

Association for Criminal Justice Research and Development

ACJRD SUBMISSION  
TO  
THE OIREACHTAS JOINT COMMITTEE  
ON  
JUSTICE, DEFENCE AND EQUALITY

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**TOPIC: Community Courts**

10 January 2014

*ACJRD seeks to promote reform, development and effective operation of the Criminal Justice System.*

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# ACJRD SUBMISSION TO THE OIREACHTAS JOINT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY IN RELATION TO COMMUNITY COURTS

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## 1. **The ACJRD**

[1.1] The Association for Criminal Justice Research and Development (ACJRD) is a non-governmental organisation dedicated to promoting the reform, development and effective operation of the Irish criminal justice system. In particular, the ACJRD encourages innovation in criminal justice and seeks to facilitate interdisciplinary dialogue between agencies and practitioners in the sphere of criminal law. The ACJRD was formerly known as the Irish Association for the Study of Delinquency.

[1.2] The ACJRD's membership is varied, but is largely comprised of individuals who have direct experience of dealing with the judicial system and representatives of criminal justice agencies. These include probation officers, legal and criminological academics, social workers, members of the Gardaí, prison officers, mental health professionals and practising lawyers.

[1.3] The ACJRD's approach and expertise is therefore informed by the hands-on experience of practitioners and agencies who deal with all aspects of the criminal justice system however the views expressed in this submission are those of ACJRD in its independent capacity and are not those of the ACJRD members' organisations or their employers.

[1.4] The ACJRD is prepared to appear at a public hearing of the Joint Committee and to present these submissions or to answer any questions which the Committee may have.

## 2. **Executive Summary of ACJRD Recommendations**

[2.1] The ACJRD supports the aims and goals of the Community Court concept and accepts the characteristics of such courts as outlined in The National Crime Council Report (2007)<sup>1</sup> as now outlined: 'A dedicated judge' and 'pre-trial assessment in every case to identify any underlying problems'. There should be 'a problem-solving focus with the provision of a well-planned team-based and immediate response to each defendant' with 'on-site provision of key services'. There

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<sup>1</sup> *Problem Solving Justice: The Case for Community Courts in Ireland* p. 18

should also be ‘speedy access to social and other services and community work together with ‘rigorous monitoring of compliance with court orders. Offenders should provide ‘an element of restitution to the local community through community work completed .in appropriate cases’ and there should be formalised involvement of the local community’.

ACJRD recognises the significant potential benefit which such an initiative can have for the community and the operation of the criminal justice system. In particular, the ACJRD supports the Community Court as a process designed to allow offenders to avoid the stigma of conviction. However, the importance of the design of a Community Court cannot be underestimated. It is therefore recommended that further steps are taken towards exploring the feasibility of the potential role and design of community courts and the challenges that might arise in the future implementation of the Community Court concept in Ireland. Some such challenges would include taking cognisance of how a Community Court would operate within our court current structures in particular within existing District Court areas.

As requested at (iii) of the guidelines for making a written submission, the following are the primary recommendations of the ACJRD with regard to the establishment of a Community Court in Ireland:

1. The Community Court should be designed as an initial pilot project, for example, Dublin City Centre, to include an Implementation Group comprising all the key agencies and representatives of practitioners.
2. Cognisance should be taken of how Community Courts would operate within our court current structures in particular within existing District Court areas.
3. The goals of the Community Court should be coherently designed and stated in consultation with all stakeholders.
4. A review of the operation of the pilot Community Court within a specified time period should be legislatively mandated. Due to the complexity of this project this may need to be commissioned in advance to ensure sufficient data collection practices are put in place from the outset, to ensure its effectiveness. This review should also have regard to what lessons the District Court can learn from the operation of that Community Court.
5. The Community Court should not be involved in conducting formal trials i.e. should only operate as a sentencing court.
6. The Community Court work should only deal with matters which do not merit the imposition of an immediate custodial sentence.

7. Due Process principles should be put in place to ensure that participation in the Community Court process will not prejudice offenders in their efforts to rehabilitate (This recommendation is made in the context of having particular regard to data protection issues and judicial developments in England and Wales).
8. The Community Court Judge should be granted powers to restrict the reporting of Community Court proceedings, where the interests of justice deem this necessary
9. The implementing legislation at 8. above should create a tortious action for prejudicial re-publication of the occurrence of an offence which was successfully disposed of in the Community Court.
10. The Community Court should have an assigned Judge in residence who should hear all proceedings with consideration being given to a judge who has qualifications in Alternative Dispute Resolution e.g. Restorative Justice Practice.
11. The Community Court building should be fit for purpose to accommodate the court and its management structures advisory teams and other key on-site services.
12. The Community Court should primarily have jurisdiction to hear all matters which may be tried summarily where :
  - (i) the offence does not merit the imposition of an immediate custodial sentence
  - (ii) the Defendant indicates their willingness to engage with the Community Court process.
13. There should be exploratory discussions with respect to circumstances where a non-summary offence where conditions similar to 2(i) and 12(ii) prevail.
14. There should be an exploration of the feasibility of whether the District Court should (provided the Defendant consents), have a discretion to refer a matter to the Community Court notwithstanding the fact that other charges, or an appeal may be pending.
15. There should be consultations with relevant stakeholders with respect to whether DPP's consent should be a pre-requisite to matters being heard by the Community Court
16. There should be discussions to ascertain whether formal agreed structures are required or necessary for the referral of cases to the Community Court. If so, the following referral routes to the Community Court are suggested;
  - (i) Referral with consent of the DPP/Gardaí where the Defendant indicates intent to plead guilty,
  - (ii) Referral by the District Court on application by the Defendant,
  - (iii) Referral as part of a non-custodial sentence imposed in the District Court,

- (iv) (With Defendant's agreement) Referral pending appeal to the Circuit Court,
  - (v) Referral by the Circuit Court either on sentencing or when reviewing the severity of a sentence imposed.
17. The Community Court should adopt less formal procedures than the District Court taking lessons from Children Court and Alternative Dispute Resolution models.
  18. In the same manner as currently exists in criminal proceedings, provision should be made for the provision of legal aid to cover consultation with solicitors at a Garda Station to facilitate the possibility of the Defendant has been charged with an offence to have his/her First Appearance in court being made before the Community Court.
  19. Where appropriate, the principles of restorative justice should be applied and victims of crime should be involved in proceedings.
  20. The due process principles which ensure that a defendant has a right of appeal against both the severity of the initial sentence imposed and any decision to re-activate that sentence for breach of conditions should be retained in a Community Court system.
  21. Where possible, all services should be provided on site.
  22. Community Service work should be appropriate and subscribe to proportionality principles of sentencing and should be modelled on the Juvenile Diversion Programme.
  23. Mental Health services should be provided, on an ongoing basis to offenders, where deemed necessary by the court.
  24. The Court should hold monthly meetings between practitioners, members of the local community and stakeholders to review its procedures and practices, within agreed structures as agreed by a collaborative advisory group comprised of stakeholders.
  25. The success of the Midtown Community Court (New York) is noted. However, possible impediments to transferring this model to this jurisdiction should be explored to ensure its success.

### 3. **Recommendations**

#### 3.1 **Feasibility of an Irish Community Court**

##### **The Community Courts Concept**

[3.1.1] The Community Courts concept has been applied in a number of settings. One of the earliest and best known examples is the Midtown Community Court ('MCC') in New York, which was established in 1993. There is no precise formula for a Community Court, and it

appears that the concept is capable of adaption to suit the needs of the Community in which it is placed. For example, the MCC appears to have been designed primarily to reduce the occurrence of quality of life offences which were having a negative effect on local businesses. Accordingly, it was designed as a sentencing only Court designed to tackle recidivism rates. The Red Hook Community Justice Centre ('Red Hook Centre'), which was established in the neighbouring borough of Brooklyn, follows a different, multi-disciplinary, model. In England, the North Liverpool Community Justice Centre ('NLCJC') applied a different model again. The NLCJC was designed as a pilot project in anticipation of a potential roll-out of similar centres across England and Wales. This Court dealt solely with criminal matters, but handled both trials and sentencing.

[3.1.2] While there is no definitive structure which distinguishes a Community Court, the ACJRD understands that they share in common a number of features including:

- The application of a problem solving approach which focuses on the underlying causes of offending behaviour
- The cultivation of an atmosphere which is more open than that of traditional Courts
- Applying greater urgency to the hearing of individual cases
- Seeking to immediately engage the Defendant in treatment programmes and or remedial works
- Fostering links with and involving the local Community

Perhaps most importantly, Community Courts have flexible sentencing options and operate a system whereby compliance with Court mandated treatment/counselling programmes is incentivised by the potential for the offender to avoid having their conviction recorded as has been successfully implemented in the pilot Drugs Courts system in this jurisdiction.<sup>2</sup>

#### **The ACJRD's Position on Community Courts**

[3.1.3] The ACJRD is broadly supportive of all of the principles which underpin the development of the Community Courts concept. The ACJRD strongly encourages the application of innovative methods both in the reform of the Irish criminal justice system and in developing methods designed to address the underlying issues which result in criminal behaviour. The Community Courts concept involves a combination of these approaches. This concept has been demonstrably successful in reducing recidivism rates and in improving the quality of life in communities where it has been implemented. Indeed, domestic experience of initiatives such as the Garda Juvenile Diversion Programmes demonstrates the enormously positive effect that

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<sup>2</sup> The American approach is to 'seal' the records.

innovation in addressing the causes of crime can have for at risk individuals, and for the community at large. There is every reason to expect that if the Community Court concept were strategically designed and implemented in Ireland it would be of significant benefit to the community involved and to the persons referred to it.

[3.1.4] It is therefore recommended that further steps are taken towards the implementation of the Community Court concept in Ireland. A programme for achieving this goal was set out by the National Crime Council.<sup>3</sup> It is the ACJRD's submission that the Community Court concept needs to be adapted to ensure it functions in an Irish context and suits the needs of the community in which it is located. Therefore, the ACJRD has made recommendations in relation to the design and operation of a Community Court suitable for an Irish context.

[3.1.5] The call for submissions from the Committee appears to contemplate the adoption of a Community Court model similar to the MCC in New York. The ACJRD has therefore had particular regard to this model and the features of the MCC which seem to have contributed to its success as well as considering other iterations of such forums. These ACJRD has also had regard to the scope and design of the Community Court envisaged by the National Crime Council<sup>4</sup> in making the recommendations below.

#### **Local Administration of Justice**

[3.1.6] The ACJRD recognises the importance of the goals surrounding the establishment of Community Courts; in particular the emphasis on the local administration of criminal justice and the engagement of communities. The ACJRD submits that the Irish District Court plays an important and democratic role by ensuring that justice is administered locally, in some respects operating in a manner akin to a Community Court. It is submitted therefore that a Community Court in Ireland should be designed to complement the current District Court system generally, whilst expanding the capacity of our criminal justice system to deliver alternative models of sentencing that are focused on improved community outcomes that reduce recidivism. It is further recommended that, when a review of the Community Court is carried out, it should have regard to whether the Community Court experience can inform the practices of the District Court.

#### **Features of the Midtown Community Court**

[3.1.7] The MCC is a one-judge Court operating in a dedicated building in Manhattan. It only processes Defendants<sup>5</sup> who plead guilty to the charges brought against them. The procedure in

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<sup>3</sup> The National Crime Council, *Problem Solving Justice: The Case for Community Courts in Ireland* (2007), Chapter 5.

<sup>4</sup> The National Crime Council, *Problem Solving Justice: The Case for Community Courts in Ireland* (2007), Chapter 4.

<sup>5</sup> The MCC refers to offenders who are following programmes as 'clients'.

the Court is informal, as is the Courtroom itself, and the Judge listens to offenders and takes their circumstances into consideration before imposing a sentence. The MCC is a one-stop shop in that all counselling and therapeutic services are provided onsite, and community service work is organised, and operates from, the MCC building. The MCC places a significant emphasis on the speed of its operations and much of its success is attributed to the fact that offenders are generally arrested, arraigned, and sentenced within 24 hours and able to walk directly upstairs from the Court-room to begin their programme. The MCC's speed of operation is facilitated by an award winning computer system which is an essential component of the efficiency of the Court's supervisory and review function. The MCC has a very strong element of community involvement; it is a public-private partnership and holds monthly community meetings with stakeholders and community leaders.

### Managing Expectations

[3.1.8] There seems to be little doubt that the MCC can be considered a success. However, at this point it should be noted that the difference between a Community Court and an ordinary criminal court in New York is greater than a comparable Irish analogy. The following examples illustrate why this is the case:

- In New York the misdemeanours<sup>6</sup> carried out by a population of 8.3 million are heard in a total of 7 criminal Courts (2 of which are Community Courts). Thus the catchment of any given Court of summary jurisdiction can be in excess of 1 million persons. In terms of sheer scale, therefore, it can be seen that the Irish District Court is a far more community based entity than its New York equivalent.
- The limited sentencing options available to judges in New York meant that the Community Court Judge's capacity to impose a community service order was a real innovation. At present, Irish District Court judges have significantly more sentencing options available to them than did judges in New York in 1993. Therefore, a certain amount of the credit due to the MCC for the reduction of the recidivism rate in its catchment area can be attributed to its adoption of measures, such as community service orders and probation measures which are already available to the Irish District Court.
- The MCC is one part of a more progressive approach to criminal justice in New York. Its success must be contextualised as it is merely one part of a significant framework of heavily funded State programmes designed to tackle the State's crime problems under the umbrella term *Alternatives to Incarceration*.<sup>7</sup>

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<sup>6</sup> Broadly equivalent to the summary offences which are dealt with in the District Court in Ireland.

<sup>7</sup> New York State currently funds 165 programmes, established from 2002 onwards, with bursaries of \$50,000 per annum, each of which is designed to provide support services with regard to a particular aspect of the criminal justice system and which cumulatively form a network of support services. See: [http://www.criminaljustice.ny.gov/opca/ati\\_description.htm](http://www.criminaljustice.ny.gov/opca/ati_description.htm) for details.

These are significant factors which impact the use of the MCC as a comparator jurisdiction for Ireland.

[3.1.9] In addition, it must be recognised that the establishment of the MCC was one of the earliest innovations for the New York criminal justice system. By comparison, the Irish criminal justice system has already seen significant innovation and reform over the last decade in its approach to crime prevention. The success of these domestic measures must be recognised, and any Community Court model established in this jurisdiction should be designed to complement and build on the progress already made, rather than seeking to replace it. It is therefore submitted that it would be unrealistic to expect the introduction of a Community Court in Ireland to have quite as dramatic a ‘success’ as that attributed to the MCC. The management of expectations is consequently important since it will assist in the design and subsequent perceived success of a Community Court model for Ireland. It is also of note that the unreasonableness of the expectations placed upon it may have contributed to the alleged ‘failure’ of the North Liverpool Community Justice Centre.<sup>8</sup>

### **Designing a Community Court for Ireland**

[3.1.10] There are a number of issues which arise in relation to the possible transposition of the MCC model to Ireland:

- The 24 hour turnaround in the MCC must be seen in the context of New York criminal procedure. In New York, all arrestees are arraigned; this is when bail is set by the Court. Since arrestees cannot be released prior to arraignment the State is under a Constitutional obligation<sup>9</sup> to arraign arrestees within roughly 24 hours. To facilitate this, the New York City Criminal Court operates special Arraignment Parts which are open 24 hours a day, every day of the year. Thus, the MCC’s 24 hour turnaround was designed in a context of an administrative system which was accustomed to preparing a case for first appearance on the following day. This is unlikely to be capable of replication in Ireland.<sup>10</sup>
- The MCC is self-contained and operates a broad variety of services out of one building on a full time basis. While this model is certainly ideal, it will present considerable resourcing challenges that must be incorporated into the design and implementation stages of an Irish Community Court system.

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<sup>8</sup> See below, paragraphs [3.2.11 – 14]

<sup>9</sup> See New York Court of Appeal decision in *People ex rel Michele Maxian on behalf of Damon Roundtree et al v Brown* 77 NY 2d 422 (1991)

<sup>10</sup> In Ireland, arraignment is only necessary for indictable offences and summary proceedings can be instituted within 6 months of the offence / arrest. By 2013 the NLCJC was taking an average of 27 days to process the cases which came before it.

- The MCC only sentences persons who agree to plead guilty to misdemeanours. ‘Clients’ are clearly incentivised to plead guilty at the earliest opportunity. However, the State of New York is under different Constitutional obligations regarding the provision of legal advice to those accused of criminal charges<sup>11</sup> and an Irish Court is likely to be under more significant obligations regarding legal advice, etc.

In conclusion therefore, it is submitted that whatever model is deemed applicable in our jurisdiction it will need to be distinguished from the MCC model and will have to be designed specifically to meet the needs of the Irish community within which it is established.

### **The Benefit of a Well Designed Community Court**

[3.1.11] The ACJRD therefore notes that while the Community Court model is capable of providing significant benefit to the community and has the capacity to have a strong impact on recidivism rates amongst offenders, it must be acknowledged that mere transposition of an identical MCC model is unlikely to have an impact equivalent to its introduction in New York City. Furthermore, the extent of the benefit which can be obtained from a Community Court will largely depend on the quality of the design and implementation of the Community Court. It is to this end that the ACJRD makes the recommendations that the implementation of a Community Court along these lines is both feasible and has the capacity to be of significant benefit to the community and to the criminal justice system generally.

## **3.2 The Aims of an Irish Community Court**

### **The Need for Clear Goals**

[3.2.1] The recent decision to close the North Liverpool Community Justice Centre<sup>12</sup> is noted for the purposes of this submission. While this is certainly a setback for the Community Justice concept in England and Wales, the closure decision may have reflected pragmatic budgetary considerations on the part of the UK authorities as much as any deficiencies of the community court model. In any event, the ACJRD feels that lessons can be learned from the NLCJC experience which should help ensure the success of an Irish Community Court.

[3.2.2] The academic review of the progress made by the NLCJC within its first five years of operation, *Doing Justice Locally*,<sup>13</sup> identified a number of problems when carrying out the

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<sup>11</sup> The right to counsel provided for in the Constitution of the United States has been interpreted as mandating the provision of legal aid only to those accused of felonies, not misdemeanours. Since the Community Courts deal exclusively with misdemeanours, the requirement for the accused to be offered legal advice is not as significant an issue as in Ireland.

<sup>12</sup> The NLCJC will be closed in March 2014

<sup>13</sup> Mair and Millings, *Doing Justice Locally: The North Liverpool Community Justice Centre*, Centre for Crime and Justice Studies (2011)

mandated research. Firstly, it was felt that the manner in which the success or failure of the Centre would be empirically measured was never clearly set out.<sup>14</sup> This made it difficult for the staff to then set goals or achieve targets themselves. Secondly, it is abundantly clear that the study was hampered by a failure to implement proper data collection policies from the outset. Mair and Millings commented that relevant information was only sporadically, if ever, recorded.<sup>15</sup> Thus, despite a general consensus that the Centre was effective and beneficial, it was impossible for the researchers to empirically demonstrate this. It is noteworthy that the NLCJC was designed as a pilot project in anticipation of a nationwide roll-out of similar Community Courts. This meant that the Centre was conflicted between pursuing the design of a unique network to ensure a maximum level of community engagement, and the necessity for it to create transferable systems for future replication. For example, the researchers commended the unique characteristics of the Centre's specially recruited Judge but then despaired of the likelihood of being able to replicate this success nationwide.<sup>16</sup>

[3.2.3] In addition, there are two other significant features of the NLCJC which merit mention. Firstly, the Centre operated a special jurisdiction which allowed it to dispose of both Magistrate's Court and Crown Court matters (i.e. both summary and indictable). This meant that the sentencing options available to the Judge included the imposition of an immediate custodial sentence and that this was regularly exercised. In addition, unlike other Community Courts, the Centre was not merely a sentencing court but also heard full trials. It is the ACJRD's submission that this must necessarily have made the operation of the NLCJC far more difficult to distinguish from that of a regular Court. Indeed, the plan for closure of the Centre involves a straightforward absorption of its business by Sefton's Magistrates Court.<sup>17</sup>

[3.2.4] Therefore it is recommended that:

- The Community Court should be designed as a stand-alone initiative but as a pilot project in its first phase before general roll-out.
- The goals of the Community Court be cohesively designed and be clearly stated
- The design of an Irish Community Court should have a legislative provision mandating a review of the operation of the Community Court within a specified time period

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<sup>14</sup> Ibid, pp. 4-5

<sup>15</sup> Ibid, p. 5

<sup>16</sup> Mair and Millings, *Doing Justice Locally: The North Liverpool Community Justice Centre*, pp. 97-98, 100-101.

<sup>17</sup> (Final) *Impact Assessment on Her Majesty's Courts and Tribunals Service proposals on the proposed closure of North Liverpool Community Justice Centre (NLCJC)*, Ministry of Justice (6.9.2013)  
<https://consult.justice.gov.uk/digital-communications/north-liverpool-community-justice-centre>

- That provision be made for appropriate data collection for the review, having regard to the goals of the Court
- Steps should be taken to ensure this data collection is implemented appropriately, if necessary requiring early commissioning of the review and/or consultation with the evaluators involved in that process
- Notwithstanding the stand-alone nature of the Court, when this review is carried out, it should have regard to whether the Community Court experience can inform practices of general applicability to the District Court
- Community Court business should be limited to sentencing only
- The Community Court should only hear and sentence matters which do not merit the imposition of an immediate custodial sentence

It is submitted that these recommendations should ameliorate any deficiencies experienced with regard to the implementation of the Community Court concept in England and Wales.

#### **Data Protection and the Community Court**

[3.2.5] The capacity for offenders to be processed without a conviction being recorded against them is central to the success of the Community Court concept. The ACJRD wholly endorses this approach which is synonymous with the proposed enactment of the Criminal Justice (Spent Convictions) Bill 2012 as a measure to extend a similar benefit and incentive to offenders nationally. However, the recent decision of the Court of Appeal of England and Wales, *R(T) v Chief Constable of Manchester & Ors*<sup>18</sup> in relation to the operation of legislation on spent convictions raises significant concerns in relation to data retention and disclosure requirements for persons involved with the criminal justice system. This persuasive authority should ring a note of caution to ensure that legislative systems are put in place to ensure that participation in the Community Court process will not prejudice offenders in their efforts to rehabilitate generally and in particular in relation to their employment prospects.

[3.2.6] Further, it is recommended that the Committee have regard to the extent to which Community Court proceedings should be considered public. While the ACJRD recognises and respects the importance of the public administration of justice and therefore does not recommend that proceedings be held in private, it is also manifest that one of the primary goals of the Community Court is to allow offenders to avoid the stigma associated with the criminal process. If that safeguard for offenders can be circumvented, it can be rendered null and void. Therefore the ACJRD recommends that the Community Court Judge be granted powers similar to those already in existence in our criminal court system in relation to the restriction of reporting of

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<sup>18</sup> [2013] EWCA Civ 25

Community Court proceedings. These powers could perhaps apply exclusively to the initial stage of the process, rather than re-activation of a sentence. Further, or in the alternative, it might be appropriate to include an individual tort, or an amendment to the Defamation Act 2009, providing for a private cause of action in respect of the prejudicial re-publication of the fact of an offence which has been successfully disposed of by the Community Court. This cause of action might only accrue after a specified time period post-disposal.

### **3.3 Design of the Court Itself**

#### **Single Judge Court**

[3.3.1] Most Community Courts operate with a single dedicated Judge. This appears to be an ideal scenario in terms of ensuring continuity of the Court's operation and it means that the Judge is in an excellent position to review cases. It is recommended that a one-judge model be adopted in Ireland and that the expected workload of the Community Court and the size of its catchment area should be designed with this in mind. A judge who has demonstrated skills in alternative dispute resolution methods would be most suitable for a community court structure which is generally regarded as being outside the normal adversarial model of Irish courtrooms.

#### **Recruitment of Judge**

[3.3.2] It is clear from the experience of other jurisdictions that the personal characteristics of the Judge are central to ensuring the success of the new Court. The role of the Judge is administrative, legal, consultative, mediating and slightly entrepreneurial in nature, and it demands a broader skill-set than a traditional judicial appointment. Any candidate will require a very high level of interpersonal skills, a capacity for empathy, an awareness of social problems, networking skills, etc. The judge for the North Liverpool Community Justice Centre was specially recruited and notwithstanding that Court's closure, he is acknowledged to have done an excellent job. It is recommended that the Committee adopt a similar approach to the appointment of a Judge in an Irish context. It is further recommended that since the role is an entirely new departure in an Irish context, some provision could be made with regards to the specific training of the Judge.

#### **Design of the Community Courtroom**

[3.3.3] The ACJRD recommends that the Community Court building should be designed or specially adapted for purpose. In particular, the Courtroom itself and any holding cells should be designed with a view to creating a more open and less intimidating environment whilst still maintaining the dignity of court proceedings. The design should ensure that the Court

proceedings are not under significant time constraints<sup>19</sup> and ideally only one offender should be in Court at a given time so as to encourage communication. One of the primary goals of a Community Court is that it induces a willingness to comply with therapy or remedial work. In MCC, ‘clients’ are said to distinguish the building from other Court complexes and the higher rate of compliance with court orders is attributed to this and to the Judge’s more involved approach.

### **3.4 Matters Appropriate for the Community Court**

#### **Types of Charge Suitable for Community Courts**

[3.4.1] In 2007, the National Crime Council proposed the establishment of a Community Court. This document set out a non-exhaustive list of the types of charges which such a Court could deal with. It is submitted that there is no need to prescribe an exhaustive list of the types of offences for which a Court might make a Community Court referral. The ACJRD recommends that referral should be available in relation to all offences which may be tried summarily and for which the Court considers that the imposition of an immediate custodial sentence is not appropriate.<sup>20</sup> In applying an MCC model a possible pilot programme in Dublin City Centre could include support from business communities who would wish to extend the list of offences enumerated by the National Crime Council Report (2007) previously referred to by including crimes by adults that include anti-social behaviour, begging and minor road traffic violations. In such circumstances it is possible to consider resourcing the Irish community courts system by emulating the public-private partnership aspect of the MCC. If there are offences which are to be excluded this should be done on an individual basis with reference to specific policy justifications.

#### **Sentencing only Court**

[3.4.2] While the ACJRD has recommended above that Community Court referrals should not always require DPP consent, it is suggested that consideration should be given to the limitation on access by offenders to this forum solely on a plea of guilty,<sup>21</sup> and the court should operate only as a sentencing court and not a trial court. It was one of the features of the NLCJC that trials were run before the Judge sitting there and that its dual role in running trial as well as a sentencing court may have contributed to a perceived lack of success.<sup>22</sup> It is submitted that it would be impossible for a Community Court Judge to foster an open problem-solving

<sup>19</sup> i.e. Adequate and comfortable holding cells, waiting areas for family members/victims and consultation rooms.

<sup>20</sup> And potentially also some offences triable on indictment on the election of the DPP, if a sentencing Circuit Court judge determines that referral to the Community Court is appropriate.

<sup>21</sup> See paragraphs [3.4.4 – 5] below.

<sup>22</sup> See paragraph [3.2.1 – 4] above.

collaborative atmosphere in an enquiry into the Defendant's circumstances and background, whilst simultaneously observing the rules of the law and thereby observing the Defendant's right to a fair trial.

### **Designing Referral Criteria**

[3.4.3] In any case, any proposed legislation for community courts will be obliged to design criteria to guide the District Court and the DPP in referring cases. It is recommended that a case should be referred where it is considered that (i) the offence does not merit the imposition of an immediate custodial sentence and (ii) the Defendant indicates a willingness to engage with the Community Court process.

### **Community Court / Justice Centre limitation to Guilty Pleas**

[3.4.4] The greater extent to which the Irish State is obliged to ensure that an accused has legal advice has been alluded to above. In the case of *State (Healy) v Donoghoe*,<sup>23</sup> the Supreme Court held that the Courts are under an obligation to ensure that a person facing a charge be afforded legal advice wherever any of a number of factors is present, these include; the severity of the charge, its potential effect, and the capacity of the Defendant to present their own case. The precise extent of this Constitutional obligation is not fully defined, consequently, where a new system is designed which impacts on this issue, care must be taken to ensure it is not open to challenge.

[3.4.5] Given the extent to which an Irish system will have to protect the interests of the Defendant, it is worth exploring whether the competence of Community Courts should be confined only to persons who have pleaded guilty. If Community Courts are to fulfil a mission of being an effective manner of reducing recidivism to benefit both the community and the offender it seems appropriate that a trial judge might order a referral where a person has been found guilty of a charge, notwithstanding their 'not guilty' plea. The basic enforcement mechanism of a Community Court is essentially the use of suspended sentences (albeit more sophisticated and structured than those applied by the District Court). The District Court imposition of suspended sentences could be legislatively mandated to refer Defendants to a specialist forum such as the Community Court who would have the responsibility for managing suspended sentences. This process might obviate the necessity of insisting that a guilty plea is a pre-requisite of case disposal in the Community Court. Therefore, the ACJRD recommends that any implementing legislation should offer a referral to a Community Court as a sentencing option in the District Court, irrespective of plea.

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<sup>23</sup> [1976] IR 325.

**Requiring the DPP’s Consent**

[3.4.6] The ACJRD recommends that there should be stakeholder discussion as to whether the DPP’s consent should not always be a pre-requisite to a Community Court referral. The main emphasis of the legislation should be the offender’s willingness to engage with the support services offered. The District Court should, therefore, be given a residual discretion to refer an offender to the Community Court, if it feels that it is in the interests of justice to do so. Arguably, this means that in certain circumstances, where the DPP has elected to try an offence on indictment, it should be open to the trial judge in the Circuit Court to refer the offender to the Community Court if his/her view of the case is that such action is the optimum one at the sentencing stage of the case.

**Allowing for Multiple Charges**

[3.4.7] In a similar vein, it is recommended that the Committee make provision for allowing referrals to the Community Court notwithstanding the existence of pending active charges. An example of where this might apply is as follows. Say a Defendant were charged with both possession of stolen goods and assault; if the Defendant was willing to be referred to the Community Court in relation to the possession charge but was pleading ‘not guilty’ to the assault charge, a trial would still be necessary. However, the Community Court system places a premium on the immediacy of intervention. It might take 12 months for the assault charge to be disposed of, and if a custodial sentence were imposed there would be no chance for a Community Court referral to have effect. The ACJRD recommends that the Defendant should be entitled to apply to be referred to the Community Court with immediate effect. If the offender is found guilty on the assault charge, the sentencing Court should then be obliged to have regard to the successful completion or compliance with a Community Court programme. It is important to note that such a process would result in necessary amendment to bail legislation.

**Proposed Referral Mechanisms**

[3.4.8] Accordingly, it is recommended that there should be a number of routes whereby an offender might be referred to the Community Court:

<b>Circumstances</b>	<b>Community Court Intervention</b>
(i) Where the prosecutor indicates that the Community Court might be an appropriate venue and the Defendant pleads guilty	Appearance in the Community Court for plea and sentencing
(ii) Where the prosecutor brings proceedings in the ordinary District Court, the Defendant may	Appearance in the Community Court for plea and sentencing

indicate his/her intention to plead guilty and apply for a transfer to the Community Court for sentencing	
(iii) Conviction after trial in the District Court, if the trial Judge decides it is appropriate they may impose a non-custodial sentence conditional on the Defendant’s compliance with the Community Court	Appearance in the Community Court for supervision and review of sentence
(iv) (With Defendant’s agreement) Referral to the Community Court pending appeal from a District Court sentence	Appearance in the Community Court for supervision and review
(v) Confirmation of a lesser Community Court sentence on appeal from a District Court sentence	Return to the Community Court for supervision and review

### 3.5 The Community Court Process

#### Procedures of the Community Court

[3.5.1] It is recommended that the District Court procedures be adapted for application by the Community Court. While proceedings should be as informal as possible, given that the administration of justice is still in question, appropriate levels of formality are required to ensure that the Defendant’s due process rights are observed. For example, it is the ACJRD’s understanding that therapeutic jurisprudence indicates that a person who participates in and understands the making of a social undertaking is more likely to fulfil their obligations. Therefore, it is appropriate that the offender should be invited to address the Community Court directly in relation to their circumstances and as regards their attitude to the crime committed. In the context of this non-adversarial process, due consideration should be given to various alternative dispute resolution problem-solving models. However, there should also be scope for any such communications by the offender to the court to be complemented by legal submissions where, for example; an offender has not communicated their circumstances effectively, or where there is a risk that a factual detail might be misunderstood. These procedures should be subject to external review and assessment.

### **Legal Representation and Legal Aid**

[3.5.2] In spite of the less formal nature of Community Courts, it is submitted that the need for legal representation is not obviated. While representation in Community Courts is unlikely to involve the same amount of adversarial advocacy as ordinary proceedings, offenders will be pleading guilty to criminal charges and the Court will still be administering significant suspended sentences; accordingly, the Defendant will require detailed legal advice. In particular, the speed with which proceedings are designed to go ahead would indicate that early advice is highly advisable. It is recommended therefore that an extension of the Garda Station Legal Aid scheme is provided for to cover advice given in relation to charges for which a referral to the Community Courts is envisaged. Such adherence to standard principles emanating from constitutional rights to legal representation should facilitate an early referral to the Community Court and the speedy processing of individual cases there.

### **Victims of Crime**

[3.5.3] The ACJRD recommends that the Community Court procedures be designed having regard to the principles of restorative justice and that, where appropriate, victims of crime should be involved in the Community Court post-sentencing procedure.

### **Sentencing Options**

[3.5.4] It is recommended that all of the sentencing options currently available to the District Court, other than the power to impose an immediate custodial sentence, be extended to the Community Court judge. Where it becomes apparent that an immediate custodial sentence is appropriate, the accused should be referred to the ordinary District Court as soon as this becomes manifest. If the accused had entered a plea of guilty in the Community Court in order to comply with a pre-requisite to disposal of the case in that forum, consideration will have to be given to that accused's right to withdraw that guilty plea where necessary on entering a different court jurisdiction. This procedure would be analogous to current procedures where an accused who is sent forward to the indictable court on a plea of guilty in the District Court can change that plea on arraignment in the higher level trial court. In addition, it is recommended that special powers to review a sentence be designed for a Community Court Judge to ensure they have as much flexibility as possible to deal with offenders and to react to changing circumstances. For example, it should be possible for a sentence to be reviewed or interrupted for compassionate reasons, or due to change of circumstances. Additionally, a Community Court Judge should be entitled to decide whether to impose an entire suspended sentence, or to vary it having regard to the severity of a breach of the conditions attached.

### **Right of Appeal**

[3.5.5] It is recommended that an offender should have a right of appeal to the Circuit Court against the severity of a sentence imposed by a Community Court, as would be the case if the matter was dealt with in the District Court. It is further recommended that where a Community Court Judge decides to activate a suspended sentence for failure to comply with a Community Court programme, the offender should have a right to appeal that decision to the Circuit Court, within the usual available structures. This is practical because it provides a cheaper and more effective alternative to the issuing of judicial review proceedings that naturally emanate from the offender's constitutional rights.

### **3.6 Post-Sentencing Phase**

#### **Developing a Support Services Network and Community Service Tasks**

[3.6.1] The international experience of Community Courts seems to suggest that ideally all services should be offered on-site to ensure the immediacy of an offender's interaction with them. The ACJRD recommends that, as far as is practicable, this model should be pursued in Ireland. However, the ACJRD also recommends that the Community Court should make every effort to integrate its operations with those of existing services and initiatives, both local and national, and considers it essential that the Court be provided with the capability and inter-agency support necessary to build and manage this network.

[3.6.2] Community Court programmes typically involve a combination of community service and therapeutic / educational sessions. With regards to community service, it is recommended that every effort be made to ensure that any such work is worthwhile and well considered. The ACJRD notes the extent of detail that goes into the design of suitable Juvenile Diversion Programmes by the Garda Juvenile Liaison Office and also the enormous success of these initiatives. The non-adversarial conflict resolution processes previously recommended, underpinned by restorative justice principles, should ensure that a programme is mediated that is a best fit for both the offender and the community at large.

#### **Support Services**

[3.6.3] The National Crime Council recommended the initial establishment of the following services to be operated in conjunction with the Community Court:

- Alcohol/Drug Addiction assessment and counselling;
- Educational/Literacy courses;
- Pre-employment and other training programmes;
- Family, Housing and other Social Services;
- Parenting programmes; and

- Anger Management Courses

While all of these services are appropriate, there is a notable exception in relation to the provision of Mental Health services. Given the vast extent to which offending behaviour coincides with mental health issues it is strongly recommended that appropriate and specialised mental health services be made available onsite for those identified as requiring such support through a best practice and rigorous needs assessment process. It is also recommended that the Committee have regard to the nature of the service provided. Whilst a relatively short course of parenting or educational classes may have a significant impact, individuals suffering with mental health problems or drug addiction may need ongoing support. It is therefore essential that in appropriate circumstances the Community Court should be enabled legislatively to ensure continuity of care after the disposal of an offence.

### **3.7 Ongoing Review of the Court**

#### **Internal Review of Community Court Operations**

[3.7.1] It is recommended that provision be made for monthly meetings between the Judge, representatives of services involved with the Community Court, community leaders, and other stakeholders on the operation of the Community Court. These meetings should involve a mechanism whereby the procedures of the Court can be adapted incrementally.

#### **External Review of the Community Court**

[3.7.2] It is recommended that the enacting legislation should provide for a statutory review of the operation of the Community Court within an appropriate time period; perhaps 3 years or longer. The parameters by which the success or failure of the Community Court will be measured should be set out from the outset. To achieve this it is essential that proper measures for the collection of data are provided for and put in place from the outset. The review of the NLCJC found that it was considerably hampered by the fact that despite a general consensus that improvements had been made, there was no way of demonstrating this since the data in question had only sporadically been collected, if collected at all.<sup>24</sup>

### **3.8 Summary and Thanks**

All of the above research and requested recommendations are summarised in the Executive Summary at the commencement of this document and will not therefore be re-iterated here.

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<sup>24</sup> Mair and Millings, *Doing Justice Locally: The North Liverpool Community Justice Centre*, pp. 4-5.



The ACJRD would like to thank the Oireachtas Committee in this matter for the opportunity of compiling and submitting this collation of the multidisciplinary views that emanate from our membership base.

Council of the ACJRD

January 10 2014