

- Changes to the rights of the accused, in particular, the potential interference with constitutionally protected rights such as the right to silence, access to justice, justice administered in the public and, of course, the presumption of innocence.
- The extent to which a person is brought to community courts on the basis of an agreement that they will plead guilty. Issues arise as regards the extent to which such a person receives legal advice prior to entering into such an agreement.
- An accused is entitled to know the facts of the case with which they are charged prior to being asked to plea; a problem which arises with the adult caution scheme.
- The extent to which legal representation is a vital component in the deliberative process in which the Judge (a mediator in the community courts process) engages. Where a community representative is present in a community court, can they fulfil the role of legal advisor, in particular as regards evidentiary issues of importance for determining appropriate sanctions?
- The implications of an accused not being provided legal advice or representation throughout the process.

³ *Ibid* at 30

- The admissibility of evidence in subsequent courts should the person change their plea and the extent to which participation in a community court process affects constitutionally protected rights in subsequent legal fora.

The introduction of a new model must ensure that there is no potential damage to the constitutional protected rights of an accused.

(2) Designed on the basis of evidence-based research

It is important to highlight that restorative justice initiatives are already in place in Ireland and any new initiative must incorporate the Irish experience of restorative measures within the Irish legal system and Irish communities. Existing Irish initiatives, such as the Drug Treatment Courts, present important opportunities for evidence-based research which can contribute to a decision to establish community courts in Ireland.

The Society believes that a decision to introduce community courts in Ireland must be predicated on evidence-based research which measures three important issues:

- (1) The impact of community courts on crime and the improved outcome for people (including the accused in terms of preventing future offences, the victims of crime and the community).
- (2) The impact of community courts on the procedural rights of the accused.
- (3) The necessity for adequate resources.

The Society recommends that a blended research methodology be used to address these important issues including comparative, socio-legal and empirical research.

Conclusion

The Society welcomes the initiative of the Joint Oireachtas Committee for Justice, Defence and Equality in its overdue examination of whether the introduction of community courts would be of value in Ireland as it has been in some other parts of the world. The mere fact that community courts have worked elsewhere, of course, does not automatically mean that they would work in the same way or be equally successful in Ireland.

The community court model and its potential value in an Irish context deserve to be thoroughly examined with an open mind, however, and the Society would be very happy to contribute to such an examination the energy and expertise of practising solicitors.