A Feasibility Study on the Introduction of a Community Court in Ireland

Based on a comparative analysis of the Neighbourhood Justice Centre in Australia and the North Liverpool Community Justice Centre in England

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Plagiarism Declaration

I hereby certify that this material, which I now submit for assessment on the programme of study leading to the award of PhD in Law and Criminology, is entirely my own work and has not been taken from the work of others save and to the extent that such work has been cited and acknowledged within the text of my work.

Table of Contents

List of Acronyms

ACJRD	Association for Criminal Justice Research and Development
AHD	Aboriginal Hearing Day
CCOs	Community Corrections Officers
CDI	Childhood Development Initiative
CISP	Court Integrated Services Programme
CSO	Community Service Order
DCBA	Dublin City Business Association
DDTC	Dublin Drug Treatment Court
FDAC	Family Drug and Alcohol Courts
HMIC	Her Majesty's Inspectorate of Constabulary
HSE	Health Service Executive
IEP	Incentives and Earned Privileges Scheme
IPRT	Irish Penal Reform Trust
JARC	Joint Agency Response to Crime
MCOV	Magistrates' Court of Victoria
NCC	National Crime Council
NGO	Non-Governmental Organisation
NJC	Neighbourhood Justice Centre
NJO	Neighbourhood Justice Officer
NLCJC	North Liverpool Community Justice Centre
PSP	Problem Solving Process
SCJI	Salford Criminal Justice Initiative
SGIC	Sentencing Guidelines and Information Committee
TR	Transforming Rehabilitation
UK	United Kingdom
US	United States

Abstract

This doctoral thesis assesses the feasibility of introducing a community court in Ireland – based on a comparative analysis of the Neighbourhood Justice Centre (NJC) in Australia and the North Liverpool Community Justice Centre (NLCJC) in England – and provides evidence-based recommendations to inform policymakers of the approach that is needed to successfully implement this innovative court model.

Building on the two previous proposals to introduce a pilot Irish community court, semi-structured interviews with key stakeholders in Australia, England, and Ireland, and an online survey of Tallaght residents, this thesis concludes that a community court is feasible in Ireland, and that such an initiative, if adequately resourced and structured, would have the capacity to transform high-crime communities and improve the quality of life of residents. The thesis also argues that it is the optimal time for Irish policymakers to reconsider the community court model, but that in doing so, close attention must be paid to the key recommendations made within this thesis which serve as a guidebook for how to successfully implement a community court.

The best practice guidelines set out for the establishment of a community court in this thesis include: adequate resourcing, funding of dual staff members, built-in mechanisms for monitoring, evaluation based on relevant indicators of success, accessible placement in a high-crime area with established support services, a standalone and purposefully designed building in which the court is not the main focus, a strong commitment to the principle of community justice, intensive community consultation and continuous community involvement, creation of political champions and advocates at every level of the criminal justice system, a single judge with experience in therapeutic jurisprudence, and the on-site co-location of criminal justice agencies and support services. Furthermore, it is suggested that Tallaght is a prime location for a pilot community court as it is an area with a large population, high crime rates, a strong sense of community, and an existing foundation of established support services.

On the whole, the thesis demonstrates that an ill-conceived community court risks becoming a waste of vast resources, but that if these evidence-based recommendations are carefully followed, the community court model can have a truly transformative impact on high-crime communities.

Introduction

i. Purpose of this Thesis

Criminal courts have seen an increase in the number of defendants with mental health, housing, and addiction problems due to social service cuts (Feinblatt, Berman and Fox, 2000; Fagan and Malkin, 2002; Mansky, 2004a). In general, mainstream criminal courts do not have access to the wide range of support services necessary to deal with complex social issues, whereas these remedies and services may be available within communities. The concept of 'community' has often been promoted as the solution to crime problems (Lacey and Zedner, 1995), and policy has frequently focused on the need for responses to crime to be localised and delivered through the co-operation of local agencies and community members. Karp and Clear (2000: 352) argue that criminal justice agencies should "make themselves available to the community, and the community must take an active role in the justice process". While community courts are difficult to define, for reasons that will be explained further in Section 1.2, the overarching definition for the purpose of this study is: a community court is a form of problem-solving court that operates as a community hub in a high-crime area, and works in collaboration with local agencies and community members to provide a range of services to residents based on the issues that they identify as important. In sum, the community court model aims to apply the approach promoted above by Karp and Clear (2000). Community court models aim to improve community-level justice outcomes through the collaborative working of the court, criminal justice agencies, support services, and local residents (Wolf, 2007). However, problem-solving courts have been criticised for developing without a strong theoretical framework to support their innovative approach to justice (Collins, 2021), and community courts are no exception to this criticism. Therefore, this thesis will address this lacuna and make a theoretical contribution by drawing on relevant theories that pertain to the community court model.

Initially, I was drawn to community courts as a topic of research for a PhD project because I was aware that the mainstream court system can have a detrimental impact on those who interact with it and that this can result in further damage to communities in the long term. However, as I explored the topic further, questions were raised as to the viability of this model, and whether it could potentially cause more harm than mainstream

courts in terms of net-widening, due process and coercion, over-reliance on the community, vigilantism, and the exclusionary power of the community. Yet, the evidence gathered throughout the course of this research has convinced me that a well-planned community court, which closely adheres to the underlying principles of the model, can actually work towards addressing the underlying causes of crime and maintaining civil order in a more legitimate way than mainstream courts, while also empowering marginalised communities. A different approach is necessary to adequately address re-offending in such a way that does not result in additional harm to the person who offends, the victim, and to the community as a whole. The community court model is under-theorised, meaning that the potential of this model to reframe how social order is maintained through the court system has not been fully explored. This research seeks to explain the community court model by bringing together disparate theories to create a guiding framework for how this model could be utilised to improve community safety and maintain social order. In doing so, the evidence shows that this model can achieve these aims in a more legitimate way than the existing court system. Fundamentally, this thesis puts forward a paradigm shift in how we should think about courts. Community courts, when established correctly, are not courts with internal services or with links to external services. Instead, community courts operate as a community hub in which the court element is not the main focus. As the evidence from the NJC reveals, the outcome of a well-established community court is not the criminalisation of social issues. Rather, the outcome is that the holistic support of those who offend becomes the norm within a community.

Both the National Crime Council (NCC) (2007) and the Joint Committee on Justice, Defence and Equality (2014) recommended that a pilot community court be introduced in Dublin, but this recommendation was never acted upon. There is limited research on community courts from an Irish perspective, with the NCC's report being the most comprehensive Irish research on the topic to date. The NCC report, while still relevant, is now dated and the recommendations made need to be updated in light of the closure of the NLCJC. Community courts need significant resourcing, and therefore serious consideration and planning is required before the model is implemented so that funding can be used appropriately to allow the initiative to meet its aims. This thesis will address the dearth of research on this court model in an Irish context and will examine a successful

community court, the NJC, and one that has been closed, the NLCJC, to make evidence-based recommendations.

The recommendations will be informed by semi-structured interviews with those involved with the NJC in Melbourne, those who were previously involved with the NLCJC in Liverpool, and relevant stakeholders in Ireland. The recommendations will also be informed by an in-depth review of the literature on the community court model, relevant policy documents, and existing evaluations of the NJC and NLCJC. A survey of Tallaght residents will determine an Irish community's openness to the community court model, how they perceive crime in their neighbourhood, and their general views of the criminal justice system.

A community court must be specifically tailored to the community that it aims to serve and therefore it is not a model that can be easily transplanted from one area to another. However, insight from those involved with existing community courts will highlight the challenges that community court planners may encounter. This thesis will offer a theoretical understanding of the community court model with a view to creating a framework for how to successfully implement a community court, which will then be used to determine whether it is feasible to introduce a community court in an Irish context.

ii. Research Aims

The purpose of this research project is to examine whether it is feasible to introduce a community court in Ireland based on the implementation and operation of community courts in other jurisdictions. To achieve this purpose, the following objectives were established:

- Review the literature on the emergence of community courts, their underlying principles, and the associated criticisms.
- Develop the theoretical framework surrounding community courts within the discipline of criminology.
- Analyse the inception of community courts as a problem-solving paradigm, and assess the challenges pertaining to their coordination in practice.
- Conduct qualitative interviews with relevant practitioners in Australia, England, and Ireland.

- Conduct a survey of criminal justice and community court perceptions in a chosen Irish neighbourhood.
- Determine the feasibility of introducing a pilot community court in the Republic of Ireland.

This study seeks to answer the following research questions:

- How do we define community courts?
- Why did community justice and problem-solving paradigms develop in Victoria and in England and Wales, despite the development of more punitive responses to crime in these jurisdictions?
- What insight can be garnered from relevant practitioners about the implementation and operation of community courts and the associated challenges?
- How would an Irish community react to the concept of the community court model?
- What are the best practice guidelines to introduce a community court based on the experience of previous models?
- Based on these findings, to what extent is a community court feasible in an Irish context?

iii. Thesis Structure

The thesis is divided into eight chapters. The chapter that follows contains an overview of problem-solving courts and community courts, including a discussion of the definition and aims of community courts, the associated criticisms, the differences between community courts and mainstream courts, and the development of the model in Ireland so far. This chapter will address the first research question, and provide the necessary context for the rest of the thesis. The first research question is also addressed by Chapter Two, which continues with a review of the existing literature on the core principles that underpin the community court model. Chapter Three sets out the methods that were employed to conduct the research to achieve the stated aims of the thesis, the limitations associated with this approach, and the ethical considerations involved in the study.

Chapters Four, Five and Six are divided based on the jurisdictions, Australia, England and Wales, and Ireland respectively. Each chapter begins with an overview of the penal landscape in the jurisdiction and how punitiveness and ‘tough on crime’ rhetoric has

impacted criminal justice policy, which will address the second research question. Chapters Four and Five contain an outline of the existing research and evaluations in relation to the chosen case studies, the NJC and the NLCJC. Chapters Four, Five and Six will also present the substantive findings of the study, which will address the third and fourth research questions.

Chapter Seven will address the fifth research question by devising recommendations for Irish policy-makers based on the differences in the planning and operational experience of the NJC and the NLCJC. The final chapter answers the sixth research question by presenting a summary of the key findings of the research, further situating these findings in an Irish context, and concluding as to whether a community court is feasible in Ireland.

The following chapter, Chapter One, provides an overview of community courts and outlines the current situation in relation to the model in Ireland.

1. Overview of Community Courts

This chapter presents an overview of community courts, beginning with a discussion of problem-solving courts in general, which will give context to the development of the community court model. The definition and aims of community courts will then be explained, before addressing the key criticisms associated with the model. The chapter then moves to discuss the differences between community courts and mainstream courts, and continues with an outline of selected community court models. The chapter concludes with an analysis of the situation in relation to community courts in Ireland, including an outline of the recommendations made by the NCC and the submissions made to the Joint Committee on Justice, Defence and Equality. This chapter addresses the first research question by exploring the definition of community courts, and meets the objectives of the thesis by reviewing the literature relating to community courts and the criticisms of the court model.

1.1 Problem-Solving Courts

This overview of the problem-solving court movement will provide the necessary context for the emergence of the community court model, as they employ similar underlying principles and are subject to many of the same criticisms. Problem-solving courts apply problem-solving approaches to justice within a court environment in an attempt to address the underlying causes of a particular type of offending. As Kaye (2004: 128) notes:

> "Adjudicating these cases is not the same thing as resolving them. In the end, the business of courts is not only getting through a day's calendar, but also dispensing effective justice. That is what problem-solving courts are about".

The principles of problem-solving justice include: enhanced information, community engagement, collaboration, individualised justice, accountability, and outcomes (Wolf, 2007). The roots of problem-solving justice can be traced back to various innovations in policing such as community and problem-oriented policing, which try to utilise the community and focus the response to crime on the underlying causes (Wolf, 2007). These

innovative policing approaches led to the creation of specialised problem-solving courts, which then, quite rapidly, permeated the legal landscape of the US.

Problem-solving courts developed through periods of policing, and court innovation and reform in the United States (US) in the late 1980s. The original problem-solving court model, which continues to be the most popular, is the drug court. Drug courts were first developed in Florida in 1989 (Jeffries, 2005), and this same model was soon followed by mental health courts. Mental health courts, initially were established in Florida once it became apparent that the drug court participants required a specialised mental health approach (Castellano, 2011). Problem-solving courts have since expanded across the legal landscape of the US, and further afield to other jurisdictions such as Australia, Canada, the United Kingdom (UK), Ireland, the Netherlands, and many others.

Problem-solving courts are a response to the 'revolving door' of offenders within criminal justice systems (Berman and Feinblatt, 2005) and developed due to the frustration felt by court officials at the conventional way of case processing (Castellano, 2011). Berman and Feinblatt (2001) claim that problem-solving courts emerged in response to a number of issues, such as the decline in strength of community institutions and family dynamics that would have addressed certain social problems, and the failure of policy initiatives to counteract these changes. Due to these failures, many people who experience addiction, homelessness, and mental illness, ended up in the prison system resulting in overcrowding (Berman and Feinblatt, 2001). The traditional sentencing options available to judges, such as dismissal, probation, or imprisonment, do not provide a solution to crime in the long run, which results in re-offending and further court dates, and does not help the offender or their community (Berman and Feinblatt, 2005).

Problem-solving courts aim to address the root causes of criminal behaviour to try prevent future offending, but how the underlying causes are addressed varies depending on the court's focus. However, all problem-solving courts have a similar guiding philosophy, which is described simply by Schaefer and Beriman (2019: 344): "by targeting those factors that contributed to the offense, the individual is less likely to reoffend". Forms of problem-solving courts have expanded to include domestic violence courts, youth courts, Indigenous courts, and of course, community courts. Depending on the court and the jurisdiction, problem-solving court participants may have their charges dismissed entirely, or may receive a lesser sentence, based on their compliance with the process.

Butts (2001) notes that while a key principle of problem-solving courts is accountability for harmful behaviour, the justice system should work to prevent future harm rather than just punishing harm done. Butts (2001: 121) perceives the "essential ingredients" of a problem-solving court to be "enhanced judicial oversight, lengthier case management (including post-sentencing supervision), and a general philosophy of restorative rather than retributive justice".

As noted, problem-solving courts were influenced by many other areas of innovation, but the main principles that underpin these models are therapeutic jurisprudence and restorative justice. Therapeutic jurisprudence and restorative justice will be discussed further in Chapter Two. Collins (2021: 1583) claims that the common origin story of problem-solving courts involves "a pioneering judge" who has observed problems with how the court system interacts with repeat offenders, and therefore seeks to create their own specialist court. Repeat monitoring by judges, often referred to as judicial monitoring, is another element of problem-solving courts. Judicial monitoring allows the judge to assess progress and alter the sentence requirements as necessary. Through these repeat meetings between the judge and the defendant, positive behaviour is encouraged, incentives are given, and the severity of negative behaviour is assessed so that interventions can be adjusted accordingly.

Participation in a problem-solving court programme is a largely voluntary process through which people are given the choice to attend the problem-solving court if they live within a certain catchment area, or if they meet certain eligibility criteria (Dollar et al., 2018). Participants will usually agree to participate in a programme or course of treatment or complete a non-custodial sentence, while under intensive monitoring, in lieu of a custodial sentence. If the participants fail to meet necessary standards or decide to opt out of the problem-solving court process, they are often returned to a mainstream court. There are concerns about those who are returned to mainstream courts, regarding whether they receive the same due process rights as those who never participated in a problem-solving programme (Casey, 2004). Also of concern is whether they receive a harsher sentence once returned to the mainstream court than they would have if they never voluntarily participated in the first place (Gottfredson and Exum, 2002; Gottfredson et al., 2006; Bowers, 2008; O'Hear, 2009).

Problem-solving courts have also been criticised in part due to their spontaneous emergence, without a centralised policy, leadership, campaign or evidence-based scholarship (Berman and Feinblatt, 2005). Collins (2021) argues that the popularity and spread of problem-solving courts occurred before any meaningful evidence could be gathered as to whether they are successful and meet their stated aims. He states that problem-solving courts are not "data-driven" but are "retrospectively data-justified" (Collins, 2021: 1587). However, a reason for this could be due to the difficulties problem-solving courts encounter when attempting to capture positive outcomes through traditional justice indicators of success, which will be discussed further in the context of community courts throughout this thesis. Moreover, the impact of problem-solving courts often depends on external elements, such as the availability of housing, jobs, and social service funding (Colvin et al., 2002; McCoy, 2010; Castellano, 2011).

As mentioned, a further concern relates to the rights of defendants and whether those rights are sacrificed during problem-solving court processes (Baar and Solomon, 2002), which is particularly relevant as many problem-solving courts require defendants to plead guilty in order to participate in the programme. McCoy et al. (2015: 161) acknowledge that coercion is an ever-present element of court processes, whether traditional or problem-solving, but they note that "the goal is to ameliorate the worst applications of coercion by designing a procedure that merges the best features of criminal justice and restorative practice". It cannot be said that mainstream courts are non-coercive, especially when non-compliance with sentences such as a community service or probation orders can lead to breaches resulting in imprisonment also.

Advocates of problem-solving courts argue that the traditional role of the court has become dysfunctional, and courts need to take on a new social role. However, McCoy et al. (2015: 162) argue that proponents of problem-solving overlook that courts and judges "are supposed to adjudicate, not mediate". They contend that the literature that surrounds problem-solving courts lacks an underlying social and political philosophy or theoretical explanation as to their place within the wider criminal justice system, or why it is best to address these social issues through the courts in the first place. A simple answer to this criticism is that social issues are already being addressed by the courts when they result in an individual committing a crime. However, there is a valid argument that problem-solving court models reinforce the idea that the criminal justice system should deal with social issues, rather than the public health system (Collins, 2021), and that this could

result in the criminalisation of social issues (Kiely and Swirak, 2021). This argument will be discussed further in Section 4.2.2(a). McCoy et al. (2015) suggest that problem-solving courts should not be considered courts in the first instance, as they are more like correctional agencies, and they should include interventions that are not presided over by a judge. This is a constructive suggestion, and is an approach that can be incorporated into community court models in particular.

Berman and Feinblatt (2001: 135), while acknowledging the criticisms, argue that it is important when examining any reform to ask the question "compared to what?". They state that "proponents of problem-solving courts have been adamant about not allowing critics to pick apart these new initiatives by comparing them to an idealized vision of justice that does not exist in real life" (Berman and Feinblatt, 2001: 135). They argue that each issue raised by critics can be resolved if they are given due consideration during the planning and development stages of problem-solving court models. If asked the question "compared to what?", it must be acknowledged that innovative reforms are needed to address the 'revolving door' of the same individuals presenting with the same underlying problems through the court and prison systems. In this context, Donoghue (2014) argues against the idea that problem-solving models are inherently punitive because they combine legal and therapeutic responses, and allow judges to apply both treatment and prison sentences. Conversely, Donoghue (2014: 22) states that problem-solving courts are:

> "not about a wholesale departure from punishment per se, it is about transforming the substantive nature of punishment to make it more socially productive, which includes an emphasis upon reducing the social exclusion, stigmatisation and marginalisation experienced by recidivist offenders in their neighbourhoods through treatment to address the causes of their offending; recognition of and engagement with community dynamics; and enhanced procedural justice through offender 'voice in the court process".

This focus on reducing social exclusion, stigma, and marginalisation is especially important in the community court model, as will be explained in Section 2.2.3. There must be a more effective and humane way to dispense justice, and experimenting with

new approaches, such as problem-solving court models, is necessary to try and discover it.

1.2 What is a Community Court?

Though it might appear straightforward, defining community courts is a difficult task. This court model must be tailored to the specific community that it aims to serve and, as a result, every community court must take a different approach depending on the area in which it is located. However, it is useful to acknowledge how this court model emerged and to assign an overarching definition to it so that planners have a starting point from which they can begin to shape the model.

Community courts were first established in the US in response to criminal activity that was negatively impacting the quality of life of residents in specific communities (Clear and Karp, 1998). The first community court in New York was established in Midtown in 1993, which was "born of a profound frustration with quality of life crime – including prostitution, vandalism, and minor drug possession – in and around Manhattan's central business system" (Berman, 2010: 2). At this time in New York City, as a result of policing focus on quality of life crimes, the courts were experiencing an increase in caseloads and mounting pressure to deal with cases quickly. Minor offences were being thrown out of court without consequence, which was negatively impacting the public's trust in the court system. Community courts, therefore, were an attempt to address the lack of accountability placed on those who offend and to gain the trust of residents who felt that their concerns were being ignored (Berman, 2010). The success of the Midtown Community Court led to another being opened in Red Hook in 2000. However, the new community court in Red Hook was called a 'Community Justice Centre' rather than a community court. These two terms are used interchangeably in the literature and are intended to mean the same thing throughout this thesis. The increasing popularity of this court model coincided with a growing community justice movement (Thompson, 2002). The community court model incorporates elements of community justice, therapeutic jurisprudence, and restorative justice, which will be discussed further in Chapter Two.

A community court is generally recognised as a form of problem-solving court, which is designed to deal with low-level, quality of life crimes (Zozula, 2018). Although initially set up to deal with minor offences, community courts now often deal with a wide range of offences, not just low-level criminal activity. Community courts are different from

other problem-solving models because they do not address just one problem that participants experience. Instead, they target offences that the community identifies as harmful (Gal and Dancig-Rosenberg, 2017). Therefore, community courts are based on the needs of the community in which they are situated, whereas problem-solving courts are based on a specific need of participants (Lang, 2011). This reliance, however, is mutually beneficial. A community court "relies on the community for its raison d'etre, its sense of mission and identity", while the community relies on the community court for "jobs, services, meeting space, and the tools and expertise it brings to the task of solving local problems" (Berman and Fox, 2005: 82).

The needs of the community are usually determined through community consultation by planners prior to the implementation of the model. The identified issues are then considered when ascertaining which on-site services should be available and they also provide direction for crime prevention programmes established by the community court (Berman and Feinblatt, 2001). Information sessions can be utilised to educate community members about potential prejudice or discrimination, and to manage their expectations as to what the purpose of the community court is and what it hopes to achieve. These sessions can help to establish boundaries as the conflicting needs within the community can lead to friction or can have a disproportionate impact on more vulnerable members of the community. It is important to manage the expectations of community members, establish boundaries, and comprehensively explain the purpose of the community court model in case some community members want more punitive responses to crime in the area, which would not be in accordance with the aims of the model (Mair and Millings, 2011). Overall, community courts tackle quality of life crimes by addressing the needs of the defendants who commit them, with the overall aim of improving quality of life in the community (Grommon et al., 2017).

As mentioned, defining community courts is difficult as they are innately connected with the issues experienced within a particular community. A community court must tailor itself to the unique community in which it is situated, as Gavin and Sabbagh (2018: 21) state:

> "Every community is unique and faces its own unique set of problems. Therefore, every community court will also be unique, as it will be

> tailored to help the community in which it is situated best resolve its issues".

It is also important to note, as Malkin (2003) does, that the term 'quality of life' is subjective. She claims that community courts can respond accordingly by determining what a 'quality of life' is, based on the local resident's own articulation of the problems. Malkin (2003) also points to this question of subjectivity as a potential problem for comparing community courts. It is difficult to use the same processes and indicators used in other problem-solving courts to compare community courts due to the different way community courts operate depending on the neighbourhood in which they are located. Feinblatt and Berman (1997: 11) note "there is no such thing as a generic model for a community court", which therefore infers that there is no general model for monitoring, evaluating, and comparing community courts.

A community court should be located in the same neighbourhood it intends to serve. The location "brings the court closer – both physically and administratively – to the social and behavioural origins of the problems that it seeks to address" (Fagan and Malkin, 2002: 898). An added benefit of the court being located within the same community as the target problems is that it communicates to the neighbourhood that certain behaviour will not be tolerated (Fagan and Malkin, 2002). Generally, community courts are placed in areas with high crime rates, central enough to be accessible to the community by public transport and nearby services to which clients can be referred (Murray and May, 2018). Research has shown that neighbourhoods with high rates of crime will benefit the most from more intensive intervention (Weisburd, 2015; Braga et al., 2019). These areas may also already have a robust system of services available with which to collaborate.

In contrast to other problem-solving courts, community courts claim that their lack of specialisation is one of their main advantages as it enables a judge to facilitate solutions to one problem without aggravating another (Dorf and Fagan, 2003). Community courts facilitate a holistic response to criminal offending that targets all the underlying causes of repeat offending, rather than one specific cause. The IPRT (2019: 3) highlights offending in a social context stating that offending behaviour and recidivism "might be immaturity and impulsivity, or it could be poverty, mental health, homelessness, addictions, experiences of violence or domestic abuse". In addition, Kiely and Swirak (2021: 140-141) acknowledge that those who come into contact with the criminal justice

system "are – based on intersections of poverty, ethnicity, race and social class – nearly universally marginalised in their respective societies before they become criminalised". Health issues can also contribute to criminal behaviour, for example substance misuse, and poor health can prevent those who offend from desisting as they cannot uphold employment (Sirdifield, Parkhouse and Mullen, 2024). People who come into contact with the criminal justice system can find it difficult to access the necessary health and support services, especially if there is more than one contributor to their offending behaviour (Revolving Doors Agency, 2017; Sirdifield, Parkhouse and Mullen, 2024). The aforementioned issues are the underlying causes of crime that community courts aim to address holistically. While every reiteration of a community court will be different, Berman (2010) states that all models share the following elements: enhanced information, community engagement, collaboration, individualised justice, accountability, and outcomes. To provide an overarching definition: a community court is a form of problem-solving court that operates as a community hub in a high-crime area, and works in collaboration with local agencies and community members to provide a range of services to residents based on the issues that they identify as important.

The core elements of community courts will be discussed in Section 1.5 below, and will be used to determine the differences between community courts and mainstream courts.

1.3 Community Courts in Context

Before discussing the aims of community courts specifically, the overall purpose of the criminal justice system must be addressed. Daly (2012: 2) suggests that "a more accurate term for *system* would be a 'collection of interdependent agencies', each having its own function". Each agency within the criminal justice system has their own bureaucratic interests, regulations, and discretionary powers, and sometimes the term 'justice' can hold different meanings within these agencies (Daly, 2012). Kurlychek (2011) echoes this sentiment and argues that while the criminal justice system should be working together towards a common goal, the various parts within the system rarely work in unison. Overall, the criminal justice system aims to establish and maintain social order (Quinney, 2002). The court system attempts to meet this aim through the traditional principles of incapacitation, deterrence, retribution, and rehabilitation. The incapacitation sentencing rationale is justified by the idea that the state has a duty to protect the public, although O'Malley (2016: 42) argues that "it will afford the community no more than a

temporary respite from further victimization by a person who is prone to reoffend". Deterrence aims to prevent crime by demonstrating the consequences of offending with the aim of dissuading society from committing an offence (O'Malley, 2016). Retribution views punishment as way to ensure that the person who has offended receives a punishment that is commensurate to the harm that has been done, but it does not allow for rehabilitation or reform (Wood, 2002). The meaning of rehabilitation is complex and McNeill (2012) suggests that there are four forms of 'offender' rehabilitation, which are psychological, legal/judicial, moral, and social. McNeill's definition of rehabilitation will be discussed further in Chapter 2.

Shonholtz (1984) argues that when the court system does not work, the excuse is often that they are overwhelmed, when the truth is that the courts are being misused. He contends that the public do not tend to view the criminal justice system as effective as it does not punish or repair harm done, explaining: "therefore, few people willingly participate in it, and most strive to avoid it. Low income people generally mistrust it and cannot afford it. Moderate to affluent people use alternatives to it" (Shonholtz, 1984: 1). The criminal justice system must be considered legitimate to be effective and to operate in line with democratic norms (Jackson and Bradford, 2009). Public perceptions of the fairness of the justice system contribute more to the legitimacy of the institutions involved than public perceptions of the effectiveness of the system (Hough et al., 2013). Theories such as therapeutic jurisprudence further recognise the negative impact that the justice system can have on the wellbeing of all those who participate in it (Braithwaite, 2002). The operation of the current court system is contributing to a range of issues that have a negative impact on the individual and the community, such as net-widening, mass incarceration and mass supervision. Net-widening will be discussed further in Section 1.4.2. In its current form, the mainstream court system is lacking in legitimacy due to the negative outcomes it produces and the collateral consequences on both the individual and the community. Therefore, alternative court models such as community courts can provide a more legitimate way to achieve social order by producing positive outcomes for both the individual and the community as a whole. The overarching aims of the community court model are explained below in Section 1.3.1.

1.3.1 Aims of Community Courts

As community courts must be tailored to their location, each model will have different aims based on the community itself. However, this section will discuss some of the common aims of community courts. Murray and Blagg (2018) argue that in order for a community court to succeed, it must be clear to policymakers and to community members what it is the model is trying to achieve. Of all the various problem-solving court models, community courts are "perhaps the most ambitious" (Berman and Feinblatt, 2005: 59), as they do not focus on just one key problem and they employ a holistic approach. In a survey of goals, performance measures, and operations of all existing community courts, conducted by Karafin (2008), the main aims cited by respondents were: to address the underlying problems that offenders face, to reduce crime and re-offending, to address community needs, to improve public perceptions of the court and justice system, and to emphasise accountability while addressing quality of life crime.

The main aim of any community court is "to address the root problems that lead to repeat offending and offer a rehabilitative alternative to jail" (Gal and Dancig-Rosenberg, 2017: 524). An additional key aim of the model is to repair and build public trust in the criminal justice system and in the justice process, while also enhancing community resilience (Malkin, 2003; Gal and Dancig-Rosenberg, 2017). It is thought that public trust in the justice system can be improved by holding those who commit even minor crimes accountable for their actions, even if this is through mainly non-custodial means or without having a long-term impact on their record. By having a support or treatment plan in place for those who offend before they embark on a community sentence, the likelihood of the individual successfully completing the order increases. This increased compliance with community orders is a further aim of community courts (Berman and Feinblatt, 2005). Fagan and Malkin (2002: 898) echo this aim, stating that community courts should "bring citizens and defendants closer in a jurisprudential process that is both therapeutic and accountable". Finally, community courts try to alleviate fear of crime in a community, thereby increasing community wellbeing overall (Kaye, 1997; Clear and Karp, 1998).

In a somewhat distinct view, Zozula (2018: 226) states:

> "Community courts subscribe to two main jurisprudential frameworks: punish low-level crimes meaningfully, harshly, and swiftly, and provide treatment for any issue perceived to cause an individual's criminal offending. This dual framework of punishment and treatment allows community courts to be simultaneously "tough-on-crime" and therapeutic".

Zozula (2018) continues to say that the question as to whether this court model is punitive or rehabilitative is fundamental as it requires the support of the public who may have differing opinions on how the criminal justice system should respond to crime. While community courts aim to respond to crimes with immediacy and in a meaningful way that promotes accountability for wrong-doing, it is interesting that Zozula (2018) uses language such as "punish" and "harshly" as this aim or approach is not particularly evident in the literature. It is possible to hold people to account for their behaviour without applying disproportionate punishment. Zozula (2018) views the dual framework as a benefit to the model as it can appeal to both sides of the political crime debate.

Zozula's explanation of community courts warrants a discussion of punitiveness more generally. It is difficult to find a comprehensive definition of 'punitiveness', although many criminologists readily accept the term. In its simplest form, punitiveness refers to harshness in relation to criminal justice. However, punitiveness is a multi-layered concept that can be visible in various circumstances depending on the events that are being studied. Tonry (2007: 7) has described punitiveness as usually referring to:

> "an unspecified mix of attitudes, enactments, motivations, policies, practices, and ways of thinking that taken together express greater intolerance of deviance and deviants, and greater support for harsher policies and severer punishments".

This description allows the author themselves to pinpoint the aspect of punitiveness that their analysis is going to focus on. Matthews (2005), by contrast, is a critic of the notion of 'punitiveness' due to its widespread use, while being vaguely defined and analysed. Matthews (2005: 178) also argues that the reason 'punitiveness' is readily accepted by scholars is that "it appears at first sight to have the capacity to 'explain' a whole range of

penal developments". However, the vague definition of punitiveness may be beneficial, once each individual scholar explains what they mean by the term and the events to which they are applying the term. Frost (2008: 278) warns that the "definition of punitiveness as simply 'punishing more' (and typically measured as 'imprisoning more') is too broad to be of much use".

Therefore, this thesis will focus primarily on 'political punitiveness' or 'legislative punitiveness', which relates to "penal legislation as the outcome of political discourse" (Kury, Brandenstein and Obergfell-Fuchs, 2009: 65). This type of punitiveness involves the enactment of largely symbolic penal policies by governments who have adopted the 'tough on crime' approach, even during times when crime rates remain steady or are decreasing. The symbolism of these harsh penal policies does not prevent them from having a detrimental impact on the criminal justice system. Similarly, there are negative consequences to the political promotion of community courts as a punitive response to crime. The consequences will become evident once the specific aims of the NLCJC are discussed at length and compared with that of the NJC. Community courts can operate as a more legitimate response to crime because they are not directed towards punitive outcomes and instead focus on rehabilitation and social reintegration as a way to secure civil order. Therefore, placing punitive aims above therapeutic aims, and moving away from the underlying principles of community courts, will compromise the model and will hinder its chance of success.

In sum, the previous literature suggests that the community court model aims to address the underlying causes of offending, reduce re-offending, address community needs, emphasise accountability, improve public trust, alleviate fear of crime, and improve community resilience and well-being overall. The evidence from this research shows that a successful community court can achieve three overarching aims that together create a broader shift towards a community-orientated understanding of justice, which are: aiming to address the underlying issues that cause people to commit crime, maintaining civil order in a more legitimate way than mainstream courts, and empowering stigmatised and marginalised communities. The model can achieve these aims by ensuring that the holistic support of those who offend becomes the norm within communities.

Overall, the purpose of promoting the community court model is to sustain the legitimacy of the justice system and its legal institutions as they seek to reinforce civil order.

Community courts can achieve this by enabling the powerless to be key agents in the maintenance and survival of the criminal justice system in a way that is more justifiable than the mainstream court system. Due to this core purpose, a discussion of social control theory and the critical realist movement will be included in Chapter 2. In addition, Therapeutic Jurisprudence and Restorative Justice will be further analysed in Chapter 2, as community courts can achieve their aims through procedures based on these principles.

1.4 Key Criticisms of Community Courts

There are a number of criticisms associated with community courts, many of which also apply to problem-solving courts in general. It is important to be aware of the criticisms of the community court model before any plans are made to implement one, so that the potential negative aspects can be prevented through thoughtful planning (Berman and Feinblatt, 2001). A criticism of problem-solving courts in general is that they focus on an individual's problem(s) when many of the issues are rooted in broader social problems and inequalities (Miller, 2009; Shdaimah, 2010; Spinak, 2010). This criticism does not apply as readily to the community court model as community courts bring more resources and services to an area and employ a holistic approach to try to address the social problems in the community as a whole, as will be discussed further in Section 4.2.2(a). For all problem-solving courts, there are criticisms relating to the potential erosion of due process rights for vulnerable people (Thompson, 2002; Miller, 2009), the coercive power of the court to impose treatment orders (Thompson, 2002; Seddon, 2007), and intensive service provision being available only through contact with the criminal justice system (Thompson, 2002; Burns, 2010). The latter could be addressed by ensuring that the support services available through the community court model are available to all residents in the catchment area, whether they are involved with the court or not.

Concerns have been expressed about the potential for net-widening through problem-solving courts, and that they could facilitate the prosecution of actions outside the usual remit of the criminal law (Thompson, 2002; Malkin, 2003). Other criticisms, specifically relating to community courts, argue that they place too much responsibility on the community to respond to crime problems (Lacey and Zedner, 1995; Williams, 2006), the potential dangers associated with the business community being the driving force (Amman, 2000; Thompson, 2002), and the potential for vigilantism and discrimination

(Karp and Clear, 2000). These criticisms will be discussed in the context of community courts below.

1.4.1 Due process and coercion

Some community court models require a guilty plea in advance of participation in the court process. Naturally, this procedure has resulted in serious concerns around due process rights, issues of coercion, and the level of legal advice that the individual has received prior to making this decision. Thompson (2002: 98) argues that "we should be sensitive to the impact of encouraging a guilty plea as a vehicle for gaining access to the resources of the court". A referral to a community court could be considered coercive if a potential participant feels that they must present at the community court, or else receive a custodial sentence. Potential community court clients should receive adequate legal advice prior to making the decision and be made aware of the various other legal routes available to them. Coercion does occur if the choice to continue the legal process through a mainstream court is removed, if the individual is unaware that they have that choice, and if they are dissuaded from pursuing alternative options (Zozula, 2018).

There are further potentially coercive elements involved in the community court process, which include forcing an individual to undergo treatment, or to take part in reparations to the community (Thompson, 2002). There is a chance that the application of therapeutic jurisprudence in court settings could result in higher levels of surveillance and control over individuals (Malkin, 2003; Nolan, 2009). Other important elements revolve around data protection, and also the ability for an individual to consent to treatment if they are currently using drugs, for example (Seddon, 2007).

Each concern is valid and would need to be addressed by community court planners to mitigate the risk of due process rights being impeded, and serious consideration needs to be given to the coercive power of the court. It is possible to adapt community court procedures, as long as bureaucratic barriers do not prevent it, to ensure that such risks are limited. Procedures can be put in place to require that individuals receive legal advice and give informed consent prior to participating in the community court process. Similar concerns about due process rights and coercion were expressed in Ireland in relation to the Dublin Drug Treatment Court (DDTC). The current procedure to partake in the DDTC requires a guilty plea or for the individual to have been convicted of a non-violent offence (Courts Service, 2022). The individual themselves, or their solicitor, can make a

request to the judge to send them to the DDTC and this decision is ultimately up to the judge (Courts Service, 2022). The effectiveness and potential risks associated with the DDTC approach should be examined by community court planners.

1.4.2 Net-widening

Alternatives to imprisonment, such as probation supervision and community sentences, were introduced as a way to reduce the prison population and the reliance on imprisonment as a sentence. However, in practice, prison populations have increased even though the number of alternatives has also increased, meaning that the 'net' of penal control has widened alongside the development of these alternatives (Cohen, 1985; Mathiesen, 1983; Matthews 1979; McMahon, 1990). As such, Cohen (1985: 44) argues that "community control has supplemented rather than replaced traditional methods". Stemming from the 'nothing works' debate in relation to rehabilitation, community-based alternatives to imprisonment have been key throughout the development of more managerial approaches to criminal justice (McMahon, 1990). Critical criminologists argue that the 'nothing works' debate in relation to penal reform has heavily contributed to more political and policy-based responses to crime (McMahon, 1990).

Net-widening causes concern in relation to community courts due to the argument that combining criminal justice responses and support services results in the criminalisation of social issues such as poverty, homelessness, mental health, and substance misuse (Mostyn, Gibbon and Cowdery, 2012). Due to this argument, legislation such as the Children Act 2001, introduced a statutory framework for children in contact with the criminal justice system which focuses on diversion, crime prevention, health, education, and child protection (Reddy, 2022). In the Swedish criminal justice system, the balance between support and punishment has long been a subject of debate (Gruska and Self, 2018). In Sweden, SiS operates as "an independent Swedish government agency which delivers individually tailored compulsory care for young people with psychosocial problems and for adults with substance misuse problems" (Gruska and Self, 2018: 7). Children who are flagged as being at risk of drug use or crime by social services, or who receive a court sentence, are sent to the SiS homes. This system has been criticised for merging child welfare and criminal justice as it could result in an over-reliance on custodial sentences for children (Lappi-Seppälä, 2011). It is also acknowledged that if the welfare and criminal justice systems are strictly separated, problems arise such as the

lack of information-sharing and individuals potentially receiving interventions within both systems (Lappi-Seppälä, 2011). Therefore, the need for coordination and the sharing of information between the two systems is clear (Lappi-Seppälä, 2011).

The community court model has roots in the Broken Windows Theory, which infamously led to the zero-tolerance policing approach, which was found to widen the net of criminal courts (Thompson, 2002). The link between the Broken Windows Theory and community courts will be discussed further in Section 2.1. Both the Broken Windows Theory and zero-tolerance policing initiatives have been condemned for increasing the criminalisation of crimes that are most associated with poverty and social disadvantage (Smith, 2002; Herbert and Brown, 2006). Therefore, it is necessary to acknowledge concerns relating to the potential of the community court model to result in net-widening. Thompson (2002: 82) put forward the argument that "what had once been minor infractions or low-level misdemeanours became the principal focus of this new judicial effort". Malkin (2003: 1574) has also expressed concern about factors impacting the 'quality of life' of residents as "it has been redefined to constitute a new moral category". The traditional focus of community courts is on low-level, quality of life crimes, which means that these criticisms apply heavily to the model.

Feinblatt and Berman (1997) acknowledge that many quality of life crimes are outside the remit of traditional courts and recommend establishing a mediation service alongside the community court in order to address neighbourhood disputes before they become legal problems. The Midtown Community Court set up a street outreach unit aimed towards community members in need of the court-based social service, before they broke the law (Feinblatt and Berman, 1997: 10). These approaches are important considerations for community court planners.

McMahon (1990: 143) suggests that arguments around net-widening should be applied with caution, as community-based alternatives to imprisonment do not inevitably lead to net-widening and indicate that penal reform is futile, but that "deeper theoretical and political matters" must be considered. In this vein, Cohen (1985) attempts to escape the pessimistic view of social control theory through 'moral pragmatism' which argues that criminal justice initiatives be evaluated through their potential to give rise to preferred values. Cohen's approach could be applied to community courts and they could be evaluated based on whether they contribute to higher community satisfaction and

cohesion. The criticisms around net-widening in relation to community courts could be counteracted by careful monitoring and ensuring that individuals do not appear before a community court judge if they were not alternatively going to appear before a mainstream court judge. Judicial discretion to apply a proportionate sentence, which also suits the individual's needs, is necessary to ensure that the community court model does not contribute to net-widening. There is a clear need to avoid "the criminalisation of the social" (Cook, 2006: 178) when it comes to community courts, and this issue will be addressed in Section 4.2.2(a).

1.4.3 Over-reliance on community

It has been suggested that community courts put undue responsibility on the community to respond to crime (Lacey and Zedner, 1995). Lacey and Zedner (1995: 302) argue that this pressure on the community could "seek to dispel the idea that crime is the problem of the government, to be dealt with away from the community's gaze". It is important to note that the approach of a community court could place this responsibility on the victims of crime also, which should not occur (Williams, 2006).

Again, planners can protect against the possibility of responsibility for crime being placed on the community. Crime is dealt with through the courtroom in a community court, the sentencing process is the responsibility of the judge alone, and non-custodial sentences are managed by professionals. Through information sessions, the expectations of the community can be managed and boundaries can be established as to the specific role of the community in relation to the community court model. Community residents should never feel obliged to become involved with a community court if they do not wish to do so.

1.4.4 Driven by business

Although community courts aim to bridge the gap between courts and communities, there are concerns that the business community is considered more important than other community members. Amman (2000: 816) argues that "it is telling that in major cities where community courts have been instituted, the driving force is often downtown business establishments". The business community spearheading such a court model could give the impression that protecting the economy is a more important aim than providing individuals with the supports that they need. Thompson (2002: 89) submits that

"community courts are rarely focused on the interests of low-income communities" and emphasises the need to include diverse community perspectives. Lacey and Zedner (1995) concur that 'community' must be inclusive and that certain voices should not be ignored because they are different.

This concern is particularly relevant because the business community was the driving force behind the first community court in Midtown, and the Dublin City Business Association (DCBA) was behind the introduction of the community court concept in Ireland. As can be seen through the Irish findings in Section 6.2.1, the business community does not necessarily have adverse intentions towards any individuals when promoting the community court model. Community court planners would need to give this criticism due consideration and make sure that community voices are not excluded in favour of improved economic outcomes. However, involving the business community and having their support would be beneficial, especially to try and create the political will to establish a community court.

1.4.5 Vigilantism and Discrimination

Providing community members with a certain level of authority within the community court model could result in an increased opportunity for vigilantism or discrimination (Karp and Clear, 2000). This criticism is especially relevant if power is provided to community members through informal mechanisms, and this is an issue for all crime prevention initiatives involving community members (Karp and Clear, 2000). Without formal mechanisms to hold community members to account, there is an opportunity for residents to engage in exclusionary responses to unacceptable behaviour in the area, racist and discriminatory responses (Skogan, 1988), and vigilantism (Weisburd, 1988). The use of 'community' as a concept within criminal justice approaches can contribute to the fear of people who do not fit the community norms, creating 'outsiders' that could become the focus of community groups.

Localised justice can lead to prejudice and vigilantism, however, the Howard League for Penal Reform (2009) note that communities only tend to lean in that direction if fuelled by more punitive centralised policy. They contend that these tendencies can "be counteracted by the lived reality of local engagement in the very processes which inspired them" (Howard League for Penal Reform, 2009: 46). While acknowledging

discrimination and vigilantism as genuine concerns in relation to community court models, it does not appear that community involvement in a community court fosters discrimination or results in vigilantism in practice. Feinblatt, Berman and Sviridoff (1998) note that, when provided with options, community members involved in the Midtown Community Court favoured community based sentences and engagement with social support services. By following the approach suggested by Karp and Clear (2000: 339), which emphasises "*restoration* of the community in response to the damaging consequences of crime and *social integration* of marginalized individuals, particularly offenders and victims", this will protect localised justice initiatives from emerging out of, or leading to, vigilantism and discrimination.

1.5 Differences between Community Courts and Mainstream Courts

It will become more apparent throughout this thesis that a community court is much more than its court function. However, it is useful to recognise the core differences between the court within a community court model and mainstream courts. Both community courts and mainstream courts share the aim of improving community safety, but community courts take a different approach. Frazer (2006: 4) explains some of these differences:

> "In particular, community courts are designed both to help defendants solve the problems that underlie their criminal behavior and to hold them accountable for the specific incidents that brought them to court; they consult with local stakeholders to set and accomplish priorities; they are proactive in preventing crime rather than merely responding once crime has occurred; they bring criminal justice agencies (courts, prosecutors, defense attorneys, and police) into close coordination to address community issues; and they strive to create an atmosphere which is conductive to engaging communities, defendants, and other litigants".

The survey conducted by Karafin (2008) asked participants to explain how the community court differed from local traditional courts and the most common response pertained to the use of problem-solving approaches to address the underlying causes of offending. Second to this, respondents listed improved court processes and procedures

that increased efficiency, speed, and value for money. Respondents highlighted the level of engagement with the local community as the next core difference, along with the varied sentencing options available to the judge. Finally, respondents noted the ability to dismiss cases without conviction following compliance with orders as another key difference between the community court model and mainstream courts. As mentioned in Section 1.2, every community court model will have differences, but according to Berman (2010), they share the elements of enhanced information, community engagement, collaboration, individualised justice, accountability, and a focus on outcomes. The core elements of community courts discovered through this research, and which set them apart from mainstream courts are: a single judge, immediacy and meaningful accountability, monitoring and evaluation, location and design, collaboration and co-location of justice agencies and support services, client-focused approach, commitment to underlying principles, community engagement, and innovation.

Community courts are generally presided over by one dedicated judge, which has several potential benefits. Research conducted by Goldkamp (2004) found that if a defendant has repeat contact with the same judge, they are less likely to reoffend. In addition, if an individual feels that they have been treated fairly by a judge, they are more likely to view the judge as legitimate and to comply with their demands (Tyler, 1990). The role of a community court judge is much broader than that of judges in mainstream courts. Community court judges balance their authority and an 'ethic of care' through practical applications of therapeutic jurisprudence, interact directly with the individual rather than speaking through their legal representatives, and they assist the individual to understand court proceedings and feel comfortable in the courtroom (NJC, 2012). Further, community court judges often have the power to return individuals to the court every few weeks to provide encouragement or to alter the support provided based on any changing circumstances, which is known as judicial monitoring.

An important element of community courts is the immediacy with which cases are dealt. For some community courts, the individual will appear before the court on the same day the offence was committed, and the court order is often set down at the first appearance before the court. The existence of on-site justice agencies and support services working in collaboration facilitates the speedy response of the court, and the individual has immediate access to the necessary support services (Lang, 2011). Accountability is sometimes emphasised by community courts by sentencing an individual to carry out

community service in the area where the offence was committed (Berman, 2010). A key difference between community courts and mainstream courts is that community courts are closely and continuously monitored and evaluated with a view to improving the processes, which rarely occurs in mainstream courts, if at all.

As mentioned, community courts should be located in the area that they plan to serve and they are often in dedicated standalone buildings that have a more informal design than mainstream courts. Within the dedicated building, justice agencies and support services are often co-located on-site which facilitates active collaboration and information-sharing. The provision of and collaboration between on-site services would assist the judge in handing down individualised and client-focused sentences. The underlying principles of community courts are community justice, therapeutic jurisprudence, and restorative justice and community courts should be dedicated to applying these principles in practice. The Joint Committee on Justice, Defence and Equality (2014) notes how the model promotes restorative justice principles and serves to address the root causes of offending, which is a core difference of the community court model to the traditional court's focus on retributivism, punishment, deterrence, but is in line with more traditional rehabilitative aims. Community justice is the main underlying principle of this court model, and this should be demonstrated through intensive community engagement both prior to the community court's establishment and continuously throughout its operation.

1.6 Overview of Selected Community Courts

This section will provide an overview of selected community court models. First, the Midtown Community Court will be discussed as it was the first community court established and was spearheaded by the business community like the initial community court proposal in Ireland. An overview will then be provided of the Red Hook Community Justice Centre as this community court model in particular inspired the creation of the NLCJC and the NJC respectively. A brief overview of the NLCJC will follow, which is one of the core case studies for this research. The NLCJC was chosen as a case study due to its location in Liverpool, a city with deep Irish roots, and due to the similarities between the English and Irish criminal justice systems and legal culture. The NLCJC was also selected because it was closed down after eight years of operation, and lessons from this closure could be used to inform Irish policymakers about how to avoid an Irish community court meeting a similar fate. Finally, the NJC will then be discussed

as another case study for this research. The NJC, which has been operational since 2007, was chosen for this study as the model was inspired by both Red Hook and the NLCJC. The NJC is considered to be a successful community court. Melbourne, where the NJC is located, is also rich in Irish heritage as it "was one of the great centres of Irish emigration" (The Irish Times, 2016). The achievements of the NJC, and the difference in their approach from the NLCJC, can provide Irish policymakers with potential best practice guidelines for the establishment of a community court.

1.6.1 Midtown Community Court

As the first community court to exist, and one that was mainly driven by the business community like the initial Irish proposal, a brief overview of the Midtown Community Court is useful here. The Midtown Community Court was established in Manhattan, New York, in 1993. The idea was proposed by the Midtown Business Improvement District, which is an organisation consisting of local businesses, residents, and social services in the Midtown area. The community court is tied to the city court system, but it was funded by private foundations such as the *New York Times* newspaper and Broadway theatre owners (Chesluk, 2007). The aim of this court model was to address 'problems' in the area such as prostitution, drug dealing, illegal street vending, shoplifting, and homelessness. Chesluk (2007: 82) notes "real estate entrepreneurs and developers felt that these "undesirables" threatened the attractiveness of Times Square real estate by their very presence in the area". A similar reasoning was employed by the DCBA when they introduced the concept of a community court in Ireland, as these problems in Dublin City Centre were deterring people from visiting and shopping in the area.

The Midtown area had a very high crime rate relating to low-level offending that was quite visible. When this low-level offending was responded to with increased policing, it resulted in offenders spending long periods in custody, which then led to the offenders being released due to time already spent in custody by the time that they went to court (NCC, 2007). Therefore, the underlying causes of the offending were never being addressed. As a result, there was limited trust in the criminal justice system and judges were frustrated by the limited sentencing options available to them (Chesluk, 2007). Local businesses objected to offenders who committed crimes in the Midtown area being taken elsewhere to be processed, as it meant that those who harmed the Midtown community were not held accountable to the area. Having a space where local crimes

could be dealt with and community orders could be carried out locally, meant that the Midtown community directly benefited from the justice process. Chesluk (2007: 88) notes that the Midtown Community Court "felt more like a small chapel than the dark and lofty courtrooms downtown" and that clients continue to frequent the community court even after their order was completed to access the services.

In Midtown, while the hearings were more intimate than in a traditional courtroom, the lawyers still spoke on behalf of clients the majority of the time (Chesluk, 2007). The Midtown Community Court formally involves the community in its processes by holding regular consultation meetings with community members, having community members sitting on the Advisory Board, and using community impact panels. The Community Court responds innovatively to crime problems, for example, by developing a court to educate illegal street vendors on how to apply for a license (NCC, 2007). The concept of the Midtown Community Court was criticised due to the level of resources required to establish such a court model. It was suggested that only an area like Midtown would have the necessary resources, which would mean that the model is not replicable (NCC, 2007). Further criticisms were to do with the possibility of net-widening due to the potential criminalisation of low-level offences which may not have ended up before a mainstream court. However, the success of the Midtown Community Court led to the Center for Court Innovation in New York to begin assisting other neighbourhoods to develop their own community court models. One of these neighbourhoods was Red Hook in Brooklyn.

1.6.2 Red Hook Community Justice Center

The Red Hook Community Justice Center is very relevant to this research as the two chosen case studies, the NJC and the NLCJC, were based primarily on the Red Hook model. Red Hook has surpassed Midtown to become the poster child for community courts for those who are considering establishing the model. The area of Red Hook had very high crime rates that were impacting the quality of life of residents, and it was an area with high levels of socio-economic deprivation. The neighbourhood was severely impacted by drugs like heroin and crack cocaine, and was once known as the 'crack capital of America' (D'Cruz, 2017). The community court was established here following the shooting of a local school principal who was caught in a cross-fire of a local feud while out searching for a student (Berman and Fox, 2005). This incident served as a catalyst for action which led to the establishment of the Red Hook Community Justice

Center in 2000. Red Hook was the first community court that was multi-jurisdictional, including criminal, civil and family cases (National Crime Council, 2007). It also includes a Youth Court.

The Red Hook Community Justice Center operates as both a community centre and a court, and has a focus on problem-solving. Mansky (2004b: 255) notes that "unlike many conventional courts, which target efficiency as their ultimate goal, the Justice Center focuses on improving outcomes". Residents in Red Hook can avail of the many on-site services regardless of whether they are involved with the court or not. Red Hook is home to social workers, housing services, drug and alcohol treatment services, job training, high-school diploma programmes, community service programmes, restorative justice programmes, and youth court programmes. The Red Hook Community Justice Center gained the support of locals in the first instance by involving them in its establishment through the use of focus groups, interviews and community meetings to find out residents' concerns. The community remains an integral part of the court and many community members have been hired as staff or volunteers at the centre.

In comparison to the Midtown model, which remains quite court-focused, Red Hook is more community justice orientated. While still assisting the local Red Hook community, the centre has become the model community court for justice reformers all over the world who visit the centre before setting up similar initiatives in their own jurisdictions. The NLCJC is one such community court model that took inspiration from the Red Hook approach.

1.6.3 North Liverpool Community Justice Centre

As one of the case studies for this research project, it is appropriate to provide a brief overview of the NLCJC at this stage. As mentioned above, the NLCJC was modelled on the Red Hook Community Justice Center following a visit to Red Hook by then Home Secretary, David Blunkett and then Lord Chancellor, Lord Falconer. The establishment of the centre met a number of commitments in the cross-Government strategy to tackle anti-social behaviour. Policy programmes such as 'RESPECT' and the Government's White Paper of 2003, *Respect and Responsibility – Taking a Stand Against Anti-Social Behaviour*, first laid out the plan to introduce the court model in England. There was a very short period of time between the planning of the centre and its opening, which

occurred in December 2004. The NCC (2007) credits strong political will and speedy provision of funding for the quick turnaround.

A call was put out for cities to vie to be chosen as the location for the new court model, and North Liverpool was selected due to the high crime rates in the area, the level of socio-economic deprivation, and the lack of public confidence in the criminal justice system. The judge of the NLCJC was given legislative power under the Community Order (Review by Specified Courts in Liverpool and Salford) Order 2006, which enabled them to make an order to have individuals re-appear before the court on a regular basis to discuss their progress. If a client of the court received a custodial sentence, a release plan was put in place in collaboration with the client, and the judge remained in touch with them (NCC, 2007).

The core aims of the NLCJC were to reduce anti-social behaviour and low-level offending, increase public confidence in the criminal justice system, reduce the fear of crime, expand the involvement of the local community, increase compliance with community sentences, create a speedier justice process, and increase the satisfaction of victims and witnesses with the justice process (McKenna, 2007). However, the centre did not meet many of its key objectives and was closed down in 2013. The NLCJC, and the reasons for its closure, will be discussed in-depth in Chapter Five.

1.6.4 Neighbourhood Justice Centre

The NJC is the second case study for this research project and therefore a brief overview will be provided here before it is discussed in detail in Chapter Four. The NJC also took inspiration from the Red Hook Community Justice Center, but it also incorporated elements of the NLCJC, such as providing financial advice services. The NJC is the only court of its kind in Australia and is located in Collingwood, which is in the City of Yarra, an inner-city suburb of Melbourne, Australia. Rob Hulls, then Victorian Attorney General was the driving force behind the establishment of the NJC. Following a visit to Red Hook by Rob Hulls and the then Secretary of the Department of Justice, a community court forum was set up in Melbourne, which was attended by staff from the Center for Court Innovation in New York (Murray, 2009). The NJC was originally set up as a three-year pilot project (Murray, 2009), and it now finalises 3500 to 4000 cases a year (NJC, 2022). The NJC is the first community court outside of the US to have been awarded International Mentor Community Court status. The main overarching goal of the NJC is

to “make the places we live, work, and raise families safe and resilient through compassionate, tailored and appropriate justice” (NJC, 2022). Multiple teams are co-located on site at the Neighbourhood Justice Centre including several support services which share information and work holistically with clients, whether they are attending the court or not. There is a Leadership Team, Crime Prevention Team, a Programme and Innovation Team, Monitoring and Evaluation Team, Client Services Team, and a Neighbourhood Justice Officer. Legal and justice agencies are located on-site, such as Victoria Legal Aid, Fitzroy Legal Services, Community Correctional Services, and Victoria Police.

The Client Services Team provide services including, but not limited to, alcohol and drug services, financial and general counselling, housing support, mental health outreach and clinical services, family violence support, Aboriginal and Torres Strait Islander support services, mediation, and victim support. The collaboration of such a range of agencies and services is known as the ‘Embedded Specialist Services Model’, which means that a referral to one service, is a referral to all, if considered necessary. The Embedded Specialist Services Model has its basis in psychological positivism as it notes that crime can be a result of an individual’s mental or emotional issues, or stem from the difficult circumstances that they experience (Hopkins Burke, 2018). Further, this model also has a basis in social positivism as it recognises that people may commit crime due to social factors in their life. Therefore, by assisting in changing those existing social conditions, crime can be prevented or reduced (Hopkins Burke, 2018). Information is shared openly among service-providers, which saves the client repeating their story or having to attend multiple meetings. A solutions-based plan is put in place for the client before they leave the building. For court-users, there is no delay between their court date and engagement with any necessary supports. The client services team is made up of both staff employed at the NJC, and ‘dual staff’ workers from key local community service providers who are based in the building. Further detail on the approach of the NJC will be provided in Chapter Four.

1.7 The Situation in Ireland

In this section, the background to the recommendations made to introduce a community court in Ireland will be explained, and the recommendations made by the NCC and the Joint Committee on Justice, Defence and Equality Report will be discussed in more detail.

This section will explain the situation as it currently stands in relation to community courts in Ireland, and will therefore provide the context necessary for the arguments developed throughout the thesis.

1.7.1 Background

The then Chief Executive Officer of the DCBA, who was also a member of the NCC, brought the concept of a community court to Ireland, and it was arranged that a representative of the Center for Court Innovation in New York would give a presentation to the DCBA on the model. The presentation was attended by members of An Garda Síochána, the Department of Justice, Equality and Law Reform, and the NCC. The Criminal Justice Subgroup of the NCC was tasked with researching community courts further and members visited a number of community courts to inform their research, including the Midtown Community Court, Red Hook Community Justice Center, Philadelphia Community Court, and the NLCJC. The culmination of this research resulted in a report by the now defunct NCC, published in 2007, which recommended that a community court be established in Dublin. However, limited progress was made in this regard until 2014 when the Joint Committee on Justice, Defence and Equality published a Report on Hearings in Relation to Community Courts.

Submissions to the Committee highlighted several concerns around the potential impediments to individuals' constitutional rights, the receipt of legal advice and representation prior to and during the process, and the admissibility of evidence in cases where the defendant changes their plea. Submissions also highlighted the need for such an initiative to be adequately resourced for it to have a real impact, and the DDTC was used as an example of an initiative that was struggling due to a lack of resources. With these concerns taken into consideration, the Committee recommended that a pilot community court be established in central Dublin, in a policing district, under the supervision of a single judge, and with the support of an implementation group and local community groups (Joint Committee on Justice, Defence and Equality, 2014). Then Minister of State, Joe Costello, on behalf of then Minister for Justice, Alan Shatter, stated "now is the time to fully explore whether or not community courts can be of benefit within the Irish criminal justice system" (Department for Justice and Equality, 2014). A working group was established to further investigate the introduction of a community

court in Dublin, but no findings were published, and the Dublin Community Court never materialised.

1.7.2 The National Crime Council Report 2007

The NCC was set up in 1999 as a non-statutory body, which focused on crime prevention and crime policy development. At the time of the publication of the report, there were fifteen members of the NCC, including a member of An Garda Síochána, representatives from the Department of Justice and Dublin City Council, the Archdeacon of Dublin, a District Court judge, Senior Counsel, and a Senior Research Officer. The NCC ceased operating in 2008 and its main functions have since been absorbed by the Department of Justice and Equality (European Crime Prevention Network, 2018). Research for the 2007 NCC Report was conducted through the examination of literature pertaining to community courts internationally, site visits to several existing community courts in the US and in England, and through statistical analysis using statistics from An Garda Síochána and the Courts Service (NCC, 2007).

The report listed the potential benefits of the community court model for defendants, the community, and the criminal justice system. They note that the potential benefits for defendants include pre-trial assessments, a dedicated judge, the potential to avoid a criminal conviction, application of an individualised response, a problem-solving focus, participation as a gateway to treatment, immediate access to treatment, rigorous monitoring, and efficient case disposal. The suggested benefits for the community are restitution through unpaid work, and the formalised involvement of the community in the justice process. Finally, the stated benefits to the criminal justice system include greater efficiency due to the immediacy of the proceedings, guilty pleas, and greater provision of resources.

The overarching recommendation made within the report is that community courts should be established in Ireland as standalone courts in high population areas, and should form part of existing District Courts in more rural areas. This recommendation is sensible as it would limit the resources required in regions where the caseload would not justify the resources allocated to a standalone court. However, it could be difficult to apply community justice practices within an existing hierarchical and well-embedded court system. The council stated that the standalone courts should have their own dedicated building located within the community that they aim to serve. The recommended area

was within the catchment areas of the Store Street and Pearse Street Garda Stations due to the high concentration of quality of life offences in these locations. Locating a community court in the city centre is another similarity to the Midtown Community Court, in addition to it being initiated by the business community. The proposed location will be discussed further in Chapter Seven.

The NCC recommended that the established community court should have the capacity to handle forty cases per day, and that the caseload could be increased over time once any arising operational issues were addressed. The report provided a list of suggested offences that should come under the remit of any community court established in Ireland, which mainly comprised more minor public order offences, but also included crimes such as assault, drug use, and theft. The NLCJC was criticised as an expensive way to deal with low-level offences, although it did deal with more serious offences (Mair and Millings, 2011), so it is possible that the focus on minor crimes as per the NCC's recommendations could have prompted similar concerns in Ireland. However, they note that the list was not intended to be exhaustive, which left room for more serious offences to be included.

According to the report, any established community court should have a single judge, and representatives from all relevant criminal justice agencies should be located on-site. While the provision of on-site support services is a common element of community courts (Berman and Feinblatt, 2005), the report states that it is not necessary for all services to be available on-site, but that these services should be available to the community court as a priority. They include that all selected support services should be located within the catchment area or close to the defendant's home.

The report recommended that the Courts Service have responsibility for the operation of Irish community courts and that implementation groups should be established with representatives from relevant statutory and non-statutory agencies. The importance of evaluating community courts was emphasised, and so too was the need for research to be done prior to implementation, for example, relating to community perception of quality of life crimes in their area. The report suggested that formal avenues for community involvement should be explored. Many of the recommendations made in the NCC report will be revisited in Chapter Seven, and updated based on the findings of this thesis.

1.7.3 The Houses of the Oireachtas Joint Committee on Justice, Defence and Equality Report on the Hearings in relation to Community Courts 2014

The Joint Committee was proposing a study into the feasibility of introducing community courts in Ireland and invited interested stakeholders and individuals to make written submissions on the topic. Seventeen submissions, expressing various concerns, were made in response to the call, which were explored further in a public hearing in January 2014. By this stage, the NLCJC had been closed down and it was suggested that this was due to the failure of this model to address local needs. Although the community court proposal appeared to be developing in Ireland in 2014, the closure of the NLCJC could have contributed to the lack of progress in this regard in the years following.

The submissions made to the Joint Committee highlighted a number of concerns about the community court model. The Joint Committee was asked to consider the following legal issues: the possible infringement of constitutional rights, the potential implications around admissibility of evidence if a plea is changed or if participation in a community court would impact the individual's rights in any subsequent proceedings. Also, concerns were expressed about the extent of legal advice provided in relation to entering a guilty plea, during the deliberation process of the judge, and throughout the entire process. As mentioned in Section 1.4.1, community courts are often criticised due to apprehension around the potential interference with due process rights. The entering of a guilty plea before participation in a community court will expediate the process, but it is necessary to mitigate any possible risk to constitutional rights through the provision of legal advice and requiring informed consent. How this issue was overcome in relation to the DDTC could also be examined.

Submissions also highlighted the need for a community court to be adequately resourced during difficult economic times. Again, the DDTC was used as an example within the submissions because it is not operating to its full potential due to under-resourcing and the strain on the services that it relies on. The requirement for inter-agency cooperation and support was further emphasised. It is suggested in the report that hiring an experienced project and financial manager would be imperative to ensure that any pilot project makes effective use of the resources available.

Many submissions made to the Joint Committee supported the community court concept and welcomed the provision of services on a broader scale through the model. For

example, the Irish Penal Reform Trust (IPRT) (2014) submitted that community courts could contribute to a culture of 'penal moderation' and prison as a last resort within the criminal justice system in Ireland. The Committee concluded that if a community court were to work in Ireland, local communities would have to be open-minded and change their preconceptions. However, this should not be the responsibility of the local community. It is the role of community court planners to conduct extensive community consultation, inform the community as to the benefit of the model, and encourage their participation so that they do not feel as though the initiative was forced upon them. The Joint Committee acknowledges that the local community should be involved in the process and that its needs must be taken into account. The report argues that community courts only have a chance of success if there is a commitment to engaging with the community and proper collaboration between services.

The Joint Committee ended the report by recommending that a pilot community court be set up in Dublin City supported by an implementation group. It suggested that the community court have a single, dedicated judge and that local community groups and services should be involved. The Joint Committee also recommend that the pilot community court be established in central Dublin so that it is close to the Department of Justice, which would allow the initiative to be closely monitored. The report concludes with a recommendation that "this initiative be given full consideration by the Minister for Justice and Equality, with a view to the introduction of a pilot scheme as soon as possible" (Joint Committee on Justice, Defence and Equality, 2014: 10).

1.8 Conclusion

This chapter addressed the first research question by defining community courts, and it also provided an overview of the emergence of problem-solving courts in general. The main overarching aims of the community court model were outlined along with the key criticisms of the model. The first two community courts established in the US and the chosen case studies, the NLCJC and the NJC, were discussed in more detail. Finally, the situation in Ireland in relation to community courts was outlined, and the background was provided to the two main recommendations made to introduce the court model in Dublin.

Work around the establishment of a community court in Ireland has already been done and is visible through the NCC Report and through the Joint Committee on Justice, Defence and Equality Report. The initial push to introduce a community court in Ireland

was due to the DCBA, which is interesting as the first community court model to exist was also spearheaded by the business community in Midtown to address quality of life offences. When a community court is driven by the business community, it is necessary that the core aim of addressing the underlying causes of offending is emphasised, and the model should not become a mechanism to 'clean up' people who are considered problematic by a particular group. In contrast to Midtown, and the Irish community court proposal, the Red Hook Community Justice Centre was set up in response to a more serious crime, the shooting of a local school principal. The credit for the introduction of the Red Hook model is often given to Judge Alex Calabrese, who is well known for his enthusiasm for community justice and his general charisma (Berman and Feinblatt, 2005). The NLCJC model was a government initiative, and so too was the NJC model, but the NJC had a very strong political champion in then Attorney General, Rob Hulls.

Most of the submissions made to the Joint Committee in 2014 were cautiously optimistic, although they expressed certain concerns about the community court model. Following this, a working group was set up to further research the implementation of a pilot community court, and in July 2015, the Department of Justice stated that "the Minister looks forward to bringing forward her proposals for the establishment of a pilot Community Court in Dublin in early Autumn". However, as of today, no proposals were ever published and the community court initiative has never been progressed. It is possible that the creation of a working group was used as a delay tactic by the government, particularly in light of the closure of the NLCJC in England. It is also possible that Ireland lacked a strong political champion, like the NJC had, who could have advanced the initiative. Further consideration will be given to these points in Chapter Eight.

The following chapter, Chapter Two, will provide an analysis of the existing literature in relation to the theories and principles that underpin the community court model.

2. Literature Review

This chapter contains an overview of the literature relating to the main theory underpinning community courts, the Broken Windows Theory. While community courts are known to have developed following the establishment of other problem-solving courts such as drug courts, they are also said to be an extension of Wilson and Kelling's Broken Windows Theory. Following this, the idea of 'community' is discussed, with a focus on how the concept is idealised, politicised, how it can be exclusionary, and the application of the concept to community courts. The literature relating to the key principles that underpin community courts – community justice, therapeutic jurisprudence, and restorative justice – will also be discussed in detail. This chapter meets the objectives of this thesis by reviewing the literature relating to the underlying principles of community courts.

2.1 Broken Windows Theory

The Broken Windows Theory applies to the community court model due to the model's traditional focus on minor crimes that increase residents' fear of crime and negatively affect their quality of life. This section will outline the original theory, the literature surrounding it, and the main crime prevention strategy that emerged as a result – zero-tolerance policing. It is important to discuss the impact of zero-tolerance policing as the approach has been heavily criticised, yet widely applied. Right realism provides the theoretical framework for zero-tolerance policing. Right realists would argue that the causes of crime deserve no attention when determining how to effectively respond to crime, as it based on the rational choice of the person who offends (McLaughlin and Muncie, 2012). Left realists criticise this approach as it disregards the structural inequality that exists in society, such as poverty and deprivation, which they argue must be considered when trying to respond to the problem of crime (Matthews, 2014). The criticisms of zero-tolerance policing serve as a warning to community courts on the dangers of taking a punitive approach to low-level crimes.

The Broken Windows Theory proposed by Wilson and Kelling in 1982 suggests that visible signs of disorder in an area give the impression that criminal behaviour will be tolerated, which in turn increases the level of crime committed in the area. The environment created by the visible signs of disorder also contributes to the residents' fear

of crime, according to the theory. Wilson and Kelling (1982) propose that by allowing small signs of disorder within a community to fester, eventually it will lead to a breakdown of social cohesion and will contribute to increased criminality. The theory argues that addressing the minor offences that occur within a neighbourhood will enable residents to enact methods of informal social control, and that more serious crime can be prevented by tackling low-level crime in the area. The theory further contends that the more afraid residents become of crime in their locality, the more they will withdraw from the community. This fear of crime could be exacerbated by visible disorderly behaviour rather than serious crime (Wilson and Kelling, 1982). Therefore, low-level crimes can have significant consequences and by the time more serious crimes occur, it may be too late to tackle the issue (Kelling and Bratton, 1998). Overall, the theory was put forward to encourage crime prevention approaches and interventions in communities so that crime does not escalate to a more serious level.

The Broken Windows Theory has been criticised for the lack of empirical evidence submitted to support it. The only evidence to support the theory is Zimbardo's (1969) study involving an abandoned car in the Bronx and in Palo Alto. Ansfield (2020: 117) argues that Wilson and Kelling manipulated the results of Zimbardo's study to support their theory, and states: "it was not a broken window that lured passersby into vandalism; it was the sight of Stanford faculty and graduate students wreaking havoc on a seemingly abandoned car". Crawford (1999a) further criticises the theory, claiming that Wilson and Kelling's contribution shifts the focus from the offender on to the offences, which automatically removes the focus from rehabilitation. Crawford's criticism applies to the right realist nature of the theory, and promotes a left realist approach to crime prevention, which he acknowledges as the initial purpose of the theory. Criminologists and experienced practitioners often agree that "we cannot arrest our way out of crime problems" (Skogan, 2008: 198). Instead, Skogan (2008) argues that proactive problem-solving approaches are more appropriate for dealing with disorder in neighbourhoods.

Wilson and Kelling's article prompted a number of policing reforms in large cities across the US, including New York, Chicago, and Los Angeles (Harcourt and Ludwig, 2006). Although there is limited research in support of the Broken Windows Theory (Katz, Webb and Schaefer, 2001), this did not stop police forces across the US, and eventually the UK, developing policing strategies based on the theory. These reforms involved aggressive policing techniques that targeted more minor misdemeanour crimes and have

collectively been referred to as ‘zero-tolerance’, ‘broken windows’, or ‘order maintenance’ policing (Harcourt and Ludwig, 2006), or quality of life policing (Chappell, Monk-Turner and Payne, 2011). This form of policing “takes a zero tolerance approach to misdemeanor crimes based on the premise that unattended disorder leads to more serious crime” (Chappell, Monk-Turner and Payne, 2011: 523). The zero-tolerance strategy is described as a form of community policing, but it relies less on the community and more on an aggressive enforcement of the law (Katz, Webb and Schaefer, 2001). Zero-tolerance policing has been credited with significantly reducing crime in New York City in the 1990s (Bratton and Knobler, 1998; Kelling and Sousa, 2001; Chappell, Monk-Turner and Payne, 2011). Kelling and Bratton (1998: 1217) state that “something dramatic happened in New York City in 1994: a lot of people stopped committing crimes, especially violent ones”. They argue that the way the city was policed in the years prior was central to this achievement. Although they also acknowledge that there is no way of knowing for certain if this is true, they are firm in the view that the zero-tolerance policing strategy played an important role (Kelling and Bratton, 1998).

Zero-tolerance policing strategies have been heavily criticised and a range of other possible contributory factors to the decline in serious crime in New York City have been put forward. For example, the reduction in crime could have been due to the hiring of more police officers, changes in drug use, the economic upturn in the 1990s, developments in technology that allowed for faster police response times, population changes, the increased incapacitation of offenders by imprisonment, or the specific targeting of gang members (Harcourt, 1998). A study conducted by Sampson and Raudenbush (1999: 638) found that “attacking public disorder through tough police tactics may thus be a politically popular but perhaps analytically weak strategy to reduce crime”. Similarly, Harcourt and Ludwig (2006) found no evidence that zero-tolerance policing techniques are the best use of limited police resources. Harcourt and Ludwig (2006) further criticise a number of studies conducted with findings in favour of the zero-tolerance policing approach. They argue that Kelling and Sousa’s (2001) research contained significant limitations that ultimately compromised the findings, and that Corman and Mocan’s (2005) study found no evidence that the decreases in crime were caused by the policing technique.

Even Wilson and Kelling admitted that their original article proposing the Broken Windows Theory was “speculation” and “an assumption” (cited in Harcourt and Ludwig,

2006: 315). Broken Windows Theory reflects right realist ideologies and caused Matthews (2014: 15) to describe Wilson and Kelling as the "most powerful neo-conservative thinkers". Young's (1991) 'Square of Crime' argues that the understanding of crime would occur through the relationship between agents of social control, such as the police, and the person who offends, the victim, and the public. Right realists focus entirely on the offender, and therefore are not capable of adequately dealing with crime (Young, 1991). Hinkle and Weisburd (2008) found that social and physical signs of disorder do increase fear of crime, but they also concluded that aggressive forms of police enforcement also heightened the chances of people feeling unsafe. They warn that the benefits attained through a reduction in disorder could be offset by the increase in the fear of crime due to the policing techniques (Hinkle and Weisburd, 2008). Howell (2016: 1060) notes that zero-tolerance policing does not help to return communities to residents, rather:

> "what zero-tolerance policing does is make public spaces very, very dangerous for black people, Latino people, poor people, LGBTQ people, people with substance abuse problems, people with mental health problems, and homeless people".

Zero-tolerance policing has been condemned for criminalising poverty and further contributing to social inequalities in communities (Howell, 2016; Ansfield, 2020). To criticise Broken Windows Theory's application in practice through zero-tolerance policing from a leftist perspective, it has been argued that the real underlying causes of crime, such as inequality within society, will still remain and therefore crime is not being prevented (Hopkins Burke, 2018). When coupled with police discretion, zero-tolerance policing tactics may be a form of disorder themselves as it "embraces irregularity, illegality, and brutality" (Harcourt, 1998: 345). Despite numerous criticisms, zero-tolerance policing remained popular and began to spread across the Atlantic due to the conception that it had transformed New York City (Punch, 2007).

The zero-tolerance policing tactics that stemmed from the Broken Windows Theory demonstrated that if crime prevention approaches are not conducted in line with due process rights and respect for individuals, then they will likely do more harm than good. In 2022, Greg Berman published a commentary in *NYN Media* called 'Mend It, Don't End It: An analysis on salvaging broken windows'. In this piece, Berman (2022) argues

that the reputation of the Broken Windows Theory can be repaired, but only if the harm it resulted in is adequately acknowledged. Berman (2022) contends that the theory still has relevance and can apply in practice by improving the physical environment in a neighbourhood, involving residents and business owners in voluntary initiatives, and actively diverting those arrested for minor offences to community-based sentences and support services. Berman (2022) concludes: "we should seek to maintain public order without necessarily exposing thousands of New Yorkers to criminal convictions and jail time". The zero-tolerance policing strategies that stemmed from it, and the many criticisms of these aggressive policing techniques, serve as an important warning to any other initiative that extends from the theory. Berman's (2022) article illustrates how community courts can be a positive application of the Broken Windows Theory as long as the operation of the model is in accordance with due process rights and fair treatment, and aims to use convictions and prison sentences as a last resort. It is possible to hold individuals accountable for minor offences without having a long-term impact on their criminal record, and this is an approach that community courts should take.

2.2 The Idea of Community

Community courts are a model that require the local community to get involved, as it is the community who inform community court planners on the main problems experienced by residents in the area (Berman, 2010). The idea of community must be discussed to determine what this term means in relation to community courts and find out who in particular community court planners should be engaging with. The concept is often politicised, especially in policies relating to crime. Day (2006: 1) argues that the concept of community "has been worked to death" and that its meaning "is so wide and diverse, its connotations so inconsistent, and at times downright dangerous, that it deserves no place in any serious social analysis". It is clear that questions must be asked about the role of 'community' in criminal justice responses, who is included in the concept, and more importantly, who is excluded.

2.2.1 The Ideal of Community

One definition of community relates to people who feel a sense of belonging together, or who have something in common with one another. However, Day (2006: 2) argues that "all too often 'community' signifies some-thing vague and ill-defined, an excuse for not

thinking hard enough about what exactly it is that people do have in common". Community participation in a modern world is fluid and people may be part of multiple communities at any one time, and this may be subject to change over time (Kennedy and Roudometof, 2003). Crawford (1999b: 151) notes that the definition of community within policy is assumed to be "both a shared locality – in purely territorial terms – and a shared concern of 'sense of community', which assumes that physical proximity creates shared values". There is a belief that all members of a community will share a common understanding of appropriate moral behaviour and what constitutes order, however, in reality, communities contain a mix of people with different lifestyles, cultures, identities, and priorities (Crawford and Evans, 2012). Therefore, traditional forms of social order must now be "actively constructed and managed" rather than "merely be protected and maintained", and crime is seen as a burden that requires the intervention of the whole community (Lacey and Zedner, 1995: 301).

Pakes and Winstone (2005: 4) note that "there is the idea of community that represents a nostalgic indulgence". Politicians often utilise the nostalgia associated with traditional forms of community to gain political approval (Young, 1999). A recent and prime example is the 'Make America Great Again' campaign of Donald Trump during the 2016 and 2020 US elections. Pakes and Winstone (2005) note that while this sentimentality is evident throughout most Western countries, it is very evident in British discourse. However, Sampson (2012: 4) draws attention to the fact that concern over the decline of the traditional community is not a novel one, noting: "intellectual and public concern with the decline of community is longstanding and finds vigor in every historical period".

The community is a notion that can be seen as the remedy to crime or as the cause of it in certain circumstances (Lacey and Zedner, 1995). Van Swaaningen (2011) observes that globalisation has disturbed the idea of 'who we are' and put the notion under pressure. What could be considered 'traditional' forms of community have deteriorated due to social and economic change in Western societies, which some argue has resulted in the weakening of family and community bonds (Lacey and Zedner, 1995). This idea aligns with social control theory in the form of social bond theory. Hirschi (1969) notes the connection between an individual's behaviour and society, and argues that the impact of the bonds and commitment that the individual has to society will determine whether they will deviate from societal norms, for example, by committing crime. Hirschi (1969: 16) suggests that crime occurs when "an individual's bond to society is weak or broken".

Returning to this 'traditional' community is attractive as people feel the need to defend their cultural norms, even in circumstances where these norms no longer exist (Van Swaaningen, 2011). If the return to 'traditional' forms of community has the additional benefit of being seen as the answer to crime problems, it is all the more appealing. Duff (2001: 40) notes that the ideal of community may be one of delusion and bygone times, stating: "too often they amount to little more than rhetorical appeals to vague but currently resonant ideas or to romanticized images of a premodern golden age of small, stable communities". This concern is echoed by Spalek (2007: 86) who considers that the concept of community is "likely to contain a dimension of fantasy and imagination". The ideal of community that is often promoted does not exist, and likely never did.

2.2.2 The Politicisation of Community

The argument that increases in crime are caused by the disintegration of traditional community life and values has underpinned many policy initiatives (Crawford, 1994; Crawford, 1999b). Currie (1985) has critiqued control theory by arguing that it does not adequately account for the impact that socio-economic factors and social inequality have on crime. Crawford and Evans (2012: 785) note: "one factor that informs much of the community-based prevention is the assumption that the rise in crime since the 1960s is attributable, in part, to the breakdown in traditional social ties and the obligations that derive from them". This idea can also be traced back to the Chicago School and social disorganisation theory, published by Shaw and McKay in 1942. They suggest that social disorganisation occurs when a community cannot recognise their shared values and, as a result, cannot successfully utilise social control (Shaw and McKay, 1942).

The concept of community is one that has been endorsed politically as the solution to crime problems, especially low-level crime. However, the political rhetoric of community seldom acknowledges the types of communities that exist in modern society or how the policies will interact and affect this type of community (Everingham, 2001). The use of the concept of community within policy has sparked criticism as it could be perceived that governments are transferring their failure to deal with crime onto the community (Lacey and Zedner, 1995), which was discussed in the context of community courts in Section 1.4.3. The idealisation of community is utilised by politicians particularly when they want to deflect and dilute the responsibility for crime problems (Rose, 1996).

Crawford (1999b) agrees that through the utilisation of community in policy, responsibility for crime has now become a shared problem for everyone.

The flexibility of the term 'community' is what makes it useful in terms of policy-making. It is a term that can take on many different meanings to suit the interests of the political parties involved (Tapley, 2005). Everingham (2001) notes that the political right tends to define issues of community based on its decline and the loss of shared social values. By contrast, the political left is more likely to use the term community as synonymous with the State, who they think need to be more actively involved in addressing social issues through local organisations (Everingham, 2001). The community also appeals to those who do not fully align with the right or left, such as 'the third way', which Rose (2000: 1395) defines as "a new politics of conduct that seeks to reconstruct citizens as moral subjects of responsible communities". That 'community' can be used by the three political ideologies could suggest that the term itself contains no values (Everingham, 2001).

2.2.3 The Exclusionary Power of Community

Too much of a focus on the concept of community and the common good could have an impact on individual rights and could create an inference that what is good for the community as a whole is more important than what is good for the individual (Duff, 2001). It is important that communities are given the chance to identify their values and be included in achieving their own aims. However, it is also important that no individual is disadvantaged for the communal good. Also by emphasising community, particular groups could be excluded. Lacey and Zedner (1995: 308) state:

> "whilst the figure of community sounds cosy and inclusive, obvious questions arise both about the power relations between different communities and the processes of exclusion from communities evoked by the policies".

Everingham (2001) notes that concepts of community relate to social inclusion, but that participants enter into a social contract requiring them to behave in a certain way in order to receive the benefits of that contract. It is possible that individuals who do not meet community standards, or are incapable of doing so, are excluded (Everingham, 2001).

Everingham (2001) does note that the unifying characteristics that are promoted through 'community' are automatically exclusionary of those who do not share those characteristics. If there are people who belong with one another, by default, there are people who do not belong in that group (Day, 2006). Community, therefore, can elevate the fear of 'outsiders' and those who do not fit the majority within the community, which leaves room for politicians to use this fear to garner support. If utilised in this way, the concept of community is in danger of becoming more about the differences between those in the community and those outside it, instead of being about what people share within it (Crawford, 1999).

2.2.4 The 'Community' in Community Courts

Concerns about the exclusionary power of the community, highlighted above, is evident in the criticisms of community courts also. In particular, the criticism relates to whether every community member is given an equal voice in the process. This was discussed in Section 1.4.4 in relation to the business community being the driving force behind the introduction of a community court. It is argued that instead of being an attempt to address social problems, the implementation of community courts is a way of "focusing on complaints from the business community that nuisances created by the poor and homeless are bad for business" (Ammann, 2000: 811). The business community cannot be the only form of community that policy-makers recognise when it comes to the community court model.

When it comes to community courts, the term community is equated with the term 'neighbourhood'. Clear, Hamilton and Cadora (2011: 8) observes that the term neighbourhood "is almost always used to refer to a particular geographic area within a larger jurisdictional entity". Where these types of neighbourhood start and end can become blurred to the point where even residents argue about whether they live in one particular neighbourhood or another (Clear, Hamilton and Cadora, 2011). While the terms of 'community' and 'neighbourhood' are often used interchangeably, the community often comes with an added meaning that relates more to the commonalities between the people that live there rather than just the shared location (Clear, Hamilton and Cadora, 2011). Therefore, a community can exist within a neighbourhood, but can also exist outside of it. The 'community' when it comes to the operation of community courts refers to the residents, local services, justice agencies, schools, businesses,

churches, and organisations that operate within the catchment area of the community court. The people within this community court 'community' all belong to separate 'communities of choice' (Pakes and Winstone, 2005: 6) depending on their values and their personal interests. However, for the purpose of community courts, the term community is based on location for practical reasons. As Clear, Hamilton and Cadora (2011) note, the difference between 'neighbourhood' and 'community' is that a community has more in common than just location. Taking this into account, a 'community' could be created through the shared aim of improving quality of life in a neighbourhood through the work of a community court.

As mentioned in Section 1.3.1, the core aims of the community court model, which can be achieved if the model is well planned and implemented, are: to target the underlying problems that contribute to crime, reinforce civil order in a more legitimate way than mainstream courts, and empower marginalised communities. Therefore, careful consideration should be given to enabling those with limited power within neighbourhoods to be key stakeholders in the survival of the criminal justice system. There are core issues with the concept of community mentioned here: the ideal, politicisation, and the exclusionary power of 'community'. If the community court model is to fail, the reason for the failure may be found within the criticisms outlined in this section. These critiques will be further discussed in Chapter 7 when outlining the recommendations for the successful planning and implementation of a community court.

2.3 Community Justice

This section will contain an overview of community justice as it is the main principle that underpins the community court model. An understanding of community justice is necessary as a core finding of this research is that community courts should be committed to this principle if the model is to have the best chance of success. This section examines the principle of community justice in more detail, in addition to its emergence in more punitive settings, criticisms associated with the principle, and also its practical application in relation to community courts.

Community justice is often equated to community-based sanctions, but the principle encompasses much more than sentencing approaches. Clear, Hamilton and Cadora (2011: 2) describe community justice as "both a strategy and a philosophy" because community justice is a principle, but it is also a practical grassroots movement. The community

justice movement developed due to the visible need to address the underlying causes of offending within communities, and the notable harm caused by the mainstream criminal justice system. Approaches in line with community justice involve those that give consideration to how crime and the responses to crime impact on community life (Karp and Clear, 2000). The principle is compatible with social justice as its overarching aim is to create better outcomes for all within communities, especially within low socio-economic communities (Clear, Hamilton and Cadora, 2011).

The community justice movement, where practical applications of the principle began to emerge, was a response to the "crisis in the courts" and the "revolving door" of offenders that stemmed from the war on drugs that gained traction in 1970s America (Dorf and Fagan, 2003: 1502). Social problems that already existed within communities were further aggravated by the severe justice responses to drug-related crimes. It became apparent that new responses to crime were required that would still appear punitive to the public but would also contain a therapeutic element that would assist those who were addicted to drugs (Dorf and Fagan, 2003). Approaches that applied community justice were appropriate because they aimed to solve the problems that led to the person committing the crime in the first place.

Two ideas are fundamental to the principle of community justice, according to Clear, Hamilton and Cadora (2011), which are: that criminal justice responses and strategies must be tailored to fit the community, and that the criminal justice system should not be seen as the only tool to ensure public safety. These fundamental ideas are fully in line with how community courts should operate, as the model is tailored to its location and the operation of the model depends on the utilisation of innovative partnerships in the community. The focus on involving additional parties outside of the justice system to improve public safety also resonates with Berman's (2022) suggestions on how to apply the Broken Windows Theory in a more compassionate way. The most important mechanisms for public safety are the informal social controls that exist within communities such as family members, friends, neighbours, and social groups (Clear, Hamilton and Cadora, 2011). Again, this idea aligns with Hirschi's (1969) social bond theory, as mentioned in Section 2.2.1. As Clear, Hamilton and Cadora (2011: 1) note:

> "community justice, therefore, builds varying strategies of formal social control, depending on the particular problems facing the local

> area, and always has as one of its main aims strengthening the capacity of informal social control within that location".

Community justice places a focus on the collaboration, partnerships, and relationships of justice agencies, but also with non-justice agencies within the community (Feinblatt and Berman, 1997).

The operation of the mainstream criminal justice system can cause more harm to communities and can damage public safety (Clear, Hamilton and Cadora, 2011). High crime areas, where the impact of the mainstream criminal justice system is felt the most, is where community justice practices are most effective and produce visible results (Clear, Hamilton and Cadora, 2011). Community justice strategies target these 'high impact' areas to strengthen community resilience and informal social controls through relationship-building and proactive crime prevention approaches (Clear, Hamilton and Cadora, 2011). In the traditional criminal justice system, the solution to the problem of crime is the punishment of the offender (Ashworth and von Hirsch, 1993). In contrast, community justice recognises that crime should be viewed in a more holistic way, considering the impact of crime on the wider community, as well as the impact on the offender and those close to them (Clear, Hamilton and Cadora, 2011). It is considered outside the remit of the traditional criminal justice system to try to understand the issues within a community and allocate resources and interventions accordingly (Clear, Hamilton and Cadora, 2011). An additional benefit of community justice approaches is that they can address the lack of public trust in the criminal justice system. As Clear and Karp (2018: 13) note: "if there is to be a rebirth of credibility in criminal justice, it will be based in greater community involvement in justice activities".

Community justice in practice involves the establishment of innovative partnerships and working collaboratively with community residents, local support services, businesses and organisations. Sampson, Raudenbush and Earls (1997) found that communities where people know and help their neighbours are less likely to have high crime rates regardless of socio-economic status. Through collaborative work between neighbourhood residents and local organisations, social bonds can be strengthened, which, in theory, will increase collective efficacy and reduce crime in the neighbourhood. Community justice cannot operate successfully unless the agencies involved in justice embrace inter-agency cooperation and commit to working collaboratively to achieve a common goal of reduced

crime and safer communities. However, for true collaboration to take place, justice agencies may have to change their approaches and attitudes. As Clear, Hamilton and Cadora (2011: 22) explain: "traditional criminal justice organizations have a sense of their "turf" and work hard to protect it".

However, community justice approaches have been criticised for placing too much responsibility on community members who may not want to be involved, and that criminal justice agencies could be reluctant to involve outside stakeholders (Clear and Karp, 2018). The differences among individuals within communities must also be acknowledged and that their interests may not always align, as "communities are composed of diverse individuals and layers of competing interests" (Karp and Clear, 2000: 329). It is important to recognise the different power dimensions that operate within communities. This is captured by Crawford (1999: 515) who notes:

> "the ideal of community needs to confront empirical reality, which reminds us that communities are often marked (and sustained) by social exclusion, forms of coercion and the differential distribution of power relations".

Young (1999) also warns that the pursuit of social cohesion within a community can lead to exclusion of 'outsiders' or 'undesirables' and creates an environment where discrimination is the norm. Individuals who commit a crime become 'outsiders', even if they were once accepted members of that community. Giving the community more responsibility or power in justice could result in vigilantism, discrimination and exclusion (Karp and Clear, 2000). Further, communities themselves can be criminogenic, whereby individuals can be considered 'outsiders' for not taking part in criminal activities (Crawford, 1994), which shows that an organised community does not always equal social order. These criticisms are important considerations for any community justice-based initiative.

Community courts are a practical application of community justice as the potential outcomes are for the benefit of the community as a whole and their operation depends on collaboration between justice agencies and support services in the community. When applied to the court aspect of a community court, Jolliffe and Farrington (2009) state that the key principles of community justice are: courts connected to the community, justice is seen to be done, cases handled robustly and quickly, a strong independent judiciary,

problem-solving, collaboration, repairing harm and raising public confidence in the justice system. Building relationships with the community is a vital part of community court planning, yet it is also one of the main challenges. Community advisory groups and focus groups are an initial way for community courts to involve the community from the outset (Lang, 2011). Establishing relationships with local support services and justice agencies is also a key step in the planning of the model. However, if the service providers and agencies remain focused on their own interests only, and do not collaborate properly, the objectives and desired outcomes of these partnership models become blurred (Crawford, 1994). Problems such as homelessness and educational disadvantage are individual social issues, separate from crime (Crawford, 1999) and this must be recognised also.

2.4 Therapeutic Jurisprudence

Therapeutic jurisprudence will be discussed here as another main underpinning principle of community courts. This section will outline the principle of therapeutic jurisprudence and its application to community courts. The application of therapeutic jurisprudence within the community court occurs primarily within the courtroom of the model and therefore has less relevance to the centre as a whole. However, it is through the process of therapeutic jurisprudence that the community court model practically achieves more positive outcomes as a response to criminal activity. Therefore, it is a process that supports community courts as a more legitimate approach to criminal justice than mainstream courts. Applying the principle of therapeutic jurisprudence in the courtroom of a community court supports the rehabilitation and reintegration of those who offend, thereby benefiting the individual and the community as a whole. Wilkinson et al. (2022: 141) build upon the arguments of Bhaskar (1979) and Matthews (2009) to suggest that critical realist criminology should envision "a criminology of hope, rehabilitation and, as necessary, structural reform", which applies to the court function of the community court. Before considering the principle of therapeutic jurisprudence in more detail, rehabilitation will first be discussed.

As mentioned in Section 1.3, the meaning of rehabilitation is complex. When viewing rehabilitation through a Foucauldian lens, it could be seen as the inner transformation of an individual, through primarily coercive means (Bottoms, 1980). Rehabilitation through utilitarianism sees the concept as the transformation of an individual for the good of

society by reducing the harm caused and working in the best interests of the individual who offends (McNeill, 2012). Rehabilitation based in religious repentance and reform was replaced in the 19th and early 20th centuries by a more scientific model, where rehabilitation could be achieved through the treatment of individuals to correct their flaws (McNeill, 2012). Later in the 20th century, rehabilitation moved towards acknowledging the impact of social learning on behaviour. Following the collapse of the rehabilitative ideal in the 1970s, Bottoms (1980) outlined the failings of the concept of rehabilitation. These criticisms centred on the lack of recognition around the social and structural factors that lead to crime, the discriminatory and coercive nature of rehabilitative interventions, the concept of rehabilitation being at odds with justice itself, and the moral issues associated with coercing people to change, particularly through psychological means.

McNeill (2012) suggests that there are four forms of 'offender' rehabilitation: psychological, legal/judicial, moral and social. Rehabilitation involves psychological and legal/judicial elements which focus specifically on the offender, which necessitates moral rehabilitation to focus on the victim and community, and social rehabilitation which involves the reformed offender being accepted by society. McNeill (2012) argues that all four elements are connected and therefore rehabilitation consists of "reforming the offender, removing barriers to reintegration, the offender providing reparation to the victim/community, and society accepting the reformed offender, respectively" (Roberts and Rohan, 2021: 69). This theory of rehabilitation supports the approach taken within the community court model. Kaiser and Holtfreter (2016: 46) argue that "the specialized court movement offers a guiding paradigm for the court system to consider their role in the rehabilitation of offenders", but also recognise that the movement has little theoretical underpinnings to explain the effectiveness of certain models over others. Combining the theories of therapeutic jurisprudence and procedural justice might assist is explaining why these court models support rehabilitation by increasing the chance of compliance with court orders (Kaiser and Holtfreter, 2016). They argue that problem-solving courts are more likely to successfully rehabilitate those who offend when therapeutic jurisprudence complements procedural justice within the model.

Therapeutic jurisprudence has been described by Wexler and Winick (1996: xvii), in their influential book, as "the study of the role of the law as a therapeutic agent". The principle promotes a holistic approach, which is one of the reasons that it readily lends itself to problem-solving courts. Problem-solving justice, therapeutic jurisprudence, and

restorative justice all emerged around the same time as movements within law and legal studies (Donoghue, 2014). The aim of therapeutic jurisprudence is to highlight "the enormous impact the justice system can have on people's psychological and physical well-being" (Braithwaite, 2002: 244). Therapeutic jurisprudence promotes the court system's potential to provide therapeutic outcomes to increase the chance of desistance (Kaiser and Holtfreter, 2016). The principle of therapeutic jurisprudence is applied to problem-solving courts through processes such as judicial monitoring, the involvement of support services, inter-agency collaboration, and collaboration with community services (Kaiser and Holtfreter, 2016). Processes such as judicial monitoring allow an individual to speak to the judge and make suggestions about what they think is the best approach to assist their rehabilitation. Tyler (2006) found that providing people with the opportunity to have their voice heard by the judge is important to their perception of fairness, even if there is no impact on the eventual outcome, which also increases the likelihood of compliance. An institution may be viewed as legitimate if it increases the likelihood of a person to comply with its orders, even if the person does not support those who are in positions of power within that institution (Tyler, 2006). In this vein, legitimacy can be seen as "the perceived obligation to obey authority, regardless of the personal gains or losses associated with it" (Kaiser and Holtfreter, 2016: 50).

Therapeutic jurisprudence is the acknowledgment that the law, the legal process, and legal actors such as lawyers and judges, can contribute to therapeutic or anti-therapeutic consequences (Wexler and Winick, 1996). To commit to a therapeutic jurisprudence approach is to commit to being conscious of these potential outcomes (whether they be positive or negative), minimising any negative impacts that they might have, and promoting the therapeutic outcomes. Notably, therapeutic jurisprudence tries to achieve these aims "without subordinating due process and other justice values" (Wexler and Winick, 1996: xvii), which is of particular importance in the context of the courtroom. Therapeutic jurisprudence developed in the 1980s and originated within mental health law (Berman and Feinblatt, 2005). The therapeutic approach can be applied within a courtroom by a judge in their interactions with defendants and victims, or it can be applied to, and through, court policies and processes (Berman and Feinblatt, 2005). Wexler (2008: 20) notes that therapeutic jurisprudence "looks not merely at the law on the books but rather at the law in action – how the law manifests itself in law offices, client behaviour, and courtrooms around the world". A therapeutic jurisprudence approach

compels those who implement the law to become aware of the real effect the law has on those who come into contact with it (Slobogin, 1995). Therapeutic jurisprudence is a conscious focus on how the justice process impacts the emotional and physical wellbeing of defendants, their loved ones, and the communities they reside in (Donoghue, 2014). The acknowledgement of the consequences of the legal process on each stakeholder, and particularly on the local community in which they live, is one of the reasons that therapeutic jurisprudence comfortably underpins community courts.

Therapeutic jurisprudence is an attempt to introduce more humanity into a formal and traditional legal system, and it is often used to justify the actions of legal actors in problem-solving courts. However, Berman and Feinblatt (2005) warn that therapeutic jurisprudence and problem-solving courts do not align perfectly. Using problem-solving courts as an example of therapeutic jurisprudence in action may place too much responsibility on court actors for circumstances that might be outside the traditional responsibilities of the court. Berman and Feinblatt (2005) also note the concern surrounding the alignment of therapeutic jurisprudence with problem-solving courts more generally, as some do use therapeutic processes to achieve their aims, but others do not. Therapeutic jurisprudence has been criticised for being too paternalistic and coercive, as well as being too focused on offenders at the expense of victims (Gavin, 2021). Winick (1997) also acknowledges that therapeutic approaches can be associated with paternalism, but claims that therapeutic jurisprudence is not paternalistic. In contrast, Winick (1997) describes therapeutic jurisprudence as being empathetic to, and assisting with, the individual's own views about their own lives and health.

Winick (1997: 192) argues that the 'therapeutic' in therapeutic jurisprudence is "intentionally vague" to include any processes and interactions which can have positive or negative consequences, so that the positive can be promoted while the negative is curtailed. Problem-solving courts operate through therapeutic jurisprudence because they acknowledge the human consequences of the law and the legal process on those who interact with it (Gavin, 2021). It is through mechanisms such as judicial monitoring, employed by some problem-solving courts, that therapeutic jurisprudence can operate (Gavin, 2021). Judicial monitoring is a process where problem-solving court clients reappear before the dedicated judge throughout their sentence and the judge can then adjust the sentence or provide extra support based on the client's individual circumstances and progress. Creating approaches within courts through which

therapeutic jurisprudence can be channelled helps the justice system to operate in a holistic way, treat defendants with respect, and provide them with a voice. The use of therapeutic jurisprudence approaches can promote compliance, encourage accountability, and reduce harms caused by offending (Gavin, 2021).

Wexler (2014) notes that "problem-solving or solution-focused courts have been structured to actually invite the use of good TJ practices (e.g., active listening, displays of empathy, soliciting active participation by the parties)". Further examples of therapeutic jurisprudence in practice are outlined by Wexler (2008) including, in particular, the actions of a community court judge in the UK, and a judge in Australia. The judge in the UK would send follow-up letters to defendants after sentencing and would have court staff visit the defendant to discuss any concerns that were brought up during the court session. The Australian judge would arrange the seating in the courtroom in such a way that would allow family members to participate in the hearing, particularly for Aboriginal defendants. The examples provided demonstrate how therapeutic jurisprudence can be channelled through both the actions of the court actors, and through how the court is run, although it may not be an official process or policy.

Ireland's only existing problem-solving court, the DDTC, is a potential Irish example of therapeutic jurisprudence in operation, although there are no formal therapeutic jurisprudence processes. However, the DDTC processes may be employing therapeutic jurisprudence without realising it (Loughran et al., 2015; Gavin and Kawalek, 2020). As mentioned in Chapter One, controversy has surrounded the DDTC and dissatisfaction has been expressed about the operation and efficiency of the court (Gallagher, 2019). The failure of the DDTC to meet its potential, and the failure of the NLCJC to meet its aims in England could signal that therapeutic jurisprudence approaches do not readily lend themselves to the legal culture that exists in England or in Ireland. Nolan (2009) argues that the legal culture and judges in the UK are much more reserved than in the US, which is why the transplantation of problem-solving court models from the US to the UK has not worked. It is possible that judicial culture is a factor, but as the findings in Section 5.3.7 suggest, the judge in the NLCJC was an outgoing character and was one of the most successful aspects of the model. Findings in Section 4.3.7 reveal that the judge in the NJC from 2007 until he retired in 2021 was a more reserved man, but that the therapeutic jurisprudence approaches have been successful there nonetheless.

2.5 Restorative Justice

Although there are similarities between therapeutic jurisprudence and restorative justice, restorative justice is a broader concept and can refer to legal processes that "attempt to repair the harm caused by criminal behaviour" (Young and Hoyle, 2003: 200). Restorative justice is the final core principle that underpins community courts and therefore it must be discussed in more detail in the context of the model. Similar to therapeutic jurisprudence, it is also through restorative justice approaches that the community court gains legitimacy as a model by supporting the rehabilitation and reintegration of those who offended. Community courts apply restorative justice on a wider scale by acknowledging the harm that has been done to the person who offends through socio-economic factors such as deprivation, and social alienation from the dominant social norms within the community. Community courts achieve this by drawing upon traditional Indigenous forms of justice, which restorative justice practices stem from (Strang, 2001). Examples of these traditional justice approaches include peacekeeping or peace-making programmes, which emphasise community restoration above punishment. Restorative justice approaches in this context encompass all four forms of 'offender' rehabilitation as described by McNeill (2012).

Howard Zehr is widely considered to be one of the founders of restorative justice, and he was one of the earliest to write about restorative justice theory (Van Ness and Strong, 2015). Zehr (1990) criticised the criminal justice system for failing to address the needs of both offenders and victims, and promoted restorative justice as an approach that aims to repair the harm to people and relationships caused by crime, and an approach where all parties to the crime can find a positive solution. Braithwaite's (1989) use of the term 'reintegrative shaming' was later linked to restorative justice in relation to family group conferencing (Van Ness and Strong, 2015). Reintegrative shaming consists of elements of labelling, social bond and differential association theories and involves "a social process which builds consciences as well as informal social controls to stop future wrongdoing" (Mongold and Edwards, 2014: 205). Wright's (1991) work argued that criminal justice should be restorative instead of retributive, and that restorative processes should be introduced to include the voices of victims in the system. Cragg (1992) is also critical of traditional justifications for the use of punishment, but also recognises that formal approaches are necessary for reconciliation and accountability purposes.

Restorative justice became popular in Western countries in the 1980s, but for many indigenous peoples and communities, it is not a new form of justice (Consedine, 1995; Gelsthorpe and Morris, 2002; Leonard, 2022). Restorative justice is therefore seen by some as a traditional community-based approach when compared with the modern criminal justice system (Crawford and Newburn, 2002).

While restorative justice is difficult to encapsulate in a single comprehensive definition, Johnstone and Van Ness (2006) lay out the three concepts that definitions usually focus on, which are 'encounter', 'reparative', and 'transformation'. The 'encounter' element focuses on the meetings that take place between stakeholders and the benefits associated with discussing the crime and its consequences. Within restorative justice processes, each stakeholder is given a chance to tell their side of what happened, or what led to the crime. This is in contrast to traditional justice processes where lawyers speak on behalf of the defendant and the victim/society. The 'reparative' concept relates to the idea that justice should ideally repair the harm caused by a criminal act and recognises that the harm can be addressed through a restorative meeting. It also acknowledges that a meeting is not necessary if it is not possible for stakeholders to meet, and it then becomes the responsibility of the court to ensure that ways to repair the harm are identified and emphasised. The 'transformation' concept is much wider and notes the ability of restorative justice to address harms due to structural injustices that can exist within the traditional system (Van Ness and Strong, 2015).

Restorative justice emerged due to an increased focus on the position of the victim within the legal process (Wright, 1996; Donoghue, 2014). The main principles of restorative justice are: to repair the harm caused by crime or criminal behaviour, including all relevant stakeholders in addressing the crime, including the victim and the person who committed the crime, and promoting collaborations and partnerships between communities and the State (Donoghue, 2014). A further aim of restorative justice is to provide the person who committed a crime with the opportunity to regain their position in the community (Berman and Feinblatt, 2005). Restorative justice is utilised through approaches such as victim-offender mediation, community-restitution programmes, family conferencing, sentencing circles, restorative panels, and reparative probation (Berman and Feinblatt, 2005). Due to the emphasis on offenders taking accountability for the harm caused by their actions within restorative justice practices, it is an approach that is supported by Left Realists (Madfis and Cohen, 2017). Evidence has shown that victims

and offenders who participate in restorative justice processes tend to have lower levels of fear, and higher perceptions of fairness in the criminal justice system (Berman and Feinblatt, 2005). However, restorative justice is not without criticisms. For example, the lack of formality, certainty, and the time needed for restorative justice processes can have an impact on the mainstream criminal justice system (Van Ness, 1997). Leonard (2022) emphasises the need for victims to enter into restorative justice processes fully informed about the potential outcomes and a realistic idea of what can be achieved. Participation in restorative justice processes should not cause further harm to any stakeholder who takes part.

Restorative justice has been progressing steadily in Ireland in the last decade (Leonard and Kenny, 2011, 2014; Gavin and Joyce, 2013; Gavin, 2015; Gavin and Sabbagh, 2019). The Irish Probation Service funds restorative justice projects in Ireland (Restorative Justice Services and Restorative Justice in the Community), which have been proven to reduce recidivism (Probation Service, 2014). Both the Gardaí and the Irish Prison Service have introduced restorative justice pilot programmes (Gavin and Sabbagh, 2019). The Criminal Justice (Victims of Crime) Act 2017 states that statutory agencies must inform victims about restorative justice options, where they are available. The Probation Service launched a Restorative Justice and Victim Services Unit in 2018, and in 2019, Restorative Justice Strategies for Change Ireland published a national strategy for further developing restorative justice in Ireland. The Department of Justice published its *Justice Plan* 2022, in which it states "we will continue to support employment opportunities for offenders and promote restorative justice at all stages in the system" and lists delivering "restorative justice safely and effectively" as one of eight strategic objectives to prioritise in the next two years (Department of Justice, 2022a: 31). All of the developments mentioned demonstrate that restorative justice approaches have been embraced in Ireland. However, despite the progress made in Ireland with respect to restorative justice, the process is rarely offered to victims and offenders in practice (Marder, 2019).

Community courts are a practical example of restorative justice at work (Young, 1995). Gavin and Sabbagh (2019) argue that restorative justice could be developed, promoted, and effectively practiced in Ireland through a problem-solving court, particularly through the community court model. The application of restorative justice in a community court can aid the rehabilitation and reintegration of those who offend in line with Braithwaite's (1989) reintegrative shaming process, through the impact it can have on the individual

and through informal social controls. Marder (2019) also notes that restorative justice processes during pre-sentence adjournment, work well for the Irish system due to the discretion judges can exercise when it comes to sentencing. Arguably, Marder's (2019) suggested approach would work well in a community court as judges can adjourn cases to allow for support services to be put in place, which would provide an opportunity for restorative justice processes to occur.

2.6 Conclusion

This chapter began by discussing the Broken Windows Theory, which is a theory that is applicable to the community court model. The negative outcomes associated with zero-tolerance policing serve as a warning to any other initiative that can be traced back to the theory. Zero-tolerance policing demonstrates that initiatives that use the Broken Windows Theory as a theoretical base must place a greater emphasis on due process rights and the respectful treatment of individuals. Community courts lend themselves to the approach proposed by Berman (2022) which involves improving the physical environment of neighbourhoods, the voluntary involvement of the community in crime prevention initiatives, and a focus on community sentences and service provision for those who commit minor offences.

The term 'community' is often idealised due to the nostalgic remembrance of the tight-knit neighbourhoods of the past. Sampson (2012) notes that the fear of declining traditional values is not unique to our generation, or any generation. Modern communities are more flexible and ever-changing due to rapid improvements in technology and the ability to travel. In terms of justice, it is more pragmatic to adapt to and utilise the communities that exist currently, than to lament what has supposedly been lost. The concept of community has been heavily politicised and this has been criticised as being a way for the government to share the burden of crime (Lacey and Zedner, 1995; Crawford, 1999). The flexibility of the concept allows for it to be adapted to suit all political ideologies (Tapley, 2005), and this can be applied to community courts too as the model aims can be adjusted to suit all political persuasions (Zozula, 2018). 'Community' can also act as an exclusionary force, as celebrating similarities can inevitably highlight perceived differences, which is an aspect of which community court planners must be conscious. In the context of community courts, the 'community' is a neighbourhood that comprises the catchment area of the model, but it is possible that

commonalities could be created within this catchment area due to the shared aim of crime prevention.

The chapter moved on to discuss community justice as both a philosophy and a strategy that gained momentum as a grassroots movement when the legitimacy of the criminal justice system was in doubt. It is a movement that returns control of a neighbourhood to those that reside and work within it by collaborating with the community to achieve more meaningful justice outcomes. Community justice connects strongly with social justice policy as it is focused on positive outcomes for the community in general as well as individuals (Clear, Hamilton and Cadora, 2011). Community justice is the main principle that underpins community courts, and is one that must remain at the centre of community court aims and operations, as will become clear through the findings of this research.

Therapeutic jurisprudence and restorative justice are the other key principles that underpin community courts. Therapeutic jurisprudence occurs mainly through the court processes and the relationship that forms between the defendant and the dedicated judge. Restorative justice approaches can be utilised as a justice response at any stage during the process, and does not only apply in the courtroom as versions of the approach can be used to settle disputes outside of the courtroom. The traditional criminal justice system can, at times, diminish the voice and role of both the victim and the defendant. Incorporating processes that allow victims and defendants to have their say, can be valuable to both. Concepts such as therapeutic jurisprudence and restorative justice can increase trust and perceptions of fairness in the criminal justice system, and it has been shown that trust and fairness can promote compliance (Criminal Justice Joint Initiatives, 2012). These processes can also provide information that would allow for more meaningful sentences to be applied.

The commitment of a community court to these underlying principles can have an impact on how successful the model will be. Therefore the literature relating to these principles of community justice, therapeutic jurisprudence, and restorative justice will provide context to the findings discussed later in this thesis. The next chapter, Chapter Three, will outline the methodological approach adopted for this research project.

3. Methodology

This chapter specifies the methodological approaches that have been employed in order to answer the core research questions. A mixed methods approach was employed for this study. Secondary data was analysed to determine how the NJC and the NLCJC were established, how they operate(d), and the impact of these models. The qualitative element relates to the semi-structured interviews that were conducted with those connected to the NJC in Australia, the NLCJC in England, and the proposal to introduce a community court in Ireland. An online survey was conducted with Tallaght residents, which consisted of both quantitative and qualitative questions. In this chapter, the chosen research design will be discussed and justified. Following this, the chapter will set out the research techniques that were utilised, the type of sampling that took place, the methods of data collection, how the data was analysed, the ethical issues that were considered and, finally, the limitations of the research.

3.1 Research design

3.1.1 Comparative Case Study

This thesis employed a comparative case study research design. Heap and Waters (2019: 132) state that "the focus of comparative research is the examination of similar phenomena in two or more contrasting cases". There is a general consensus that comparative research must be pursued with caution, but when conducted correctly, it will give the study legitimacy. Brants (2011: 49) notes that comparative research is filled with "pitfalls", and that the problems are "compounded by the fact that criminal justice is not only a matter of the law but of the social context in which the law functions, of the perceptions, expectations and effects of law in society". Partaking in comparative research involves gaining an insight into the different political and cultural climates in the chosen regions. As Van Swaaningen (2011: 129) notes:

> "sensible criminologists will not limit themselves to advocating specific forms of crime prevention or sanctioning from other countries, but they will also see these practices in the context of the structural and cultural characteristics of that specific country".

It is therefore the responsibility of the researcher to gain an awareness of the environment in which criminal justice innovations operate, and to acknowledge how different environments can produce diverse outcomes. A comparative researcher should not promote the complete transplantation of ideas from one jurisdiction to another in a vacuum (Nolan, 2009).

Examining the success of community courts in other jurisdictions is a logical process to undertake to determine the likelihood of such an innovation being successful in Ireland. Traditional measures of success within criminal justice tend to include reduced crime rates, lower recidivism rates, and higher rates of compliance with court orders (Cunneen and Luke, 2007). There is a general understanding that criminal justice initiatives must demonstrate positive outcomes using the traditional criminal justice indicators within a short period of time since they require significant resources to establish and operate (Kirchner et al., 1994). Newer criminal justice initiatives must work harder to demonstrate that they are meeting the traditional measures of success in order to retain their funding streams (Cunneen and Luke, 2007). However, it has been argued that for criminal justice innovations, such as community courts, wellbeing indicators and community satisfaction rates are just as important as the more traditional indicators (Murray and Blagg, 2018). The complexity of desistance as a process means that it may be more relevant to focus on the length of time between reoffending and the seriousness of the new crime committed in comparison to previous offending (Spiranovic et al., 2015). It should also be noted that that community courts need time to embed in the community and therefore will take longer to impact the traditional indicators of success (Mair and Millings, 2011).

However, it cannot be presumed that a community court would be successful, or not, in Ireland for the same reasons without considering the different political and cultural contexts within each jurisdiction. Both the NJC in Australia and the NLCJC in England took inspiration from and were based on the Red Hook Community Justice Center in Brooklyn, New York. Nolan (2009: 12) warns:

> "embedded in American problem-solving courts are cultural assumptions that significantly challenge long-held understandings of the meaning and practice of justice – assumptions that when

> transplanted along with problem-solving courts may significantly challenge or alter the legal cultures of importing countries".

When determining whether a community court should be established in Ireland, Nolan's (2009: 12) argument should be carefully considered.

A case study approach is appropriate for research that aims to examine complex social phenomena in depth (the 'thick description' famously described by Geertz in 1973). Denscombe (2010: 35) explains that "the defining characteristic of the case study approach is its focus on just one instance of the thing that is to be investigated". Cousin (2005: 424) calls case study research "'a broad church' as it can be executed using a variety of methods, whether they be quantitative or qualitative". Yin (2009) agrees, noting the clear strength of the case study approach as being the ability to use a full range of evidence, from documents and statistics to observations. Part of the case study approach for this research was conducted by analysing secondary data. Judd et al. (1991) state that the analysis of secondary data allows the researcher to look back in time. Analysing secondary data is beneficial due to its accessibility, lack of financial cost, and it is a useful way to examine matters that were not addressed by those analysing the primary data (Yorke, 2011). Therefore, the case study approach was considered the most suitable means of facilitating an in-depth study of the NJC and the NLCJC from multiple viewpoints. This approach also allowed for the exploration of the political and cultural conditions in which the community courts operated.

A comparative case study research design was chosen as I was initially provided with the unique opportunity and funding to visit other jurisdictions to interview the people associated with community courts in those areas. Unfortunately, due to the travel restrictions associated with the covid-19 pandemic, site visits and in-person interviews could not take place. This design was also considered the most appropriate approach to answer adequately the core research questions by comparing a community court that is perceived to be operating successfully with a community court that was closed down after eight years of operation. This comparison assists in understanding whether the community court model should be introduced in Ireland, and the conditions that would have to be met to increase its chances of success.

3.1.2 Comparator Case Studies

(a) The Neighbourhood Justice Centre in Australia

As mentioned in Section 1.6.4, the NJC opened in Collingwood, Melbourne in 2007. The NJC took inspiration from and was modelled on the Red Hook Community Justice Centre in New York and also took advice from the planners of the NLCJC in England. The NJC was chosen as a case study for this research because it is closely related to the type of community court model that was previously proposed in Ireland. The NJC was the second community court based on the Red Hook community court model, following the NLCJC, to be established outside of the United States. The NJC was also comparable with the NLCJC because they were both based on the Red Hook model, and operate(d) as purpose-built, standalone community courts.

It was decided that one case study for this research should involve a community court that is perceived to be operating successfully. A successfully operating community court was examined with a view to understanding the reasons for its success, and whether it would be possible to replicate in an Irish context. The successfully operating community court could be compared with a similar, but unsuccessful community court. The NJC is the only community court outside of the United States to be awarded International Mentor Community Court status, which it received in 2017. A defining feature of being an International Mentor Community Court, is that the community court should be viewed as a model upon which to base new community courts. Fledgling community courts would also receive the assistance of the International Mentor Community Court.

(b) The North Liverpool Community Justice Centre in England

As mentioned in Section 1.6.3, the NLCJC opened in England in 2005 and was heavily based on the Red Hook Community Justice Centre and the Midtown Community Court in New York. The NLCJC was a standalone community court, located in an established building in the community, similar to Red Hook. After the NLCJC was established, a further community court was opened within Salford Magistrates' Court. At the time, it was the government's plan to open more community courts in England, but the idea of standalone community courts, like the NLCJC, were abandoned early on due to the cost. Before any more community courts were established in England, the decision was made to close the NLCJC and Salford Criminal Justice Initiative (SCJI) in 2013.

It was considered important to not only examine a community court that is perceived to be successful, but also to examine one that could be perceived as being unsuccessful, owing to the fact that it was closed down. Aspects of the NLCJC were even used as inspiration for the NJC. For example, the NJC decided to provide a financial counselling service because this service was available in the NLCJC. The inclusion of a closed down community court as a case study for this research was considered appropriate to determine the reasons for its closure. Further, the examination of the reasons for the closure of the NLCJC is beneficial to ascertain if these reasons would also affect a community court in an Irish context, or if they could be avoided. The operation of a community court in England is particularly relevant to Ireland due to the close connection to the English criminal justice system and culture.

(c) Ireland

As the purpose of this research is to determine whether a community court should be established in Ireland, it is necessary to examine the abandoned proposals for a community court pilot in Dublin. It was also considered worthwhile to explore the penal landscape that exists in Ireland and the aspects of this that might impact the operation of a community court. The comparative analysis was conducted to investigate whether the Irish penal landscape is one in which a community court could operate successfully. This exploration also gives an insight into how a community court may need to be specifically tailored to suit an Irish context.

3.2 Mixed Methods

For this thesis, it is necessary to examine how community courts work in terms of resources, staff, and services allocated, but also in terms of the outcomes of the initiative. However, it is equally important to get the opinions of those involved in the planning and operation of the community courts to gain an insight into the associated challenges that may not be adequately reflected in official statistics or evaluations. Creswell and Plano Clark (2007: 184) note that "mixed methods is, simply, best suited for addressing many of today's complex research questions, which require context and outcomes, meaning and trends, and narratives and numbers". For this reason, a mixed methods approach was considered the most suitable for this research project. Mixed methods were therefore employed to address the central research questions listed above.

Heap and Waters (2019: 132) also emphasise that "to use comparative design in mixed methods research, the same data collection components need to be undertaken in each country being studied". Community courts, by their very nature, are tailored to suit the community where they are situated. Therefore, it is impossible to compare two community courts that operate in the exact same way. However, the NJC and the NLCJC are comparable as they are both based on the same model, and they both operated as a standalone version of a community court. Mixed methods have gained traction in criminological research as criminologists have advanced from being strictly quantitative or qualitative researchers. Mixed methods are fitting when conducting a study where the results from the quantitative data can be strengthened by qualitative data and when the converse is also true (Creswell and Plano Clark, 2007, 2011). Creswell and Plano Clark (2007: 9) state "mixed methods research provides strengths that offset the weaknesses of both quantitative and qualitative research". It is noted that criminology is particularly suited to mixed methods because of the complex nature of the discipline and the areas studied within it, but also because this approach has been underutilised in the discipline (Creswell and Plano Clark, 2011). A range of sources were used to come to a comprehensive decision – based on a comparative case study approach involving the NJC in Australia and the NLCJC in England – as to whether a community court could operate successfully in Ireland. For this reason, a mixed methods approach is the most appropriate.

The design was convergent parallel in nature, meaning that quantitative and qualitative data were collected simultaneously and did not influence each other until they were combined for the analysis stage of the research. Convergent parallel mixed methods were considered the most appropriate as they allow the researcher to be more flexible in the collection and combination of data collected within the same time period, and then to combine this data with the information stemming from the results (Creswell, 2014). This approach allowed for all of the data collected to inform the overall recommendations. When combining the data, complementarity was employed. Greene, Caracelli and Graham (1989: 258) state that complementarity allows for an "enriched, elaborated understanding of the phenomenon". Complementarity is often confused with, and is similar to, triangulation. However, complementarity allows for more flexibility within the research to support a central research question that is broader than one required for the triangulation method of combining data (Heap and Waters, 2019).

3.3 Philosophical Position

Kuhn (1996: X) defined paradigms as "universally recognized scientific achievements that, for a time, provide model problems and solutions for a community of researchers". The pragmatic paradigm was used to inform this research. Creswell and Plano Clark (2007: 5) state that "mixed methods research is a research design with philosophical assumptions as well as methods of inquiry". It is accepted that the philosophical paradigm best suited for mixed methods research tend to be the pragmatic paradigm. Heap and Waters (2019: 18) note:

> "pragmatism seeks to bypass the debates around positivism and interpretivism by taking a practical stance that focuses on the research questions at hand utilising the most appropriate research tools available to provide the 'best' possible outcome".

Quantitative research aims to deductively test a theory, while qualitative research attempts to interpret meanings given to circumstances inductively. Each method is associated with a set of worldviews. Pragmatism allows the researcher to hold multiple worldviews throughout the study, which is paramount to mixed methods research.

Greene and Caracelli (1997) claim that using different paradigms is acceptable in mixed methods research once the researcher is clear to signpost when each is being used. Purists are researchers who do not think that mixing paradigms is appropriate, situationalists are researchers that adapt their methods depending on the situation, and pragmatists allow for multiple paradigms to be used in their research (Rossman and Wilson, 1985). Accepting that multiple worldviews can exist in a single study allows the research to focus on the research problem and the best methods to address it. Multiple methods were employed to gather data to answer the research questions associated with this research project. For this reason, a pragmatic paradigm was deemed the most appropriate for this research as it allows the researcher to choose the most effective methodological and philosophical approach to address each research question (Tashakkori and Teddlie, 1998).

3.4 Qualitative Research Methodology

Taylor, Bogdan and DeVault (2015: 17) note that "the phrase qualitative methodology refers in the broadest sense to research that produces descriptive data – people's own written or spoken words and observable behaviour". Qualitative research for this thesis was conducted in the form of semi-structured interviews. This interview approach is inductive and uses the patterns and themes created by the data to understand the experience of the interviewee. The planned questions can be used to encourage and prompt the participants to share their opinions and experiences (Gilbert and Stoneman, 2016). The semi-structured interview approach also allows for further clarity to be sought regarding the responses provided by participants, by asking them to speak about their response in more detail (Gilbert and Stoneman, 2016). Semi-structured interviews enable participants and researchers to deviate from the interview schedule as unexpected details emerge.

Semi-structured interviews were conducted with key stakeholders involved in the planning and operation of community courts in Australia and England, and with those connected to the community court proposal in Ireland. To make participants feel more comfortable, first they were asked to give a brief overview of their careers and how they first came into contact with community courts. As interviews took place with people in many different roles, semi-structured interviews were considered most appropriate due to the flexibility of the approach (Robson, 1993).

3.4.1 Semi-structured interview schedule design

The semi-structured interview schedule was tailored to suit the three different jurisdictions. The interview schedules for Australia and England were divided into six sections under the following headings: Personal, Local Community, Policy, The Court, Court Success (Australia), Court Closure (England), and Concluding Questions. The interview schedule for Ireland was divided into five sections as it did not contain Court Success or Court Closure questions.

The Personal section asked questions relating to the participants' own careers, their experience with community justice, how they got involved with the community court, and what their role was. The Local Community section aimed to garner information about the involvement of the local community in the community court set up and day-to-day

activities. The Policy section sought to find out about the policy decisions that led to the implementation of the community court and the plans for evaluating the court. The Court section asked about how the court is/was structured, the crimes dealt with and services available. In the Australian interview schedule, the Court Success section addressed the reasons it is considered to be a successful community court and what the participant would change about the court. The Court Closure section in the England schedule addressed the participants' opinions on what should have been done differently. The Concluding Questions addressed the future of community justice in the area.

The interview schedule for Ireland differed as there has never been a community court in Ireland and there are currently no plans to implement one. However, the sections were similar with the Personal section asking the participant about their own career. The Local Community section asked participants about how to include the local community in a community justice project. The Policy sections sought to establish the participants' thoughts on how a community court could be implemented on a policy level in Ireland. The Court section addressed the services, clientele, and crimes that should be included if such a court model were to be established in Ireland. Finally, the Concluding Questions asked about the future of community justice in Ireland and whether it should include a community court.

3.4.2 Inclusion Criteria

The criteria for inclusion was necessarily broad for each of the jurisdictions. Participants in Australia and in England were chosen for this research based on their involvement with the NJC and NLCJC specifically. This involvement ranged from the planning stage, operation of the centres, and monitoring and evaluation. Participants were chosen specifically to gain an insight into how the community courts were established, understanding of how the courts operated in practice, the types of resources required, and what improvements they would have made.

In Ireland, participants were chosen based on their work in criminal justice reform, interest in community justice initiatives, and involvement with the community court proposal and recommendations between 2007 and 2014. These participants were able to give an account of how a community court could be implemented in Ireland and how it might work in practice. Most importantly, the chosen participants gave their opinion on whether they think the community court model should be implemented in Ireland.

Certain organisations were contacted in the search for participants who met the inclusion criteria and were willing to take part in the research. The Center for Court Innovation located in New York was contacted in March 2020. This organisation proved very helpful and links were made with the Centre for Justice Innovation in the UK and the Neighbourhood Justice Centre in Australia. These organisations were each contacted separately, and suitable interview participants were identified and contacted.

3.4.3 Sampling

A mixture of purposive sampling and snowball sampling was used to find participants for the semi-structured interviews. Purposive sampling, a form of non-probability sampling, was utilised because of the specific sample required for this research. Therefore, participants could not be chosen at random. Emmel (2013: 46) defines purposive sampling as one that "develops and tests theoretical arguments through strategic sampling strategies chosen to get at what it is the researchers want to know about a universe that they will specify as the research progresses". Stakeholder sampling was most suitable for this research. Palys (2012: 698) describes stakeholder sampling as "identifying who the major stakeholders are who are involved in designing, giving, receiving, or administering the program or service being evaluated, and who might otherwise be affected by it". Choosing key stakeholders involved in community court planning and operation meant that questions were answered by those with the relevant experience.

Snowball sampling was also utilised through the connections established as part of the initial purposive sample. Snowball sampling is also known as chain sampling or chain referral sampling (Crouse and Lowe, 2018). Morgan (2012: 816) notes that this form of sampling "uses a small pool of initial informants to nominate other participants who meet the eligibility criteria for a study". Snowball sampling is also advantageous because certain people may be more willing to participate or feel more comfortable with the interview process because a colleague has already done so. However, there is a risk with this form of sampling that through the referral of people the initial participant knows, the researcher tends to interview people of similar mindsets and beliefs (Biernacki and Waldorf, 1981). A further risk associated with snowball sampling is that the confidentiality across the participants can be impeded upon (Crouse and Lowe, 2018).

To try to mitigate the risk associated with this sampling method, each participant was assigned a pseudonym to protect their identity.

3.5 Qualitative Data Collection

3.5.1 Australia

Eleven interviews were conducted with participants who had a connection to the NJC in Collingwood, Melbourne. Eight participants were staff members at the NJC at the time of the interview. Three participants were previous staff members or were involved in the planning of the NJC. Those who were employed by the NJC at the time of the interview worked across a range of teams, including community corrections, client services, court and legal staff, programme and innovation, monitoring and evaluation, and crime prevention. Seven of the interviewees were female and four were male. Eleven was considered an appropriate sample size as each team at the NJC was represented within the sample, and it also included those who were involved prior to the opening of the centre.

Contact was initiated with the NJC by email and permission was granted in March 2020 by the NJC for the researcher to conduct interviews with staff members and to attend a guided tour of the centre in January 2021. However, due to the travel restrictions associated with the covid-19 pandemic, the in-person visit was cancelled, and all interviews took place via Zoom. Gray et al. (2020: 1292) note that video calling is a "cost-effective and convenient alternative" when face-to-face interviews are not possible due to funding restraints, or when either party is unable to travel. Research has found that interviews conducted via video call are not of a lesser quality than those conducted face-to-face (Cabaroglu, Basaran, and Roberts, 2010; Deakin and Wakefield, 2013).

Table 1: Australia – NJC Interview Participants

Pseudonym	Gender	Designation
Daisy	Female	Current NJC staff
Mia	Female	Current NJC staff
Lily	Female	Current NJC staff
Oliver	Male	Current NJC staff
Keira	Female	Current NJC staff
Isla	Female	Previous NJC involvement
Grace	Female	Current NJC staff
Ella	Female	Previous NJC involvement
Noah	Male	Current NJC staff
Lucas	Male	Previous NJC involvement
Arthur	Male	Current NJC staff

Several overarching themes emerged during analysis of the interview data collected from the participants in Australia. The six main themes were: community justice, accountability, innovation, location and design, client-focused, evaluation and monitoring, and the judge.

3.5.2 England

Five interviews took place with participants who had a connection to the NLCJC. Two participants were researchers who conducted a study involving the centre. One participant was employed by the Center for Justice Innovation in the US and consulted on the establishment of the NLCJC. One participant was employed by the UK sister organisation, Centre for Justice Innovation, at the time that the NLCJC was closed. The final participant was an employee at the NLCJC from its implementation until the year before its closure. All interview participants were male and were interviewed via Zoom. The smaller size of the sample was due to the NLCJC being closed for seven years by the time the interviews took place, which made snowball sampling more difficult. There was also limited information available on who was employed by the NLCJC.

Table 2: England – NLCJC Interview Participants

Pseudonym	Gender	Designation
James	Male	Centre for Justice Innovation
Jack	Male	Center for Justice Innovation
Thomas	Male	Researcher
Greg	Male	Researcher
Neil	Male	NLCJC Employee

The themes that emerged during the analysis of the interview data collected from the participants in England were: systemic barriers, court closure, re-establishment, community acceptance, collaboration, evaluation and monitoring, and the judge.

3.5.3 Ireland

Five interviews took place with participants who were either involved with, or consulted on, the process of proposing a community court in Ireland between 2007 and 2014. Two participants were previously members of the DCBA and the NCC. Another participant was previously the head of a prominent criminal justice agency in Ireland. The fourth participant was head of a justice-related NGO at the time of the interview. The final participant is a TD who has advocated for community courts in the past. Four interviewees were male and one was female. All interviews took place via Zoom, apart from one face-to-face interview, which was possible due to the easing of covid-19 restrictions. It was decided that five interviews would be sufficient for the Irish section as the community court proposal never made it to the planning stage, and therefore interviewing those involved with the proposal and additional consultations was most appropriate for the purpose of this research. For this reason, there were also less people in Ireland to interview because of the limited nature of the initiative in this jurisdiction.

Table 3: Ireland - Interview Participants

Pseudonym	Gender	Designation
Conor	Male	Former head of an Irish criminal justice agency
Erin	Female	Head of justice-related NGO
Rian	Male	TD
Declan	Male	Former member of DCBA
Liam	Male	Former member of DCBA

The themes that emerged during the analysis of the interview data collected from the participants in Ireland were: supporters, challenges, location, the Irish context, and advice.

3.6 Analysis of Qualitative Data

The interviews were recorded, with permission, and transcribed. The interviews were then coded and analysed using MAXQDA, a qualitative data analysis tool. The interview transcripts were analysed using Braun and Clarke's (2006) six steps for thematic analysis, which are: familiarize yourself with the data, generate initial codes, search for themes, review themes, define and name themes, and produce the report. Thematic analysis is described as being "a method for identifying, analysing and reporting patterns (themes) within data" (Braun and Clarke, 2006: 79). Thematic analysis was chosen because of the flexibility of the approach in enabling the researcher to compare and contrast, while also allowing unexpected insights to emerge (Braun and Clarke, 2006). The use of MAXQDA analysis software was considered a time-efficient way to reduce the raw data and establish workable themes. This project involved the constant comparative analysis of qualitative data. This approach is an example of an external comparison whereby "two or more different phenomena are compared against each other, now or in the past, in one society or several, in order to identify variations" (Miller and Brewer, 2003: 33).

When conducting the thematic analysis, the first step involved reading the interview transcripts several times in the first instance. The interview transcripts were read through on the first reading before notes were taken on the second reading to record any initial

impressions. The interview transcripts were read in full a third time to ensure a clear understanding of the data. Following this process, the interview transcripts were uploaded to MAXQDA to assist with creating the initial codes. Wicker (1985) states that coding requires the researcher to 'think outside the box' (cited in Corbin and Strauss, 2008) and this process allows the researcher to reduce "lots of data into small chunks of meaning" (Maguire and Delahunt, 2017: 3355). The process of establishing the meaning of the data is more important than the procedures used to analyse the data, according to Corbin and Strauss (2008). These authors (2008: 7) note "the best approach to coding is to relax and let your mind and intuition work for you". They also warn that, while software can be used to code, the researcher must avoid compiling "raw" data under labels without reflecting and participating in the process of analysing. With the research questions in mind, codes were selected and highlighted using open coding, which allows the researcher to develop the codes throughout the process without using codes that have been predetermined (Maguire and Delahunt, 2017).

The third step in this process involved searching for themes. Braun and Clarke (2006) note that there are no set rules that determine what a theme is. Here the codes were carefully assessed and it was decided that many of the codes were part of broader themes. The themes were then reviewed and modified to ensure clarity. The fifth step involved defining and naming the themes, which Braun and Clarke (2006: 92) explain as "identifying the 'essence' of what each theme is about". The MAXQDA software collated the sections of text within the assigned themes and any subthemes were identified at this stage. This thematic analysis process was repeated separately for each of the interview data sets, first for the Australian interviews, then for the English interviews, and finally for the Irish interviews. The themes for each data set were exported to separate word documents prior to the final step, which was the writing-up stage.

3.7 Quantitative Research Methodology

The quantitative research took place for this research project in the form of an online survey. This survey was conducted due to the importance of involving the community in a community court, and the link between the acceptance of the model within the community and the success of the model (Mair and Millings, 2011). The survey was aimed at people who reside in the Tallaght area of Dublin. It is acknowledged in the social sciences, and particularly in criminology, that to have an impact on policy making, it is

important to include quantitative methods in a study. The reason for this is that the ability to view success or failure at a glance using statistics or graphs is generally preferred by policy-makers. As a result, an online survey was considered suitable for this research to generate statistics on public opinion about community courts in a particular community in Ireland.

3.7.1 Online Survey

Surveys are useful because they allow multiple methods to take place within one strategy (Denscombe, 2007). The survey of Tallaght residents included a text box to garner a more in-depth response to one of the questions, which added a qualitative element to the strategy. By its definition, a community court must be tailored to the specific area in which it is situated, and must involve community engagement. To tailor a community court to an area, members of that community must be consulted to discover the types of crimes that they think affects their quality of life. It is also a lot more difficult for a community court to succeed without the acceptance of the local community. It was therefore considered worthwhile to conduct an online survey in order to gain further insight into how community members would feel about the establishment of a community court in their area. Tallaght was chosen because it is one of the first areas in Ireland where restorative justice projects were established and run by local committees. Restorative Justice Services is based in Tallaght, but before it was the Restorative Justice Services, it was part of a community mediation group. It is also an area with high crime rates (Jordan, 2020) and a large number of support services located in the area. It is also an area that displays pride in their community (Tallaght Community Council, 2022). The combination of these factors made it the ideal place to issue a survey to gather public opinion on the establishment of a community court. It could be argued that the range of existing social services in Tallaght would negate the need for a community court to be established in the area. However, it is unlikely that these support services work in collaboration with each other and information-share. Existing services also tend to have hard-to-meet criteria and waiting lists. Also, for clients whose lives are chaotic, navigating these support services can be too difficult, especially if their problems would involve contact with more than one service provider (Cream et al., 2020). The community court model would provide a hub within which support services can collaborate with each

other, share information, and wrap around clients with more chaotic lifestyles to put a plan in place before the client leaves the building.

3.7.2 Inclusion Criteria and Sampling

The inclusion criteria for the online survey was that the participants reside in the Tallaght area and were over the age of eighteen. For the online survey, cluster sampling was used because participants are needed from a pre-existing group – those who reside in the area of Tallaght, Dublin. This form of sampling involves identifying and defining the known population (Heap and Waters, 2019). Heap and Waters (2019: 137) note that "once the clusters have been identified, probability or non-probability sampling techniques can be employed to generate the sample of the participants". Defining a cluster can be difficult and therefore, for the purpose of the survey, it was requested at the beginning of the survey that participants only participate if they reside in the Tallaght area.

Online surveys allow the researcher to communicate with people who might not feel comfortable discussing their views in person (Wright, 2005). There are further advantages such as savings in time and cost. However, it can be difficult to determine a response rate as the researcher cannot be certain how many people the online survey reached (Andrews, Nonnecke and Preece, 2003). As with any survey, there is self-selection bias whereby some people are more likely to take part in an online survey than others (Stanton, 1998; Thompson et al., 2003; Wright, 2005). There are also more limitations associated with sampling as very little will be known about the people who do decide to participate in the survey (Wright, 2005). For this research, participants were relied upon to only complete the survey if they reside in the Tallaght area, which was impossible to monitor.

3.8 Ethical Considerations

The appropriate codes of ethics governing this research are the British Society of Criminology code of ethics for researchers in the field of criminology, the Australian Code for the Responsible Conduct of Research 2007, the University of Melbourne Research Integrity and Misconduct Policy (MPF1318), and the Maynooth University Research Ethics Policy. Ethical approval from the Maynooth University Ethics Committee was granted in May 2020.

Interviews

There were few risks involved in this study as all of the interview participants were professionals. All interview subjects freely chose to consent to take part and had the ability to revoke their participation without any negative consequences. Participants received an information sheet and consent form in advance of the interview and kept a copy for their own record. The contact details of the researcher and research supervisor were included on the information sheet that participants received in advance of the interview. Participants were encouraged to contact the researcher or research supervisor with any questions following the interview, or if they wanted to remove or change anything that they said in the interview. Interview participants were made aware that they could be provided with the collated data from their interview on request up to the point of publication of the thesis.

While all personalised data was anonymised and confidential, broad references were made as to the category of profession an individual belongs to, or the government department/organisation that employs them. No identifying information is provided in the thesis or in any subsequent publications. The specific professions, departments and organisations in which the individuals work were included to provide the necessary context. Participants were made aware of this in advance of the interview taking place.

Other than the time the interview participants gave for the interview, and the potential inconvenience that this may have caused them, there were no other anticipated risks or disadvantages for the interview participants. A plan was in place that if a participant did have an adverse experience or got upset during the interview, that the interview would be suspended until they were happy to continue, or it would be discontinued entirely. Support numbers were provided on the information sheet as a precaution.

Online Survey

An important element of community courts is community participation and support. Therefore, the purpose of the online survey is to examine what public opinion would be if a community court were to be proposed in their area. It was requested, at the beginning of the survey, that people only participate if they reside in the Tallaght area. The online survey had an information sheet attached outlining the purpose of the study, the voluntary nature of the survey, and explaining what a community court is. The online survey was disseminated through the social media pages set up for Tallaght residents specifically, for

example, Tallaght community notice board pages, and social media notice boards set up for specific housing estates in the Tallaght area. The survey was sent to Tallaght community groups directly, for example, the Tallaght Community Council, for them to disseminate the survey as they saw fit.

Participation in the survey was voluntary. Participants were not required to answer every question on the survey if they did not wish to do so. Contact details for both the researcher and research supervisor were included in the information sheet and participants were encouraged to get in contact if they had any questions regarding the study itself or the survey. It is not possible for survey participants to withdraw from the study following submission of the completed survey as no identifiable information was collected in the process. Participants were made aware of this in the information sheet.

Participants were asked to click on the survey link which led them to the information sheet containing an explanation of a community court. Participants had to click the consent button before proceeding to the survey questions. At this stage, participants were asked to answer a series of questions which relate to their personal opinion of crime in their area, the traditional court system, and whether they would support a community court being established in the area. The survey was created and analysed through the Maynooth University Online Surveys software and in accordance with the Maynooth University Online Surveys User Policy.

3.9 Limitations

There are limitations associated with qualitative research methods in general. As qualitative research tends to focus on meanings and experiences, Silverman (2010) contends that this approach can omit contextual sensitivities. Special care was taken to acknowledge the impact of politics and culture in each of the jurisdictions, which gives context to the experiences of the interview participants. Interviews for this project were only conducted with key stakeholders with direct experience of, or links to, a community court. This is a limitation as the opinions of community court clients or service-users were not included, which will naturally result in some bias. Court clients and service-users were excluded from this research because of the difficulties surrounding ethical approval, particularly as the interviews were to be conducted in different countries. Interviewing court clients and service-users was further considered inappropriate once it became apparent that the interviews would have to be conducted via Zoom. It was

paramount to gain an insight into the experiences and perspectives of key stakeholders for this research project, to establish the potential challenges that could be encountered in an Irish context, and also to acquire their advice. There are limitations in terms of where the interviews were conducted. Community courts operate in many jurisdictions, but this research focused on one example of a community court which was perceived to be operating successfully, and one that was closed down. It was decided that two community courts that were based on the Red Hook model would assist in drawing comparisons. It was also considered fitting to select case studies based on community courts that have tried to replicate the success of Red Hook in different countries.

The research involves a comparative analysis within what Nelken (2012) has described as the legal comparativist/policy researcher category. This type of research aims to make suggestions on how the law can be improved in a quest for 'better law'. Siems (2014) explains that this 'better law' can provide more legal certainty or that which would be more likely to meet the aims of the law. Using comparison as a method in legal research as a quest for 'better law' can be beneficial for upgrading policy or to address a specific social problem (Paris, 2016). However, Paris (2016) warns that comparative analysis brings its own challenges as law is rooted in the region's social, political, cultural and historical context. While the researcher is more aware of these contexts in relation to Ireland, every effort has also been made to shed light on the respective contexts in the other chosen jurisdictions.

There are limitations to the use of secondary data in research. Jacob (1984: 9) compares official statistics to "the apple in the Garden of Eden: tempting but full of danger for the unwary researcher". The quality of the documents must be considered. Jacobsson (2016) encourages researchers to ask the methodological question of whether the data is trustworthy. For this, Newburn's (2017) approach of considering the authenticity, credibility, representativeness, and meaning of documents will be followed. It is important to acknowledge the practices that led to the document being produced. Van Krieken et al. (2014) explain that it is wise to be apprehensive of the use of secondary data and the use of official statistics due to differences in recording practices across jurisdictions. Conversely, Bulmer (2006) argues against the view that official statistics are inherently inappropriate and untrustworthy. Bulmer (2006: 373) states, "there is no logical reason why awareness of possible serious sources of error in official data should lead to their rejection for research purposes". Although researchers must remain aware

of the possible limitations of official statistics, they should not entirely disregard them. This is encapsulated by Bulmer (2006: 373) who notes that, “the world is not made up just of knowledgeable sceptics and naïve hard-line positivists”.

As mentioned above, in Section 3.7.2, there are limitations associated with the use of online surveys as there are difficulties in determining a true response rate as the researcher cannot know how many people the survey reached (Andrews, Nonnecke and Preece, 2003). In addition, there are limitations associated with self-selection bias whereby some people are more likely to take part in an online survey than others (Stanton, 1998; Thompson et al., 2003; Wright, 2005). There are also more limitations associated with sampling as very little will be known about the people who do decide to participate in the survey (Wright, 2005). These limitations cause problems when trying to generalise from the data collected.

3.10 Conclusion

This chapter provided an outline of the research methodology employed for this project. The methods chosen were designed to generate high-quality data to produce a valuable research project. An overview of the research design was presented in the form of a comparative case study design, which was considered the most appropriate to answer the core research questions. Following this, the qualitative research methodology was outlined and the use of semi-structured interviews were explained and justified. The methods of collecting and analysing the qualitative data were presented. The quantitative research methodology was then discussed, which was in the form of an online survey. In addition, the ethical considerations and limitations associated with the research were outlined.

The next three chapters will present the findings that emerged from the procedures described in this chapter. Chapter Four will present the findings for Australia, Chapter Five for England, and Chapter Six for Ireland. Each chapter will begin with an outline of the penal landscape in each jurisdiction.

4. Australia

This chapter will begin with an overview of the penal landscape in Australia, with a particular focus on Victoria. The penal landscape in Victoria is the main focus because this is where the NJC is located, and all of the States and Territories in Australia govern their own criminal justice system. The next section, Section 4.2, will provide an outline of the operation and outcomes of the NJC, which will set the scene for the Australian qualitative findings that follow in Section 4.3. Chapter Four addresses the research questions by explaining the emergence of community justice and problem-solving paradigms in Victoria, despite the strengthening of more mainstream 'tough on crime' responses. It also answers the question as to what insight can be garnered from relevant practitioners about the implementation and operation of community courts, and the associated challenges with regards to the NJC.

4.1 Penal Landscape in Australia

Victoria has experienced a significant increase in punitive policy measures in recent years. Community courts promise to address the underlying causes of offending, prevent re-offending, and save money in the process by not adding to prison numbers in an already overburdened prison system. These characteristics may contribute to the model being viewed as a lenient response to crime. However, despite the recent development of more mainstream punitive policy measures in Victoria, the NJC is still operating with ongoing funding from the state. The community court model can be appealing to policymakers when the consequences of punitive policy decisions are more widely felt within communities. This court model can be marketed to policymakers as a therapeutic, rehabilitative approach, or alternatively, as an intensive supervision and accountability approach, depending on their political ideology (Zozula, 2018).

This section will place the NJC within the wider penal landscape in Australia, particularly in Victoria, and explores how it has evolved since its inception. Understanding the conditions in which the NJC was established, and the context in which it continues to operate, will be valuable in determining whether such a centre would operate successfully within the Irish penal landscape. Included in the overview of the penal landscape is a discussion of Victoria's colonial background, a perceived punitive turn, Victorian courts

and sentencing, recent penal policy changes, Victorian prisons, and criminal justice innovations that currently exist in Victoria.

4.1.1 Background

Australia's colonial history has had a profound impact on its penal landscape and continues to influence Australian penal policy. As a former convict settlement, the country has been dubbed "the great social experiment of the 18th Century" (Kornhauser and Laster, 2014: 449) and "the greatest penal experiment of all time" (Forster, 1996: 135). Transportation was a popular sentence used from the early 17th century and became more common as the use of capital punishment declined (Maxwell-Stewart, 2010). Under the Transportation Act 1718, transportation of seven years or more could be applied instead of a sentence to death by hanging (McNally, 2019). A sentence of transportation was considered to be a cost-effective method of supplying the colonies with labour and removing criminals from society (McNally, 2019). Originally, the most common destinations for British convicts were the Americas and the Caribbean, however, Australia became the country of choice from 1787 following suspension of the practice in the Americas in 1776 (Rickard, 2017; McNally, 2019). Martin (2018: 9) notes that following the American Revolutionary War, English prisoners had to be detained temporarily in "rotting hulks on the Thames estuary". Due to the cost associated with building new prisons and holding prisoners, transportation to the colony of New South Wales was the agreed resolution (Martin, 2018). In the eighty years following 1788, around 162,000 convicts were sent to Australia, a majority of which settled in Botany Bay in New South Wales (Cunneen et al., 2013; Rickard, 2017). In 1850, Port Phillip was separated from New South Wales and became the colony of Victoria (Rickard, 2017). Back in England, those who were transported were perceived as the criminal class, and "the dregs of that society, those whom it would be wise to be rid of" (Braithwaite, 1991: 101).

Due to the pressure to control what was perceived as a very dangerous population, punishment and methods of social control were severe in the Australian penal colonies (Kornhauser and Laster, 2014). Religion was utilised as a form of social control within the colonies, and it was used to emphasise reform among the convicts (Australian Government, 2008). It was compulsory for convicts to participate in religious services and a good word from chaplains could secure many special privileges, including release

(Australian Government, 2008). Although transportation was an extreme sentence, one positive aspect of it is that it shows that rehabilitation is possible. The Australian Government (2008: 85) notes "the majority of convicts in Australia were released before serving out their sentences and went on to become free and law abiding members of the colonies". When given the opportunity, those who were transported managed to live crime-free lives within the society they helped to create. An early sentencing innovation, the Ticket of Leave Scheme, was also created during this time. The scheme allowed offenders to complete their sentence while working and living under surveillance in the community, and it is seen as the inspiration for probation and parole systems today (Kornhauser and Laster, 2014). The Ticket of Leave Scheme could be an early sign of an Australian acceptance of practical innovations as a penal response, and is also a sign that community reintegration can effectively reduce re-offending.

Throughout the 1830s, there was increasing concern that transportation was not acting as an effective deterrent to crime in Britain and was having a negative impact on the colonies (McNally, 2019). Stories of harsh treatment in the Australian colonies began to travel back to Britain and caused outrage among the British public (Kornhauser and Laster, 2014). At the same time, there were calls from the colonies themselves to end transportation and to grant independent status (Cunneen et al., 2013). Britain was coming under increased scrutiny due to rumours of immoral behaviour in the penal colonies and accusations of slavery (Cunneen et al., 2013). However, Carrington et al. (2018) argue that when settler countries were fighting for independence, they reinforced racist policies and promoted a primarily white population, which further marginalised the indigenous population. Further, they contend that settler colonial countries, such as Australia, cannot be considered postcolonial societies, as "independence did not deliver sovereignty into the hands of the first nations of these lands but into those of their white settler populations" (Carrington et al., 2018: 6). McNally (2019) notes that the Penal Servitude Act 1857 resulted in the end of the sentence of transportation to Australia. The use, and subsequent end, of transportation, along with British colonialism, reminds us not only of the historical connection that exists between the three jurisdictions, but also of the historical impact that transportation had on the penal landscape in each of the chosen jurisdictions for this research.

The sentence of transportation and the resulting reintegration of a 'convict class' into societies was an indication that rehabilitation was indeed possible. However, the ending

of transportation resulted in the increased use of imprisonment as a form of punishment in both Britain and in the colonies (Finnane, 1997). Kornhauser and Laster (2014: 450) remark:

> "it is one of the great ironies of history that the country that provided the living proof that grand rehabilitation schemes can work, indirectly provided the impetus for the birth of the prison by refusing to take more convicts from Britain".

Punitive responses to crime are rooted in Australia's history, remnants of which are visible in contemporary penal policy. However, it is also a place that has historically accepted sentencing innovations, such as the Ticket of Leave Scheme. The tension between punitive responses to crime, and innovations to address the underlying causes of crime, still exists in Australia today, and it is particularly visible in Victoria. It is in the context of this tension that the NJC developed and continues to operate.

4.1.2 A Punitive Turn?

Despite a punitive colonial history, penal welfarism was the common approach in Australia in the 1960s and 1970s (Cunneen et al., 2013). However, the use of other forms of institutions, aside from prisons, were used to detain and control Indigenous people and had done so since colonial times. Post-colonial criminological theory focused on the Global South, such as Southern Criminology (Carrington et al., 2018), recognises the crimes committed by previous empires, including those committed against Indigenous Australians (Travers, 2019). A series of repeals of discriminatory legislation occurred in the 1960s, as it was perceived as "continuing the colonisation of Aboriginal Australians" (Baldry and Cunneen, 2011: 10). A referendum held in 1967 favoured amending the constitution to allow for more rights for Aboriginal people and to include the Aboriginal population in the national census (Baldry and Cunneen, 2011). The Aboriginal Welfare Boards were abolished following the referendum and institutions that had detained Indigenous people were all closed by the 1990s (Baldry and Cunneen, 2011). However, while colonial institutions were being dismantled, the population of Indigenous people in prisons was increasing (Cunneen, 2001; Hogg, 2001). Cunneen (2018: 21) contends that institutions, such as those associated with the criminal justice system, are rooted in and inseparable from the colonial experience, stating that "colonial violence permeated the

development of the institutions of the modern state". Even in times of penal welfarism in Australia, the punitive undercurrent of the colonies remained, and disproportionately impacted on the Indigenous population. When the state institutions that coercively confined the Indigenous population such as residential schools, hospitals, and orphanages (Cunneen and Tauri, 2016) were closed, the detainment of Aboriginal Australians still continued within the prison system (Cunneen, 2018).

Australia's prison population has risen significantly since the 1970s at a similar rate to much of the Western world, signalling the same punitive turn noted by Garland (2001) and Roberts et al. (2003). Australia has been compared to America on more than one occasion due to the similar structure of the two countries – both America and Australia have federal criminal law systems, and the separate districts apply the criminal law with differing levels of severity. Australia has also been compared to America in terms of its imprisonment patterns because certain Australian States and Territories have reached some of the highest imprisonment rates in the world (Cunneen et al., 2013). However, the federal government plays a much less prominent role when it comes to criminal justice in Australia. Australian States and Territories have a lot more independence to create and operate criminal justice policies without interference from the federal government (Cunneen et al., 2013). Each state and territory in Australia also has its own police force, court system, and prison system. Therefore, national statistics for Australia in terms of crime or imprisonment rates are not always accurate as they do not account for the large statistical differences between regions.

Throughout the 1980s, politics increasingly turned to the 'tough on crime' rhetoric and prisons were at the fore of the Australian response to crime (Cunneen et al., 2013). Remnants of colonialism is evident in the continued overuse of the prison system in Australia, and "punitiveness has always competed with pragmatic innovation" in the country (Kornhauser and Laster, 2014: 445). The increase in punitive sentencing in Australia continues to disproportionately impact the Indigenous population, who are overrepresented in the prison system and have experienced high levels of social control since colonisation (Royal Commission into Aboriginal Deaths in Custody, 1991; Carcach and Grant, 1999; Cunneen et al., 2013; Kornhauser and Laster, 2014). Public pressure mounted during the 1980s as the media reported on Aboriginal deaths in custody, and this clamour resulted in a public enquiry (Morris, 2015). It is well documented that the weight of punitive criminal justice policy and legislation in Australia has been

predominantly felt by Indigenous people and they have had a particularly negative impact on Indigenous women in Australia (NSW Legislative Council, 2002; Pratt et al., 2005; Baldry and Cunneen, 2011). The famous words of Rowley (1972: 123) still echo throughout Australian penal literature, "it is still true . . . one can be incarcerated either for crime or for being Aboriginal".

There has also been an increase in the number of non-Indigenous people imprisoned in Australia (Kornhauser and Laster, 2014). There are vast differences in sentencing and punishment across the Australian States and Territories, but the rise in the prison population is common to all regions (Kornhauser and Laster, 2014). In the past, Victoria was the State with the lowest prison numbers in Australia despite its large population (Tubex et al., 2015). Victoria was known as "the Scandinavia of Australia" (Brown, Schwartz and Boseley, 2012; Brown, 2014), as it did not follow the same punitive trend as the rest of the country. However, following a range of 'tough on crime' policies being introduced in the 1990s, the prison population in Victoria has risen to the point where it is no longer a penal outlier in the country. As noted by Tubex et al. (2015: 354), the reforms introduced in Victoria in the 1990s were "decidedly punitive in nature" with the conservative government introducing measures that "contributed to a harshening of the penal climate".

Problem-solving courts were introduced as justice innovations in the 2000s by the Labour government. The introduction of problem-solving courts followed the emergence of therapeutic jurisprudence as a popular theory in the late 1990s and early 2000s (Cunneen et al., 2013). Drug courts were established in most states in Australia during this period and Indigenous justice was addressed in the form of Koori Courts such as the one in Victoria (Cunneen et al., 2013). Both Drug Courts and Koori Courts will be discussed in more detail in Section 4.1.6. Imprisonment rates did fall following the introduction of problem-solving courts and other community-focused innovations, but their impact did not last long and imprisonment rates soon rose again (Cunneen et al., 2013). Cunneen et al. (2013: 50) state "clearly, incarceration rates could be higher without these innovations, but it is also clear that alone they are insufficient to alter the punitive turn of recent decades". The introduction of problem-solving courts during this time shows that these court models are often established in an attempt to counteract the negative effects of more punitive policies, such as prison overpopulation. However, it must be noted that depending on how problem-solving courts are implemented and operationalised, they

may also have a punitive impact, rather than a therapeutic impact as intended (Schaefer and Beriman, 2019).

The Labour government largely continued the punitive trend, despite establishing more innovative responses, such as problem-solving courts, during their term (Tubex et al., 2015). The Liberal/National Coalition government of the 2010s, who vowed to be 'tough on crime', embraced punitive approaches to sentencing (Tubex et al., 2015). Amendments to penal policy during this period resulted in the abolition of suspended sentences and home detention, heavy restrictions on parole, and new presumptive sentences (Tubex et al., 2015). These amendments will be examined in more detail in Section 4.1.5. Overcrowding in Victorian prisons resulted in prisoners being housed in moderated shipping container cells (Jewkes, Crewe and Bennett, 2016), which is reminiscent of the "rotting hulks" that housed prisoners in England once transportation to the Americas ended. When the Baillieu government were in power in Victoria, policies that portrayed a 'tough on crime' approach were hastily adopted at a time when similar policies were deemed a failure and were being discarded in other Australian States (Brown, Schwartz and Boseley, 2012). The expansion of Australian prisons is concerning, especially considering increased prison privatisation (Kornhauser and Laster, 2014). The state of Victoria now relies more heavily on private prisons than any other Australian state (O'Neill, Sands and Hodge, 2020).

Crime rates were heavily impacted by the covid-19 pandemic and the government-imposed lockdowns. However, prior to the pandemic, in the year 2018 to 2019, crime rates increased across all the major crime categories, with the exception of property and deception offences (Victorian Department of Justice, 2019). The Victorian Department of Justice (2019) admits that the increase in crime rates may be due to the deployment of 1500 new police officers, 25 new protective service officers, and the newly increased police powers in relation to certain offences. These increased police powers include allowing DNA to be taken from certain individuals without a court order (Victorian Department of Justice, 2019). $46 million was invested to increase security measures in Melbourne's central business district, such as adding a large number of security cameras (Victorian Department of Justice, 2019). The report also mentions adding a significant number of prison beds and a new youth justice precinct.

Suspended sentences were abolished in Victoria and were phased out between 2011 and 2014 (Sentencing Advisory Council, 2022), as it was considered misleading to equate suspended sentences with a sentence of imprisonment (Freiberg, 2019). Legislation was introduced in 2014 to encourage the use of community correction orders, especially in place of suspended sentences (Freiberg, 2019). However, media criticism ensued when a guideline judgment in Victoria stated that a community correction order could be used in place of imprisonment (Freiberg, 2019). The implication made by the media and opposition parties meant that the use of community correction orders in relation to certain serious offences were restricted or abolished entirely (Freiberg, 2019). Despite the introduction of more punitive approaches to justice, the Department of Justice (2020) emphasises the need for crime prevention programmes, evidence-based interventions, and rehabilitation-focused approaches. It is clear that there is still tension between the 'tough on crime' rhetoric surrounding justice, and the acknowledgement of the need for proactive and rehabilitation-based responses in Victoria.

4.1.3 Victorian Courts and Sentencing

Responsibility for justice in Australia, including creation and enactment of criminal law, falls on the State and Territory governments rather than the federal government. However, an Australian Federal Police Service does exist due to certain crimes that make such a service necessary, for example, drug trafficking (Daly and Sarre, 2016). The major criminal justice agencies in Australia are the police, the prosecution, the courts, community corrections, prisons, and other organisations such as victim support groups. Apart from the criminal courts and the High Court (highest court of appeal) located in Canberra, there are no Commonwealth criminal courts (Daly and Sarre, 2016). Certain States and Territories have criminal codes that they follow and others, including Victoria, follow the common law (Daly and Sarre, 2016). Therefore, justice outcomes profoundly differ between the States and Territories.

Each State and Territory ordinarily contains three court levels, which are: the lower courts, intermediate courts, and higher courts. Most summary criminal matters are heard in Magistrates' Courts or Local Courts where fines and sentences have an upper limit. Cases in these courts are presided over by a Magistrate or, where no Magistrate is available, two Justices of the Peace may hear cases (Daly and Sarre, 2016). More serious or indictable offences are heard in either the intermediate or supreme courts. Prior to

appearing in court, the defendant must attend a committal hearing before a Magistrate who then decides whether there is a "case to answer", and if not, the case is dismissed (Daly and Sarre, 2016: 11). Intermediate courts are called County Courts in Victoria and they consist of a judge and jury, but the defendant can choose to have their case heard by the judge alone (Daly and Sarre, 2016). The highest court in every state and territory is called the Supreme Court and this is where the most serious of crimes are heard in front of a judge and jury. The Court of Criminal Appeal is presided over by three Supreme Court judges and hears appeals from the lower courts. The highest court in Australia is the High Court, and in certain circumstances, although it is unusual, appeals can be made to the High Court directly (Daly and Sarre, 2016).

If a defendant is convicted of an offence, they are then sentenced by a judge. The Sentencing Act 1991 (Vic) lays out the purposes of sentencing in section 5(1), which mainly concern punishment, deterrence, rehabilitation, denunciation, and protection of the community. In Australia, judges have discretion at sentencing, but, as noted, this discretion in Victoria has been reduced due to the introduction of more standard sentences. Judges and prosecutors are appointed by the government, usually being selected from the bar, the practising profession, legal aid services, the public service, or academia (Freiberg, 2010). To increase confidence in the court system, Victoria have formed sentencing councils with procedures that consider community views in sentencing (Freiberg, 2010).

In Victoria, Probation Orders are only a sentencing option of the Children's Court, and they are the least intensive supervision order that may be imposed on a child who is found guilty of an offence (Sentencing Advisory Council, 2023). For adults, this form of sentence is referred to as a Community Correction Order which are enforced by Community Correction Officers (CCOs), who are employed by Community Correctional Services, a division of Corrections Victoria. The role of a CCO is to supervise individuals who have been ordered by the court to complete a sentence in the community, and to supervise those who are on parole. Community Correction Orders can last for a period of five years and can be combined with up to one year of imprisonment under Section 44 of the *Sentencing Act 1991* (Vic), which is known as a combined order (Sentencing Advisory Council, 2023). Community Correction Orders are discussed further in Section 4.1.5(b).

When the NJC was established, it was under the remit of the Department of Justice, but the NJC is now part of the Specialist Courts and Programs Division of the Magistrates' Court of Victoria, under Court Services Victoria. While the NJC does have its own website that details the work of the centre, there is little mention of the centre on the websites of the Magistrates' Court of Victoria or Courts Services Victoria, or within their published reports. It is interesting that neither Magistrates' Court Victoria or Courts Services Victoria appear to be promoting their connection to the NJC, despite the perceived success of the centre. The NJC has not been readily accepted by Courts Services Victoria, which is discussed further in the findings in Section 4.3.1(b).

4.1.4 Victorian Prisons

The population of Victoria is approximately 6.5 million, and there are currently fifteen prisons in operation in the state. Eleven of these prisons are publicly operated, three are privately operated, and one is a transition centre. The cost of the Victorian prison system exceeds $1 billion (Victorian Ombudsman, 2015). The prison system has consistently expanded in Victoria in recent years, with the most recent private facility being opened in 2017. The Victorian Government is currently building a maximum-security prison that will neighbour two existing prisons, the Barwon Prison and the Marngoneet Correctional Centre (Corrections Victoria, 2020). This new prison is called the Chisholm Road Prison, and it is not yet clear whether it will be operated publicly or privately. Chisholm Road will be the largest prison in the state when complete and will be capable of holding 1,248 prisoners (Community Safety Building Authority, 2019).

In the Victorian State Budget 2019-2020, $1.8 billion was allocated to prisons in the state, and a commitment to expand prison capacity with 1,600 new beds was made (Victorian Department of Treasury and Finance, 2019). The Independent Broad-Based Anti-Corruption Commission (IBAC) (2021) note the expansion of the prison system in Victoria as crucial due to the growth of the prison population in the state. IBAC (2021) credits the legislative amendments to bail applications in 2018, introduction of mandatory sentences, abolition of suspended sentences, and reforms in parole, outlined in Section 4.1.5, with the significant increase in the number of prisoners in Victoria. The Victorian Ombudsman (2015: 2) notes "as prisons have become more crowded, the response has been to build more of them".

Some commitment to rehabilitation in prisons has been visible by the establishment of the Marngoneet Correctional Centre, which is described by the Victorian Ombudsman (2015: 58) as:

> "the sole therapeutic and treatment focussed prison in Victoria comprising three separate living areas (known as 'neighbourhoods'), housing male prisoners convicted of sexual offences, violent offences, and those with significant substance abuse issues".

However, retaining such a model has been impossible due to the prisoner numbers and overcrowding in Victorian prisons (Victorian Ombudsman, 2015). In particular, concerns were raised about the residential drug programme at Marngoneet, which has been criticised as being "a very compromised treatment approach" (Victorian Ombudsman, 2015: 59). Overcrowding was highlighted as an issue that has an impact on the operation of the programme, and the housing of non-participants with participants which has changed the profile of the programme (Victorian Ombudsman, 2015).

Victoria is certainly seeing the effects of their doubling down on punitive policy changes in the past ten or so years. Corrections Victoria (2019) note that the Victorian prisoner population has risen by 86% since 2009. The number of female prisoners and the number of prisoners aged 50 and over have more than doubled since 2009 and the number of prisoners who had never served a prison sentence before has almost doubled (Corrections Victoria, 2019). The number of Aboriginal prisoners has increased drastically, more than tripling since 2009, and they now represent 10% of the prison population in Victoria (Corrections Victoria, 2019). The Sentencing Advisory Council (2022) note that the imprisonment rate increased by 2.1% from 106.8 prisoners per 100,000 in 2020 to 109.0 prisoners per 100,000 in 2021. The policy changes that have contributed to the increases in the prison population in Victoria will be outlined below in Section 4.1.5.

4.1.5 Recent Penal Policy Changes

The penal policy changes outlined in this section demonstrate a move towards more punitive responses to crime, and have contributed to unsustainable increase in the prison population in Victoria. These developments have made innovations like the NJC even more necessary to try to support those who offend to prevent re-offending and to reduce

the use of imprisonment. The reforms that are addressed below relate to sentencing, suspended sentences, bail, and parole.

(a) Sentencing

There have been a number of changes made in Victoria in recent years that have contributed to more punitive responses to crime, and in turn, resulted in harsher sentencing outcomes. Prison sentence lengths have become longer for many offences due to the introduction of the Sentencing Amendment (Baseline Sentences) Act 2014, which introduced median sentences for specific offences, such as violent and sexual offences (Victorian Ombudsman, 2015). Standard sentences were introduced for certain serious offences in 2018, including murder, rape, culpable driving causing death, trafficking in a large commercial quantity of a drug dependence, and eight different sexual offences involving children (Sentencing Advisory Council, 2019). The judge must consider the standard sentence as well as the other sentencing factors. The standard sentence is 40% of the maximum penalty for most of the offences mentioned (Sentencing Advisory Council, 2019). Judges in Victoria may also set a minimum non-parole period for sentences of over one year (Sentencing Advisory Council, 2019).

(b) Suspended Sentences

A recent significant change in penal policy relates to the abolition of suspended sentences in Victoria. Suspended sentences were completely abolished as a sentencing option in 2014 with those offenders who would have received a suspended sentence now being more likely to receive either a community correction order or a prison sentence (Victorian Ombudsman, 2015). This development has led to more serious offenders receiving a community correction order. The sentencing system has adapted to the removal of the suspended sentence as a sentencing option with the increased use of combination orders, which involve a combination of a prison sentence and a community correction order, with the community correction order coming into effect when the prison sentence ends. The Victorian Sentencing Advisory Council recommended that suspended sentences be phased out in a report published in 2008, after alternative intermediate orders were introduced (Sentencing Advisory Council, 2014). Suspended sentences were therefore phased out in Victoria between 2011 and 2014.

In 2014, the Sentencing Advisory Council released a report which examined the first 18 months of community correction orders, which replaced community-based orders and intensive correction orders. The Sentencing Advisory Council (2014: 56) acknowledged:

> "the phase-out of suspended sentences in the Magistrates' Court is likely to have a greater impact on the correctional system, either the custodial component or the community component, than the phase-out of suspended sentences in the higher courts".

The reason for the abolition of suspended sentences is due to the perception that they are a misleading sentence that promise jail time, but do not follow through on it. Then Attorney-General Robert Clark explains: "the Coalition government has delivered on its commitment to fully and completely abolish suspended sentences and restore truth to sentencing" (Australian Associated Press, 2014). Gelb (2013) criticised the abolition of suspended sentences in Victoria, stating that it would have social and financial consequences on the state. The removal of suspended sentences removes a valuable sentencing option and only retains sentences at the lower end of the scale, or imprisonment (Gelb, 2013). Those who breach community correction orders or commit a new offence are also more likely to receive a sentence of imprisonment due to the reduction in sentencing options (Gelb, 2013). Gelb (2013) also notes that significant resources need to be provided to community corrections in light of the reform, but funding has been increasingly directed towards expanding prison capacity.

(c) Bail

Another change to penal policy in Victoria is to do with the bail process. Further legislative changes to the bail system were introduced in 2013, and amendments made to the Bail Act 1997 (Vic) in 2018 made it more difficult for individuals to be granted bail. Police must now consider whether the offender can be brought before a court within 24 hours when deciding whether to grant bail, and if not, the offender is held on remand until a bail application is heard by a Magistrate (Victorian Ombudsman, 2015). A range of additional offences were added to the reverse onus provisions which require 'compelling reasons' or 'exceptional circumstances' in order for bail to be granted (Judicial College of Victoria, 2019). Repeat, low-level offending is now placed on the same level as the most serious offences when it comes to bail (Human Rights Law Centre, 2020). The decision was made to make significant changes to the Bail Act 1997 when Dimitrious

Gargasoulas, who was on bail at the time, attacked a group with a car which resulted in the death of six people (Bartels et al., 2018). The media and public response to this act propelled the government to introduce stricter bail measures, which has in turn, resulted in individuals being incarcerated for longer.

(d) Parole

Changes have also been made to the parole system and the Adult Parole Board. A former High Court Justice, Ian Callinan, conducted a review of the parole system in Victoria in 2013, which resulted in 23 recommendations being made to improve the system. Again, it is acknowledged that the reason for these multiple recommendations to the parole system and the Adult Parole Board were due to high-profile crimes being committed by individuals who were out of prison on parole (Bartels, 2013). When Justice Ian Callinan was appointed to the review, he was provided with a 2011 report by Professor James Ogloff and the Office of Correctional Services detailing nine prisoners who committed murder while on parole (Callinan, 2013). This report was conducted a year before the murder of Jill Meagher by parolee Adrian Bayley, and two years before the murder of Sharon Siermans by parolee Jason Dinsley. These two murders resulted in further outrage from the public and the media, and acted as a further catalyst for parole reforms.

As a result of this review, prisoners are now only granted parole if the Parole Board is satisfied "to a very high degree of probability that the risk of re-offending is negligible, and that they are highly likely to satisfy the conditions of parole to which they are likely to be made subject" (Callinan, 2013: 91). Before the changes, the presumption was that "parole should be granted at the eligibility date unless there was some compelling reason not to do so" (Victorian Ombudsman, 2015: 19). A lot more pressure has been placed on the Parole Board to ensure that they do not release prisoners who may reoffend, which is something that is almost impossible to predict.

From 2015, the prisoner must put themselves forward to be considered for parole (Victorian Ombudsman, 2015). Following the Callinan review, prisoners cannot be released until they have completed court-ordered programmes even if these programmes have not yet been made available to the prisoner (Victorian Ombudsman, 2015). The prisoner is therefore held for an extended period of time, and perhaps a disproportionate length of time to the crime committed, while awaiting for the court-ordered programmes to be available to them. These changes have resulted in a 143.6% increase of rejected

review of parole requests (Victorian Ombudsman, 2015), which undoubtedly contributes to the increase in the prison population. Also, Victoria implemented 'no body, no parole laws', which assess whether an offender has assisted the authorities by revealing the location of the deceased's body, which again contributes to much longer sentences than laid down in court (Freiberg et al., 2018).

4.1.6 Problem-Solving Courts in Victoria

This section provides examples of the problem-solving courts that currently operate in Victoria, which demonstrate the willingness of the State to engage in alternative responses to criminal justice. In particular, this section will focus on the Drug Court and Koori Court programmes in Victoria.

Schaefer and Beriman (2019) are critical of problem-solving courts in Australia, arguing that they struggle to find their identity as an Americanised model in an Australian context. Freiberg (2001: 53) observes that "where the United States treads boldly, rapidly, and sometimes foolishly, Australia tiptoes carefully, slowly, and most times reluctantly". However, Schaefer and Beriman (2019) do admit that the strength of Australian problem-solving courts is their focus on local problems and local solutions. Schaefer and Beriman (2019: 348) further criticise the blurring of "problem-solving justice, therapeutic jurisprudence, restorative justice, Indigenous justice, and managerialism". Despite the criticism, the Victorian State Budget (2019-2020) allocated $152.4 million in funding for a multi-jurisdictional headquarters that will facilitate specialist court programmes, including a Family Violence Court (Victorian Department of Treasury and Finance, 2019). This recent allocation of funding, along with the expansion of the Drug Courts and Koori Courts discussed below, shows a continued commitment to innovative court models in Victoria, which is good news for the NJC.

(a) The Drug Court

Then Attorney-General Rob Hulls, who later established the NJC, also introduced the Bill to amend the Sentencing Act 1991 to include a drug treatment order, and to amend the Magistrates' Court Act 1989 to establish a Drug Court Division of the Magistrates' Court. The Drug Court began in 2002 in Dandenong in Victoria and operates similarly to most drug courts, by offering an alternative to imprisonment on the condition that the individual undergoes drug treatment over a period of two years. Those who participate in

the Drug Court do so under a Drug Treatment Order, which consists of a custodial sentence served in the community for a period of two years or less, and to undergo treatment while under supervision. As with most drug courts, individuals must plead guilty in order to avail of the alternative sentence, must live in the catchment area, and must not have committed a violent offence. Participants of the Drug Court are heavily supervised and must attend the court regularly and participate in appointments, take part in regular drug testing, actively engage in treatment, engage with educational and job training programmes, and comply with any other associated conditions such as curfews (Magistrates' Court of Victoria, 2022).

The most recent evaluation of the Dandenong Drug Court was published by KPMG in 2014. The findings of the evaluation were positive in general and found that it is more cost-effective when compared with imprisonment (KPMG, 2014). Although it is difficult to accurately measure the impact of the Drug Court, the evaluation found that the Drug Court resulted in 4,492 fewer days of imprisonment, which amounted to over $1.2 million in savings (KPMG, 2014). It was announced in March 2020 that the Drug Court is being expanded to Regional Victoria through the Justice Legislation Amendment (Drug Court and Other Matters) Bill 2020 (Victorian Attorney-General, 2020). The decision was made to expand the Drug Court due to the success of the existing Drug Court programme in Dandenong and the positive impact that it has had on recidivism rates, community safety, and on the encumbered court and prison system (Victorian Attorney-General, 2020). The budget for Victoria in 2019/2020 allocates $35 million to expand the Drug Court programme to Ballarat, Shepparton, and to establish a County Court Drug Court pilot (Victorian Attorney-General, 2020). Drug Courts are currently available at the Melbourne and Dandenong, and Shepparton and Ballarat Magistrates' Courts in Victoria (Magistrates' Court of Victoria, 2022a). The expansion of the Drug Court in Victoria demonstrates a commitment to innovative courts and an acknowledgement of their effectiveness within the state.

(b) Koori Courts

Rob Hulls was also behind the launch of the Koori Court pilot in Shepparton in 2002, and they now operate across several Magistrate's courts in Victoria. These courts were put on a legislative basis in Victoria with the Magistrates' Court (Koori Court) Act 2002. This court model is designed to be as informal as possible and includes gathering the offender,

the magistrate, the prosecutor, community correction officer, Aboriginal Elders, a Koori Court Officer, lawyer, and family around a table to discuss the offence and decide upon a culturally appropriate sentence (Magistrates' Court of Victoria, 2022b). Hulls (2002) explains that the introduction of the Koori Court pilot was an attempt to address the overrepresentation of Aboriginal and Torres Strait Islanders in the criminal justice system. The core aim of the Koori Court was "to provide access to fair, culturally relevant and appropriate justice" (Dawkins et al., 2011: 3). The court design facilitates offender involvement in the process as all participants are seated around an oval table at the same level, not even the Magistrate's seat is elevated (McAsey, 2005). Legal language is avoided to allow an open discussion that includes all participants (McAsey, 2005). Koori courts are an attempt to include the Aboriginal community in the justice process and to create a sense of ownership and self-determination (McAsey, 2005).

An evaluation of the Koori Court published in 2011 found that 14 out of 15 offenders interviewed found the Koori Court process "more engaging, inclusive and less intimidating than the mainstream court" (Dawkins et al., 2011: 49). It was not possible to calculate re-offending rates accurately due to the absence of a comparison group. However, only one offender of the thirty-one offenders analysed had reoffended and this new offence was for a low-level public drunkenness charge (Dawkins et al., 2011). Koori Courts are now available at thirteen Magistrates' Courts in Victoria in total (Magistrates' Court of Victoria, 2022). There is also a Children's Koori Court that was established in 2005 and is available through the Children's Court of Victoria (Magistrates' Court of Victoria, 2022). The newest County Koori Court was launched in Geelong in 2021, again showing a continued commitment to problem-solving courts in Victoria. Between the Drug Courts and the Koori Courts, there was a strong foundation of successful problem-solving courts in Victoria prior to the NJC's establishment. However, it is important to acknowledge that this strong foundation only exists due to the dedication of specific individuals, and the perseverance of Rob Hulls in particular.

4.1.7 Conclusion

Martin (2018: 10) argues that modern community perceptions about punishment can be traced back to punitive colonial traditions, noting that "the colonists from England and Wales brought with them a fundamentally punitive approach to criminal justice which has a long and rich cultural tradition in the place from which they came". While Australia

has a strong history of social control relating to its colonial past, it also has a history of innovative penal responses. This is evidenced by the Ticket of Leave scheme, which allowed convicts that had been transported to Australia to complete their sentence in the community (Kornhauser and Laster, 2014). Many who availed of this scheme were able to eventually shed their convict image and become regular members of society. However, the punitive thread has been ever present in Australia.

Changes to penal policy in Victoria have been driven, in the last two decades at least, by political responses to public and media outrage following high-profile murders. Australian politicians, like those in many other countries, rely heavily on law and order debates centring on which party can be toughest on crime in the lead up to general elections, as this is presumed to be what the community wants. Due to Australia's colonial history and reliance on harsh punishments, Kornhauser and Laster (2014: 452) argue that it is difficult to alter public and political opinion from its "deep-seated fallback punitiveness". The consequences of the punitive turn in Victoria have been particularly striking for an area once known as "the Scandinavia of Australia", and the prison population has been catching up with the rest of the country (Brown, Schwartz and Boseley, 2012; Brown, 2014). Victoria experienced an influx of harsh criminal justice policies in a relatively short period of time and is well on its way to a criminal justice crisis. Community courts appear to thrive as a response to punitive policy decisions, particularly as a response to their impact on communities. A core purpose of community courts is to address the underlying problems of crime in an attempt to end the revolving door of offenders through the criminal justice system (Clear and Karp, 1998; Gal and Dancig-Rosenberg, 2017; Zozula, 2018). Accordingly, it is plausible to argue that the NJC is an integral part of the court system in Victoria as it is needed to absorb the aftershocks of these policy reforms.

It is also clear from Section 4.1.6 that Victoria is a place that embraces penal innovation, and is a place where these innovations have longevity. However, the funding allocated to these programmes has also traditionally been modest compared to the amount allocated to other branches of the corrections system (Victoria Ombudsman, 2015). The NJC was established in a state and country that has a historical commitment to both punitive and innovative responses to crime, and the tension between practical criminal justice innovation and punitive policy reform continues today. It is relevant to this study to acknowledge the duality of the penal landscape in Victoria to fully understand the

background in which the NJC operates. The above analysis supports the theory that community courts operate well in jurisdictions where the impacts of punitive policies are being felt by disadvantaged communities. Although it should be recognised that Victoria is also somewhere that has traditionally embraced innovation, the NJC also demonstrates the adaptability of community courts, and more specifically, its ability to make itself attractive to different political ideologies in order to remain operational, even in more punitive political climates.

The following section, Section 4.2, will provide a detailed overview of the NJC, including its structure, operations, and outcomes.

4.2 The Neighbourhood Justice Centre

This section provides an initial overview of the NJC in Melbourne, Australia, based on official NJC and government documents, and academic articles written about the centre. The NJC was selected as a case study as it took inspiration from Red Hook Community Justice Center and the NLCJC. The NJC is an example of a community court that was established and has operated successfully with positive outcomes over a significant period. In Chapter Seven, the results of an examination of the NJC will be compared with an examination of the NLCJC to observe the differences between a community court that has continued to receive funding and one that has been closed down. This comparison is then used to furnish best-practice recommendations to Irish policy-makers on how such a model should be implemented. In this section, the background to the creation and establishment of the NJC will be discussed and the core goals and objectives of the centre will be examined. This section includes an outline of the services, programmes, and community-based solutions provided by the NJC, followed by a discussion of NJC outputs and the impact that the centre has had on the surrounding community.

4.2.1 Background

The NJC is the only community court of its kind in Australia, and it took inspiration from Red Hook Community Justice Center in Brooklyn, New York, and the NLCJC in Liverpool. The then Victorian Attorney General, Rob Hulls, became a political champion of the NJC following a visit to Red Hook with the then Secretary of the Department of Justice, Penny Armytage (Murray, 2009). When he established the NJC, Rob Hulls had already overseen the implementation of several problem-solving courts in Victoria, including drug courts and Koori courts. The NJC is sometimes criticised for being the only community court in Australia due to the implication that if it was a successful model, it would have been rolled out in other states. However, replication is not the only sign of success for community courts. With the amount of planning, community engagement, and resources that are needed for this type of innovation to operate as intended, it could be argued that it is more beneficial to have one community court that has adhered to the underlying principles and is actively achieving its aims, rather than several that are not.

The NJC is located in Collingwood in the City of Yarra, which is an inner-city suburb of Melbourne, Australia. Collingwood was chosen as the location for Australia's first

community court as it was an area with high crime rates and high levels of social disadvantage. A large number of support services were also already operating within the area. Hulls announced the NJC project in April 2005 and the idea received criticism from opposition parties at the time, with one opposition party member calling the proposed centre the "apartheid of the justice system" (Napthine, 2006: 2289). Napthine made this comment while arguing that everyone should be treated equally before the law. Despite the opposition criticism, the NJC was established as a three-year pilot project (Murray, 2009), and has since received ongoing funding and now finalises 3500 to 4000 cases a year (NJC, 2022).

The introduction of the NJC helped to meet a number of commitments made in *Growing Victoria Together* (2001), the Attorney-General's Justice Statement (2004), and *A Fairer Victoria* (2005). In *Growing Victoria Together* (2001: 4), Victoria is noted as having "a proud tradition of community participation and strong local government". Within the document, there is a commitment to "have caring, safe communities in which opportunities are fairly shared" to be realised by "building cohesive communities and reducing inequalities" (Department of Premier and Cabinet, 2001: 6). This document places an emphasis on reducing inequality and disadvantage within communities. The Attorney-General's Justice Statement (2004) mentions expanding the use of problem-solving courts and a commitment to developing problem-solving approaches in the Magistrate's Court. *A Fairer Victoria: Progress and Next Steps* (2006: 12) aims towards "a fairer society that reduces disadvantage and respects diversity". It also promotes access to justice and places a focus on the overrepresentation of disadvantaged groups in the criminal justice system. Such policy commitments can seem like performative comments that are often not acted upon. However, the implementation of a community court that aims to address the underlying causes of offending, while also empowering marginalised and stigmatised community members, put the commitments into practice in Collingwood

The NJC was put on a legislative basis with the introduction of the Courts Legislation (Neighbourhood Justice Centre) Act 2006 (the NJC Act), which resulted in the introduction of the Victorian Neighbourhood Justice Division. The NJC Act states that the operation of the NJC should make the justice system more accessible and that therapeutic and restorative approaches should be taken in justice administration. The NJC Act therefore places the application of therapeutic jurisprudence and restorative justice on a legislative footing. Section 16E(4) of the NJC Act states:

> "the Neighbourhood Justice Division must exercise its jurisdiction with as little formality and technicality, and with as much expedition, as the requirements of this Act and the proper consideration of the matters before the Court permit".

This divergence from formality and technicality is a core difference between the NJC and mainstream courts. The passing of specific legislation for community courts is helpful in that it gives legitimacy to the actions of community court staff and ensures that important elements, such as informality and immediacy, are not ignored. The legislation provides guidance to community court planners and staff, and provides that the model must adhere to the underlying principles of the model in its operation, while also properly adhering to procedural justice in the court function of the centre. This legislation has helped to ensure that the NJC provides holistic support to those who offend within the community, and that the centre creates a community-orientated understanding of justice.

The court within the NJC is multi-jurisdictional and covers most summary criminal matters. The NJC is a venue for a Magistrates' Court and can also preside over the Victims of Crime Assistance Tribunal and the Children's Court. Tours can be provided of the Magistrates' Court and Children's Court in advance of hearings to allow clients to ask questions about the process and services available. Throughout the covid-19 pandemic, the NJC provided virtual tours of the building. Simple gestures such as providing tours and information in advance of hearings can help reduce the stress associated with attending court dates. The catchment area for having a matter heard in the NJC courtroom is the City of Yarra. Therefore, any person who resides in the City of Yarra, is a homeless person who is alleged to have committed an offence in the area, or Aboriginal and Torres Strait Islanders who have a close connection to the City of Yarra, can attend the court in the NJC. These criteria also automatically make those who meet them eligible to use any of the services offered by the NJC and its partner agencies, and this extends to community members who have no involvement with the court. This automatic eligibility is helpful in allowing clients to speak to service providers on the day, without waiting months to find out if they are eligible for appointments. Clients of the centre, who often have chaotic lifestyles, are also guided through the process instead of being left to navigate applying for service provision alone.

The NJC states that it has one overarching goal, which is to "make the places we live, work, and raise families safe and resilient through compassionate, tailored and appropriate justice" (NJC, 2020). According to the NJC Strategic Plan 2019-2023, the goals of the NJC are to prevent and reduce criminal and other harmful behaviour in the Yarra community, increase confidence in, and access to, the justice system for the Yarra community, and to strengthen the community justice model and facilitate the transfer of its practices to other courts and communities.

The NJC strongly aligns itself with community justice principles and acknowledges that justice should accommodate the specific needs of people and the places in which they reside, and aim towards outcomes that improve quality of life within the community (NJC, 2020). The importance of community involvement and community ownership of the NJC is emphasised as critical to its successful operation and is "not just a feel-good exercise" (NJC, 2012: 5). It is those who reside in the community that feel the impact of both crimes and how they are dealt with the most, and therefore should have their voices heard in relation to how justice is administered in their community (NJC, 2012). Those involved in implementing the NJC therefore participated in thorough community consultation to ensure that the NJC was designed to serve that community (Halsey and de Vel-Palumbo, 2018). It is noteworthy that such a model must work extensively in the beginning to guarantee that the operation will serve the community in which it is placed, and that community involvement is necessary to meet this commitment. A community court can only operate successfully if it is given legitimacy by the community it serves.

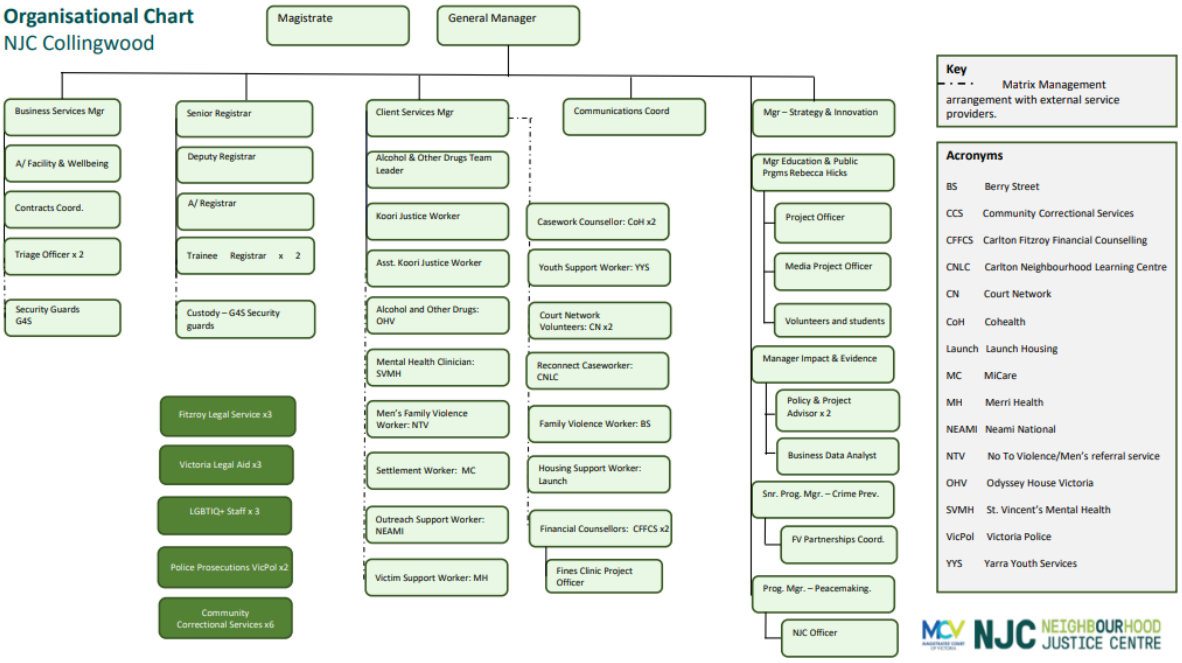
This reliance on the community does not come without issue as it can place undue responsibility on the public, while allowing the government to evade responsibility for crime problems (Lacey and Zedner, 1995), as mentioned in Section 1.4.3. Also the potential opportunity for vigilantism and discrimination is increased by providing the community with more authority (Karp and Clear, 2000), as is discussed further in Section 1.4.5. By focusing on the community and the common good, individual rights could be interfered with and what is good for the community could be considered more important than what is good for the individual (Duff, 2001), which is discussed in more detail in Section 2.2.3. Therefore, while the model gains legitimacy from the community, and it is crucial that communities have the chance to identify the issues they experience, this must be achieved in a way that does not disadvantage individuals. By utilising Karp and Clear's (2000:339) approach whereby "*restoration* of the community" is emphasised within this

model, alongside "*social integration* of marginalized individuals, particularly offenders and victims", community courts can gain true legitimacy and overcome the aforementioned concerns. The model has the potential to be a more legitimate way to achieve civil order than mainstream courts if it aims to address the underlying causes of offending, while also empowering marginalised community members, thereby creating a shift towards a more community-orientated understanding of justice.

4.2.2 NJC Structure

The organisational structure of the NJC is explained by the diagram below:

Organisational Structure of the NJC – provided by the NJC in June 2022



The Leadership Team at the NJC consists of the magistrate, general manager, strategy and innovation manager, client services manager, office manager, senior community lawyers, and the senior registrar. The Leadership Team meet regularly to ensure cohesion between the different teams at the NJC and to discuss how to solve any problems that have arisen in a collaborative manner.

The NJC building hosts a multi-jurisdictional court and tribunals, namely a Magistrates' Court, Childrens Court, and Victims of Crime Tribunal. The NJC is home to legal and justice agencies, such as Victoria Legal Aid, Fitzroy Legal Services, Community Correctional Services Victoria, and Police Prosecutions. Within the building, there are also a wide range of client services operating, which are discussed in more detail below

in Section 4.2.2(a). The NJC's Programme and Innovation Team work on initiatives aimed at crime prevention, community engagement, stakeholder engagement and education, and programme innovation (NJC, 2023). Each team within the NJC works in their own area and within their own expertise, but they also information-share and collaborate to provide a service to the client. The caseloads of staff at the NJC will inevitably vary as the support services attended will be determined by the needs of each individual client who attends the NJC, whether involved in the court or not. However, the court hears between 3500 and 4000 cases per year (NJC, 2022) and between 900 and 1000 clients are managed by client services each year (NJC, 2019). In addition, 77 crime prevention and community justice programme initiatives operate from the centre, and circa 20 community groups and agencies use the centre for non-court related activities on a regular basis (NJC, 2019). More information about the work that the NJC staff do will become clear in Section 4.3 when the findings of the interviews conducted with NJC staff members are discussed.

This section provides an overview of sectors of the NJC that operate differently to mainstream courts, including client services, community corrections, programme and innovation, problem-solving, crime prevention, and Koori justice.

(a) Client Services

There are 19 agencies co-located on site in the NJC that work together to provide services to NJC clients, whether they are attending the court or not. According to the NJC Strategic Plan 2019-2023, the NJC client service team provide: Aboriginal and Torres Strait Islander support services, alcohol and other drug services, chaplaincy service, financial counselling and general counselling, housing support, intensive mental health outreach support and mental health clinical services, LGBTI family violence support, male family violence perpetrator services and specialised family violence services, mediation services, and victims' support. This is an impressive range of services to offer within the one building to both court clients and community members within the catchment area of the City of Yarra. The amount of services provided also demonstrates the benefit of placing a community court in a location that has several support services already operating that can then collaborate with the community court.

A prominent aim of the NJC implementors was to "collaborate – not compete – with local service providers" (Victorian Auditor-General, 2011: 22). This goal was achieved by

working with established service providers in the locality prior to the opening of the NJC, and funding additional staff for these services who would be based in the NJC building and hold a dual commitment to the service provider and the NJC (Victorian Auditor-General, 2011). Funding a staff member for existing services who would be based in the NJC is an inventive way of combating any territorialism or fear around funding that the existing services may have had, particularly for services who are underfunded in the first instance. With this approach, existing service providers have a clear incentive to collaborate with the NJC in a way that is beneficial to both parties. The co-location and collaboration of services at the NJC facilitates the holistic support of clients in a system known as the Embedded Specialist Services Model. As mentioned in Section 1.6.4, this model is underpinned by psychological and social positivism. The NJC (2020) explain that "for people whose lives are chaotic the simpler the treatment pathway, the better the outcome". Staff at the NJC speak to those who are attending court in the NJC to discover potential underlying causes of offending. The clients are then linked in with support services that day following their hearing. Clients engage with the services and have a holistic treatment plan in place before they leave the building, without lengthy periods of time passing due to waiting lists or eligibility tests. The minimisation of referrals to services not located within the NJC building reduces the likelihood of the client disengaging due to the stress caused by trying to navigate phone calls and appointments with several separate agencies.

It could be argued that the above services are often available within the community and should be offered through a public health lens rather than through a criminal justice lens. For example, Collins (2021) contends that the judicial involvement in problem-solving court models reinforces the idea that social issues should be dealt with by the criminal justice system, rather than in the public health system. Further Ruane (2019) argues that "nobody goes to court to improve their health". In addition to this concern, there is a valid argument that rehabilitation and reintegration policies can result in the criminalisation of marginalised justice-involved persons, and can even contribute to further stigmatisation when those people do not meet middle-class norms (Kiely and Swirak, 2021). They note that through demanding engagement with support services, those involved in the justice system are forced to "become productive members of society who can avail themselves of opportunities in highly unequal and competitive societies" (Kiely and Swirak, 2021: 136). Rehabilitation and reintegration policies often focus on individuals taking charge

of their own desistance (De Giorgi, 2017). While these policies may recognise how necessary social reintegration is for those who are involved in the criminal justice system, they do not focus on "reducing material inequalities, provision of guaranteed housing or strategies of decriminalisation or decarceration" (Kiely and Swirak, 2021: 137). By placing responsibility for rehabilitation and reintegration onto the individual, the wider need for social reform is ignored (Carlen, 2012; Kiely and Swirak, 2021).

Desistance academics, such as Maruna (2017) and Burke et al. (2018), note that in order for desistance to occur, society as a whole also has a responsibility towards those who offend. In this vein, McNeill (2015: 204) argues "no amount of personal change can secure desistance if change is not recognised and supported by the community (social rehabilitation), by the law and by the state (judicial rehabilitation). McNeill (2017) claims that in order for transformative social reintegration to occur, a shift in perspective needs to also occur among those in power, and society as a whole. Kiely and Swirak (2021: 163) state "if we shift the focus towards reintegration as a mutual obligation, rather than a one-way street of justice-involved persons requiring rehabilitation and reintegration, we would be doing our share in ending the symbolic domination of rehabilitation and reintegration regimes".

Carefully considered community courts, such as the NJC, do not contribute to the further criminalisation of marginalised justice-involved persons. Instead, this model works to address the underlying causes of offending and maintain social order in a way that empowers stigmatised and marginalised members of the community. The NJC achieves this by creating the shift in perspective that academics, such as McNeill (2017) and Kiely and Swirak (2021), argue is necessary for true transformative desistance to occur. This paradigm shift does not involve bringing social issues into the criminal justice sphere, but rather embraces the holistic support of those who offend. This shift places criminal justice under the social justice umbrella and reduces the division between the person who has offended and the community, in line with what Maruna (2017) argued is the necessary next step for approaches that aim to support desistance.

Community courts can apply a public health approach to those who have committed a criminal offence as those who appear before the community court judge would have alternatively appeared before a mainstream court judge. The mainstream judge may not have had the power or resources to provide the individual with support for the underlying

causes of their offending, which could require engagement with several support services for a range of issues. There needs to be a formal process for people who commit crimes, even if the root cause of that crime is a social issue. Community courts provide the best of both, where those within the catchment area who have not committed a crime have access to a broad range of support services within one building where staff collaborate to meet their needs. The court within the model exists only for those within the catchment area who would have otherwise appeared before a mainstream court. In these instances, the person who offended has immediate access to the necessary support services required in a process that promotes the inclusion of those who may have been marginalised from society.

Ward (2014: 2) suggests that as long as the court aspect is guided by the principle of therapeutic jurisprudence and is one that aims to "assist people to construct positive self-identities and reintegrate into purposeful lives, and which empower people to play a role in their rehabilitation", this then creates a model that places the well-being of the individual at its core. However, as mentioned above, the responsibility for reintegration should not be placed on the individual alone. Community courts can support transformative social reintegration by eliciting the support of the community and the law and state, in line with social and judicial rehabilitation (McNeill, 2017). This approach, however, requires us to think about courts differently and to instead create a community hub, where the court function is ancillary, to be used only when necessary. In this way, community courts have the potential to meet the core overarching aims of assisting those who offend to address the underlying causes of their offending, maintain civil order in a more legitimate way than mainstream courts, while also empowering marginalised communities.

(b) Community Corrections

The NJC also houses a team of CCOs. This team supervises clients of the court who are sentenced to community-based sanctions and those who are released from prison on parole, or who are released onto community service orders. The CCOs assess whether the court client is suitable for a community correction order. The purpose of this assessment is to explore whether there are significant barriers that may impair the client's ability to successfully complete the order and if such barriers exist, to recommend to the court that sentencing be deferred until such a time as these issues can be addressed. Following a

deferral, the community corrections team work alongside client services, legal representatives, and at times, with the Neighbourhood Justice Officer (NJO) who manages the Problem Solving Process (PSP), in an attempt to provide solutions to any problems that would prevent the client from successfully completing the order. Clients can still receive support from client services once the community-based sanction has been completed.

The NJC (2020) state "the Centre's multi-disciplinary approach to information sharing and collaborative treatment and support management ensures a strong foundation for the successful completion of community correction orders". The NJC claim that those sentenced to community-based sanctions at the NJC have a better chance of completing their sentence because they will already be on a treatment plan by the time that the sanction takes place (NJC, 2020). Due to the co-location of services, CCOs are easily able to speak with service providers and become aware of any individual circumstances that could become a barrier to completing the order. By ensuring that clients are in a stable position before their sentence begins, they have a higher chance of successfully completing their community sanction.

(c) Programme and Innovation

One aim of the NJC is to contribute to the community justice model which involves implementing procedural and cultural changes. The NJC has a programme and innovation team that develops ways to make justice more accessible and they have created a number of service innovations. One such innovation relates to family safety services, which were developed to assist community members who are victims of family violence. These services include the first online Family Violence Intervention Order application in Australia, specialist security processes, and a 'one-stop-shop' of specialised services delivery model (NJC, 2020). The online Family Violence Intervention Order application allows victims to apply for an intervention order anywhere and anytime that they need to, and on any device. This innovative service was set up in 2015 on a pilot basis at the Hamilton, Portland, Ringwood, Sunshine, Warrnambool and Werribee Magistrates' Courts, and in 2016 the Royal Commission into Family Violence recommended a state-wide roll out of the service (NJC, 2020). The application has a Common Risk Assessment Framework that can flag risk factors to urge staff and magistrates to work quickly. It also includes safe contact options so the court will know when it is safe to contact the victim.

The application includes an escape feature that can close the form and redirect to Google quickly if needed and the application is encrypted and password protected to the point that the victim must go to the court in person to change the password (NJC, 2020). The Family Violence Intervention Order process is an example of an innovation where the utmost consideration has been given to the challenges that an applicant could face and how to provide a service that is both usable and safe. The updated order is also an example of how the NJC can act as an innovation hub to improve mainstream processes that can then be rolled out in mainstream courts.

The NJC is piloting an Online Guilty Plea service with the aim to improve access to justice, reduce and prevent court delays, and save on costs for both the court and the client (NJC, 2020). The client first receives a summons pack by post, then they complete the Online Guilty Plea form which is processed by the court. The court can reject the plea and schedule a hearing, or it can issue a fine which is what happens in most cases (NJC, 2020). The system is cost-effective and time-efficient as it saves the court, police, and the citizen the time and money associated with attending a hearing for a minor offence (NJC, 2020). Another innovation implemented in the NJC is a court navigation system for those who do attend the court, which is called MyCase. MyCase is an online system that gives court clients real-time information about their hearing through text (NJC, 2020). MyCase allows court staff and legal representatives to send clients updates about what is planned for them during the day, such as support service referrals, any changes in the status of their hearing, and can let them know where to go and who to meet with (NJC, 2020). The system aims to coordinate efficiently cases within the court and to limit the stress of waiting for court clients. The NJC demonstrates that courts can utilise technology in a helpful way and that old courts processes can be adapted to suit modern clients.

(d) Problem-Solving

The NJC's legislative footing facilitates the creation of innovative processes to deal with offending. The PSP is one such innovation. The NJC (2020) describes the PSP as:

> "an intensive intervention that centres around a meeting at which the person before the court (who we'll call the client), their legal representatives, case workers, and family or friends find practical pathways to resolve issues that, if ignored, will hinder rehabilitating".

The PSP was created in the months following the opening of the NJC through collaboration between the NJO, client services, community correctional services, police prosecutors, Fitzroy Legal Service, Victoria Legal Aid, the magistrate and registry staff (Jordens and Richardson, 2014). The PSP can be invoked at any stage from the time of the client being charged to the time of a bail application, or when serving a community correction order, as long as the client enters into it voluntarily. The NJO assesses the client's suitability to participate in the process, gains informed consent from the client and oversees the meeting. The NJC only returns a report of actions agreed in the meeting to the court, while everything else is confidential. To prevent the PSP contributing to net-widening, any cases that can be dealt with through a different means do not tend to be referred to the PSP, which keeps spaces free for the most complex cases (Jordens and Richardson, 2014).

The aim of the PSP is to find practical solutions through the collaboration of participants. However, the NJC (2020) note at times, through the course of the meetings, restorative conversations can occur. Jordens (2017) explains "the process we use to problem solve encourages everyone to bring their expertise and understanding to the table, no one more so than the person before the court". Although the PSP has restorative elements, Jordens and Richardson (2014) explain that victims do not tend to be involved in the PSP because the offences mostly lack an individual victim. That said, it must be noted that the community itself should be considered a victim in keeping with community justice. Jordens and Richardson (2014: 256) clarify that "cases referred to problem solving usually involve clusters of offences driven by illness, unmet need or behavioural disorders, very often committed in environments where those committing the offences are victimised themselves". Another difference between a restorative justice conference and the PSP is that the focus is placed more on the practical and achievable outcomes rather than emotional transformations (Jordens and Richardson, 2014). For the PSP to be effective, it must be premised on a belief that clients have the ability to meaningfully engage in finding solutions to their own problems (Jordens and Richardson, 2014). As is typical of community justice approaches, the PSP at the NJC was not informed by any particular theory as it developed as a practical response to a perceived need at the centre. The PSP is, however, underpinned by the same theories that underpin the NJC as a whole, such as therapeutic jurisprudence and restorative justice (Jordens and Richardson, 2014).

(e) Crime Prevention

The NJC has a team dedicated to crime prevention and community justice, which focuses on taking proactive approaches to reduce crime in the area. This proactive approach is achieved by taking a "strengths-based approach", which concentrates on strengthening the positive aspects of the community rather than on the problems that exist (NJC, 2020). Working closely with the community has the added benefit of allowing the team to gather intelligence about the community which can be used to inform the court. However, the NJC (2020) acknowledges that taking on the responsibility and shared accountability for community safety in the area can be "time-consuming, challenging, and at times confrontational". However, the NJC claim that it is through these difficult conversations and collaborative solutions that the needs of all members of the community can be met. The community should be informed from the beginning as to what a community court is capable of achieving to maintain trust between the community and clients.

The NJC crime prevention team is involved in a community collaboration project called Smith Street Dreaming which is "a one-of-a-kind Aboriginal festival that draws people from near and far to celebrate Aboriginal culture, and promote respect, peace and harmony for everyone who live, work and gather on Smith Street" (NJC, 2021). Smith Street is a street in Collingwood, around the corner from the NJC, where there has been a constant tension between the Aboriginal community and the business community. Public drinking and rapid gentrification exacerbated the problem (NJC, 2021). The Smith Street Working Group was set up to try and improve relations and create a better image of Smith Street. The Working Group decided to host a live music festival called Smith Street Dreaming to celebrate Aboriginal culture, while also bringing consumers to the area. The first festival took place in 2013 and was considered a huge success, and had the added benefit of improving relations on Smith Street (NJC, 2021). Smith Street Dreaming is one of the many collaborative crime prevention activities that have been set up in the area by the Smith Street Working Group. The NJC (2021) note that there has been a decline in police call outs to the area largely credited to the group and its work.

Addressing social problems such as public drinking through a community court initiative could be criticised when analysed through net-widening and social control theories. Currie (1985) argues that control theory does not adequately account for the impact of social inequality on crime. However, this crime prevention initiative does take the social

inequality aspect into account and aims to prevent criminalisation of the social behaviour by improving social bonds in the community and limiting social exclusion and marginalisation. This crime prevention initiative demonstrates how a community court can meet its core overarching aims of working to address the underlying causes of crime, maintain civil order, and empower marginalised communities. The NJC demonstrates how to engage positively with community members that have been marginalised and stigmatised to work to address problems in a community-orientated way that benefits all stakeholders. As a result, the NJC has worked to prevent a social issue from becoming the root cause of criminal activity, therefore also preventing net-widening from occurring. Smith Street Dreaming is an example of how collaboration and engagement with the community, and having difficult conversations, can have an unforeseen and longstanding positive impact on crime rates. However, it also provides an example of the unexpected outcomes that NJC programmes can have, which are incredibly difficult to quantify in an evaluation.

(f) Koori Justice

The NJC employs Koori Justice Workers who operate within the client services team and provide a dedicated service to Aboriginal and Torres Strait Islander community members. The Koori Justice Worker engages with clients through community outreach and encourages them to attend their court dates, and advocates for them when navigating through various services. Aboriginal people are over-represented in the Australian justice system, which is due to social, economic and cultural disadvantage (NJC, 2020). A significant finding of the 1991 Royal Commission into Aboriginal Deaths in Custody is that this over-representation of Aboriginal people in the criminal justice system strongly correlated with the disproportionate number of Aboriginal deaths in custody.

The NJC places an emphasis on court clients participating their own hearing, and in the process of finding solutions to problems they are experiencing that may be the cause of their offending, through the PSP, further explained above in Section 4.2.2(d). The PSP has the added benefit of allowing Aboriginal clients to exercise self-determination by giving them the opportunity to express their own view, which is recognised as a fundamental right of Indigenous peoples (United Nations, 2007). Dodson (1993) states that “time and time again Indigenous people express the view that the right to self-

determination is the pillar on which all other rights rest". The empowerment of having a say in the outcome of their own case is extremely important to Aboriginal people.

Since the outset, the NJC has sought to develop a strong relationship with Aboriginal people and have also wanted to contribute to cultural understanding and community relationships between Aboriginal and non-Aboriginal people in the community (NJC, 2014). The NJC puts an emphasis on providing justice that is culturally appropriate to indigenous communities and building relationships with the Aboriginal community in the City of Yarra. The NJC has given thought to the long and troubled history of the area and are careful to acknowledge how this history can impact Aboriginal people's attitude to crime. Miller (2017: 133) explains: "colonial oppression, together with marginalisation and frequency of involvement with the criminal justice system, has also contributed to a culture where crime can be a source of pride and a form of resistance against long-standing oppression".

Every Tuesday morning the NJC provides a culturally appropriate breakfast to local Aboriginal people which also provides an opportunity to strengthen relationships between the local Aboriginal community and the centre. Inviting the Aboriginal community into the centre in a respectful way shows that the NJC is a safe environment for them (Smith, 2018). Aboriginal Hearing Day (AHD) is a dedicated day every month specifically for Aboriginal clients to attend the NJC Magistrate's court. The AHD was implemented due to the low court attendance rates and the lack of Koori community members accessing the NJC (NJC, 2020). However, the NJC and AHD do not operate like the Koori Court, as Respected Elders are not in attendance for matters heard at the NJC. All matters relating to Aboriginal clients are scheduled to be heard on AHD, or are adjourned to the AHD the following month. The Koori Justice Worker is always in attendance on AHD to guide Aboriginal clients and make sure that they feel comfortable. On AHD, culturally appropriate videos are shown in the waiting area, culturally appropriate materials are used, and a culturally appropriate lunch is served (Bassett and Clarke, 2012). Tailoring the NJC to be an appropriate environment for Aboriginal clients one day a month is a gesture that shows respect to Aboriginal clients and promotes their ownership of the building.

4.2.3 Location and Design

The placement of a community court is an important element that can determine its overall success and acceptance by the community (Murray and May, 2018). The site of the NJC in Collingwood was considered a good location for the centre because it was an area with high crime rates and social disadvantage (Richardson, 2013). The building that eventually became the NJC was empty for ten years before the NJC was established and was in danger of becoming a site where anti-social behaviour and crime could thrive (NJC, 2020). It was important to the implementors that the building chosen for the NJC would already have meaning in the community which is why they chose a former technical education centre that was built in the 1940s. The building is therefore identifiable to and is associated with the community within the City of Yarra. Murray (2009: 87) explains "the community serves as a fulcrum for a neighbourhood court and the local positioning can potentially make the court more accepted by the neighbourhood and more responsive to its needs". The NJC is surrounded by high rise public housing and many residents attend services in the centre (Murray and May, 2018). The NJC is very accessible by public transport which is crucial in terms of spatial justice (Murray and May, 2018). A community court does not exist for justice outcomes, but is a centre of support where the community can gather and connect (Murray and May, 2018; Smith, 2018). For that reason, consulting with the community about the placement and building used for a community court is critical.

The NJC features a courtroom, meeting rooms, offices, custody cells, and a café (NJC, 2020). Architectural design can be used to strengthen principles of therapeutic jurisprudence and community justice, and the NJC is possibly the only community court that has considered this in every aspect of the building. The NJC claims that the design of the building is imperative for it to deliver its core objectives. Workshops were held with stakeholders and Yarra community members to design the NJC, and during the pilot period of the NJC, design decisions were reviewed and tweaked. It is important to note that the courtroom is not the main focus of the NJC building. The court is located on the first floor and to the side so that it is not easily visible to those who are not using the court. The placement of the court was a purposeful decision on behalf of the NJC designers, in both a practical and philosophical sense (NJC, 2020). This design decision allowed community residents who were not attending the court to use the centre without

disturbing the court and without feeling like they are in a courthouse. This design benefits clients of the court also as they do not need to gather on the street to await their hearing. Removing the court from the main view of clients prevents the NJC from becoming 'the Collingwood Courthouse' (NJC, 2020).

It is crucial that community members do not feel intimidated when entering the centre to foster a sense of community ownership. Clients of the court enter through "concierge-style security, rather than warning signs and x-ray security scanning" (NJC, 2012: 33). There are no restrictive barriers or permissions required to enter the NJC and community members can walk through the NJC floors to use meeting rooms. This freedom does not extend to staff offices, but staff and citizens share all communal spaces. A lot of thought was put into designing the NJC in such a way that would make victims of crime feel safe. Certain elements were added such as a specific entrance for victims to use so that they do not come into contact with the defendant, quiet rooms for victims of family violence, and video link facilities that allow victims to give evidence remotely (Victorian Department of Justice, 2010). The quiet rooms are especially for women who are attending the court due to family violence and are accessible only to staff. These quiet rooms feature sound-proof child play areas so that children cannot hear what is being discussed but can be visible (NJC, 2020). There is a children's playroom on the ground floor, which is used to meet with clients with children, but it can also be used to host supervised parental visits (NJC, 2020). The playroom is not exclusively for those attending the court and it can be used by parents who are attending community meetings in the NJC. The NJC building is also maintained to a very high quality as a sign of respect to the community (NJC, 2017).

The design of the NJC has also been used to place an emphasis on transparency. Where mainstream courts use wooden doors, the NJC court uses ceiling-to-floor glass. The main reason for this is to show clients of the court what they are walking into and represents the transparency of the court. The courtroom itself features large windows to create a bright environment and a connection to the streets outside. This is an attempt to bring "community life into the court and reminds everyone that the decisions made in the room affect many people and hint at what can be lost and what can be gained" (NJC, 2020). The connection to the outside is also hoped to create a sense of normality to reduce the stress associated with attending court. The NJC offices also feature large windows so that the staff can be seen by the public to promote transparency and community ownership (NJC, 2020). Halsey and de Vel-Palumbo (2018: 188) hold that the NJC was trying to

avoid the "the formality and hierarchical structure" that a mainstream court building can project. Smith (2018), a Senior Koori Justice Worker, has written about the importance of open space and a connection to the outside within the building, especially for Aboriginal clients. The inclusion of a balcony on the first floor was another design element that has practical advantages such as allowing people attending the court to stay close to the courtroom and go outside without having to leave the building. While the balcony is practical for all court attenders, for Aboriginal people it is especially considerate because it prevents complete confinement within the building. Smith (2018: 204) notes that on AHD, "at least 90 per cent of people who have court on that day will sit out on the balcony with their support people, rain, hail or shine because it is not in the confinement of the building (even though it is beautiful space)".

Art from professional artists in the Yarra community have been displayed in the NJC for over a decade and the centre hosts two art exhibitions every year. The community art "fundamentally changes the very nature of what is, in effect, a statutory agency within a complex justice landscape" (NJC, 2020). The art gives the community a chance to express itself and helps the NJC to be a more comfortable environment. Art is used strategically in the NJC and is chosen based on what the clients in that area of the centre could be going through. For example, public spaces in the NJC will feature art of public spaces within the community such as a street scene. However, in rooms used for legal representatives and case workers to meet with clients, the art portraying the artist's personal journey is displayed (NJC, 2020).

4.2.4 The Judge

A core element of community courts is that only one judge presides over the court proceedings. This is considered a major advantage because it provides consistency to clients and allows them to build a relationship with the judge, which can have an impact on accountability and compliance levels. The judge is also able to pay close attention to each case and have a deeper knowledge of each individual's personal circumstances (NJC, 2012). Magistrate David Fanning presided over the NJC from its inception in 2007 until 2021. Magistrate Fanning had experience as both a lawyer and social worker, and advocated therapeutic jurisprudence and restorative justice practices before taking up the role at the NJC (NJC, 2020). Magistrate Noreen Toohey has since taken up the role of

magistrate within the NJC and is noted as having a "deep interest in therapeutic jurisprudence" (NJC, 2022). Under Section 16E(3) of the NJC Act it states:

> "In assigning a magistrate to the Neighbourhood Justice Division, the President must—
>
> (a) have regard to the magistrate's knowledge of, or experience in the application of, the principles of therapeutic jurisprudence and restorative justice; and
>
> (b) consult with the Chief Magistrate of the Magistrates' Court".

The requirement of appointing a magistrate with knowledge or experience of therapeutic jurisprudence and restorative justice is indicative of how important these principles are to the operation of the NJC, and sets the court at the NJC apart from mainstream courts. While it is important to note that therapeutic jurisprudence and restorative justice principles may be applied by certain judges in mainstream courts without a legislative basis, the requirement for a magistrate at the NJC to have knowledge or experience of these principles is still a significant difference. Proponents of therapeutic jurisprudence emphasise that therapeutic jurisprudence principles should not outweigh other values in the legal process, but that they should be considered and used where relevant (King, 2010). The NJC (2012: 4) acknowledge this and state that "without diminishing the court's authority, the magistrate applies an 'ethic of care' in court to increase participants' understanding of processes and outcomes and make people feel more comfortable about participating in court".

Another purposeful design within the NJC relates to the height of the magistrate's bench, which is lower than in traditional courts. The defendant sits beside their legal representatives and in line with the prosecutors so that they can be front and centre of the hearing. The reason for the lower bench is so that the magistrate and the defendant can be at eye-level which promotes dialogue between them. It also enables the defendant to participate fully in their own hearing, which is of particular importance to Aboriginal clients, as mentioned in Section 4.2.2(f). In the NJC, the magistrate speaks directly to the client about the circumstances surrounding their own case which is determined to strengthen the relationship between the client and the judge, and it is hoped that this will increase the client's respect for the law (Chan, 2012). Interestingly, there has been a move

away from the judicial problem-solving approach in Australia. King (2010: 137) notes that "in Australia there is a move away from the rhetoric of problem-solving towards a concept of solution-focused judging". This type of judging highlights the ability of the client to participate in solving their own problems and creating plans to address their own issues (King, 2010), which is a common practice in the NJC. The client is always invited to ask questions and can make suggestions about their own case that the magistrate may acknowledge (Chan, 2012). This approach is also in line with restorative justice approaches, as they aim to responsibilise offenders (Robinson, 2008). Robinson (2008: 439) argues "in this respect, then, contemporary rehabilitative and restorative approaches share a communicative or 'moralizing' function". Robinson (2008) contends that late modern rehabilitative approaches align with punitive trends in order to remain legitimate. In doing so, these approaches return the focus to the moral consequences of offending, demonstrating that new rehabilitative initiatives require the responsibilisation of those who offend. However, as mentioned in Section 4.2.2(a), the responsibility for reintegration should not be placed on the individual alone, as while personal accountability is important, transformative desistance requires society to also take responsibility towards those who offend (Maruna, 2017; Burke et al., 2018; McNeill, 2017; Kiely and Swirak, 2021).

The magistrate at the NJC often defers the sentencing hearing to allow clients to access pre-sentencing supports, but perhaps the most important stage at which to apply therapeutic jurisprudence is during the sentencing hearing. During the sentencing hearing, the magistrate can tailor the sentence to the individual client based on the information provided by client services, so that they have the best chance at rehabilitation. Murray and May (2018: 223) explains "sentencing offenders divorced from a recognition of their life challenges resigns the legal system to a recidivist trap". The magistrate has the capacity to apply sanctions innovatively so that it is a meaningful sentence to that client (Chan, 2012). This does not mean that jail sentences are never applied in the NJC; the magistrate can impose a custodial sentence where appropriate. However, it is noted that to many court clients, a jail sentence would be the easier and most familiar option and that addressing the problems that lead to their offending is a more difficult sanction. Chan (2012: 276) explains "while creative sentencing may seem 'soft' on paper, in reality such orders demand a great deal more personal strength, change and sacrifice from people than waiting out a jail sentence". The approach taken in the community court can be

difficult for those who offend as it involves addressing the issues that led them to offend in the first place. As such, it is particularly important for community court judges to act in accordance with therapeutic jurisprudence principles to limit the negative outcomes on the individual's well-being. In addition, judges should be acutely aware of the potential to over-punish an individual in the guise of assistance. This core criticism of penal welfarism (Rubin, 2011) could potentially also be applied to the community court model. Committing to therapeutic jurisprudence means treating people who interact with the criminal justice system with respect and with consideration for how traumatic it can be, while also fully adhering to due process rights.

Post-sentencing support is a feature of the NJC also. Judicial Monitoring Hearings between the magistrate and the client take place during the community-based sanction. This is an opportunity for the magistrate to observe the client's progress, provide encouragement, and to offer additional support to the client if needed. The role of the judge at the NJC is clearly much broader than that of a judge in a mainstream court, which is why it is important to appoint a judge who is committed to the court model and the principles that underpin it.

4.2.5 Outcomes

Although community courts have the potential to have a positive impact on a community, there is no denying that a substantial financial investment is necessary in order to give it a chance at success. Approximately $9 million was invested in the NJC before it was opened and its initial budget for the first four years of operation was $15 million (Halsey and de Vel-Palumbo, 2018). Planned funding for the NJC was increased to a total of $50 million in the 2009-2010 budget due to an extended commitment to the project (Victorian Auditor General's Report, 2011). It is understandable that for such an amount to be invested in a criminal justice innovation, funders will require adequate proof that the money is returning worthwhile results. However, it is not easy to demonstrate statistically significant decreases in recidivism or crime rates in a short period of time when programmes may have small participant numbers and receive varied treatment. There are also benefits of community courts – felt at a community level – that are difficult to quantify and display. For example, the reduction in tension between the Aboriginal community and business owners, and resulting outcome of fewer police call outs due to Smith Street Dreaming as discussed in Section 4.2.2(e). The NJC has been closely

monitored since it opened, and has been the subject of several large evaluations, but it has experienced difficulties expressing the non-traditional outcomes of the centre and proving that the NJC is worth the resources that it receives (Morgan and Brown, 2015). However, cost-benefit modelling was conducted by the Victorian Department of Justice in 2010. This study took into account changes in re-offending, number of offences, severity of re-offending, court order completion, breaches of intervention orders, differences in sentencing outcomes, guilty pleas, and completed community-work hours (Victorian Department of Justice, 2010). The NJC was found to have between a $1.09 and $2.23 return for every $1 invested in the centre (Victorian Department of Justice, 2010). The analysis also found a positive net benefit of $201,002 over five years due to changes in re-offending rates (Victorian Department of Justice, 2010).

An added challenge in the evaluation of community courts is that their outcomes are impacted heavily by external factors outside of the centre's control (Halsey and de Vel-Palumbo, 2018). A range of factors may result in a crime rate decline in an area which makes it difficult to pinpoint a single factor as the cause (Ross et al., 2009, 2015; Halsey and de Vel-Palumbo, 2018). Ross conducted an evaluation of the NJC in 2015 and discovered several challenges that prevented him from attributing positive community changes to any one factor, including the NJC. Ross (2015: 1) notes:

> "the complexity of the program model and in particular, its reliance on engagement with community service providers, the relatively small scale of many programs and the difficulty in attributing outcomes to a single cause".

No two clients receive the same treatment at the NJC due to the emphasis on individualised justice, which increases the complexity when it comes to attributing outcomes to NJC programmes (Ross, 2015). A potential solution to this problem is proposed by Ross (2015) who explains that evaluations should focus on areas where targeted intervention programmes took place in comparison to areas where no specific form of intervention was applied. Despite all the challenges, the NJC has faced in terms of attribution and measures of success, the persistent evaluation of the centre and the visibility of positive outcomes has been paramount to the centre receiving ongoing funding. However, there is an obvious need to look beyond traditional criminal justice measures when evaluating centres such as the NJC.

The sub-sections below will outline the main findings from the evaluations conducted on the NJC, which relate specifically to crime rates, recidivism rates, compliance, and community satisfaction.

(a) Crime Rates

When first established, one of the main goals of the NJC was to reduce property crime, particularly burglary and car theft, in the City of Yarra (Ross, 2015). It could be said that the NJC achieved this goal, as in the years following its implementation, property crime in the City of Yarra fell by 40%, and the area experienced a 31% fall in crime overall (Ross, 2015). When the Victorian Department of Justice (2010) compared total crime rates in the City of Yarra in the two years before the NJC opened (2004-2006) and the two years following the NJC's establishment (2007-2009), it was found that residential burglaries fell by 26%, vehicle theft fell by 38%, and other burglaries fell by 20%. While these findings speak to the positive impact that the NJC had on crime rates in the area, the problem of attributing a decline in crime rates to a single factor remains. Halsey and de Vel-Palumbo (2018: 185) explain:

> "it is almost impossible to know whether and to what extent changes in drug markets, policing priorities and practices, the pace of gentrification in particular areas, levels of unemployment, school retention rates, and more, played into this scenario".

It must be noted that a decrease in property crime was evident across the entire country of Australia in the same time period, which has been linked to changes in population, security, policing, and drug consumption (Wan et al., 2012; Weatherburn and Holmes, 2013; Ross, 2015).

(b) Recidivism Rates

In order to discover a 10% change in recidivism rates, it is recommended that both the group and comparison group have a minimum of 200 people (Colledge, Collier and Brand, 1999). A sample would therefore have to be collected over a long period of time to overcome the issues faced due to small participant numbers (Ross, 2015). The Victorian Department of Justice (2010) published findings from a study of 100 offenders who received targeted intervention at the NJC compared with 200 offenders who were sentenced at mainstream courts. Both groups were observed over an 18-month period and

findings showed that those who had engaged with the NJC were 14% less likely to reoffend. While this finding again displays the positive impact of NJC practices, it is still not possible to attribute the lower recidivism rates entirely to the work of the NJC as desistence is a complex and individual process.

A follow-up study was conducted in 2014 for the years 2009-2011. This study involved 187 cases from both the NJC and a comparison group from mainstream courts, both of which were observed over a two-year period. The results of this study showed that 33% of the NJC clients had reoffended compared to 44% within the comparison group (Ross, 2015). However, it should also be noted that those within the NJC group had a higher number of prior offences and tended to be higher risk on average than those within the comparison group (Ross, 2015). The NJC (2019) states that there is a 25% lower rate of re-offending for clients who attend the NJC in comparison to those who attend other magistrates' courts in the jurisdiction.

(c) Compliance

Compliance with community-based orders is a way of measuring offender accountability. Ross (2015) argues that if an offender takes accountability for their actions, they are more likely to complete their community-based sanction. Ross et al. (2009) contend "there is strong evidence that there are higher levels of confidence by justice system participants at the NJC and that this in turn generates higher levels of meaningful involvement in justice processes". Between September 2008 and 2009, the successful completion rate of community-based orders at the NJC was 75.4% compared to 65.2% for state-wide successful completion rates (Victorian Department of Justice, 2010).

Ross (2015) notes that the risk level of offenders is relevant to measuring compliance rates as offenders will be in receipt of different services depending on their individual risk level. It was discovered that the NJC has more of an impact on those at a higher risk level. Ross (2015: 5) explains:

> "where the NJC generated substantially better results than the other sites was in the high risk and moderate risk cases, where the unsuccessful completion rates were less than half that at comparable sites".

There was no significant difference between the unsuccessful completion rates with regards to low-risk offenders and those at comparable sites (Ross, 2015). However, these results are an indication that NJC clients have higher levels of accountability, and that the provision of support services for high-risk offenders increases the likelihood of those offenders completing a community-based order. The NJC (2019) states that those who engage with community corrections orders at the NJC are three times less likely to be breached when compared with the state-wide average.

(d) Community Satisfaction

The Victorian Auditor-General's Report (2011: xi) states:

> "[the NJC] is having a positive impact on its clients and on the local community by addressing factors contributing to local crime and disadvantage in the City of Yarra, for example, through targeted crime prevention initiatives".

Making sure that the community supports a community court is vital as it is "a likely key determinant in the success and community acceptance of a neighbourhood court and the wider community justice model of which it forms part" (Murray, 2009: 87). It is the community that decides whether the NJC has legitimacy (Murray, 2009). NJC clients are members of the community also, so it is important that they have a positive experience with the centre. NJC clients were found to rate their NJC experience as highly satisfactory and that engagement with the NJC had increased their confidence in the justice system (Richardson, 2013).

A future challenge may involve the finding from Victorian Police that people from outside the City of Yarra are responsible for 75% of the crime committed there (NJC, 2019). This is a worrying trend as it means that 75% of those who impact on the community's quality of life will not meet the inclusion criteria to have their case heard before the NJC or access the services there. This challenge could result in waning community support of the centre and could impact evaluation findings in a negative way, which could eventually impact on the centre's funding.

4.2.6 Conclusion

Documents from the NJC and the Victorian Government, academic articles, and independent evaluations all demonstrate that the NJC is a successful community court model, which is having a positive outcome on the community. The goals of the centre mentioned in Section 4.2.1 are being met, as can be seen from the available outcomes. Despite this, the model has not been replicated anywhere else in Australia. The NJC had a strong political champion in Rob Hulls and the centre's legislative footing helped to give it legitimacy within the criminal justice system. The NJC has a clear commitment to the community and the idea of community ownership is very important to the ethos of the NJC. Prior to and following the establishment of the NJC, the planners and staff engaged extensively with the local community and with existing support service providers in the area. Planners were careful to include community members when developing the NJC and staff work to include community voices to this day.

Innovations such as the PSP and programmes such as the Family Violence Intervention Order were developed in consultation with community members and incorporate staff expertise. These initiatives also demonstrate the ability of the centre to act as a hub where innovations can be trialled. Consideration has been given to providing culturally appropriate justice to Aboriginal community members. Thought was given as to where best to place the NJC and how to design the building so that "restorative justice has been written into the architecture" of the NJC (Johns, 2009). The courtroom is not the main focus of the NJC building, which further signals that the community comes before the court. Only magistrates with a commitment to therapeutic jurisprudence and restorative justice can preside over the court in the NJC.

It is difficult to measure the exact impact that the NJC has on those who use the support services and those who come before the court, but the impact certainly cannot be measured through recidivism and crime rates alone. Continued monitoring and evaluation of the centre is required to ensure that there are strong arguments for keeping the centre open and receiving government support. Past evaluations have demonstrated that the NJC does save government spending on justice due to lower recidivism rates and due to fewer prison days (Victorian Department of Justice, 2010). The NJC will experience challenges over time, but it has demonstrated its ability to adapt to situations that arise, and it is likely that they will use their experience to adapt again in the future. While parts of the

NJC clearly show that inspiration was taken from Red Hook and the NLCJC, it is just as clear that the NJC was thoughtfully and successfully tailored to the City of Yarra.

The following section, Section 4.3, will discuss the findings from eleven interviews conducted with current NJC staff and people who were previously involved with the NJC. These findings will further expand our understanding of the establishment and operation of the NJC, along with the challenges it experiences.

4.3 Australian Findings

As mentioned in the introduction, community courts are under-theorised. For this reason, their theoretical framework is usually formed using disparate theories to gain legitimacy according to the political landscape in a particular country at that time. This thesis aims to highlight this, while also providing a clearer theoretical framework for the community court model. Each community court model must be tailored to the community it is situated in, and therefore each model will be different and will have different legitimating factors that underpin them. In this section, the theoretical underpinnings and legitimating factors of the NJC will be considered through the empirical evidence.

This section details the findings from the semi-structured interviews conducted with individuals who currently work at the NJC, or who were previously associated with the centre. The section begins with a discussion of the theme of community justice and it contains a number of sub-themes: the centre as a custodian of community justice, 'community' before 'justice', collaboration, relationship-building, and community ownership and advocacy. The remaining themes that are examined are: accountability, innovation, location and design, client-focused, evaluation and monitoring, and the judge. Several lessons can be taken from what the NJC does well, and from the challenges it experiences. In Chapter Seven, these findings are compared with the NLCJC experience to establish evidence-based recommendations for Irish policy-makers.

4.3.1 Community Justice

Community justice is a principle that aims to build upon the existing strengths within a community and utilise these strengths to create better outcomes for those who come into contact with the criminal justice system. The principle involves giving thoughtful consideration to how crime, and the responses to crime, impact community life (Karp and Clear, 2000). Community justice is the main underlying principle of community courts. It is clear from the empirical evidence outlined below, that community justice is a principle that guides the operation of the NJC and is evident in the overall culture of the centre. There is an emphasis on the commitment to community justice above all else – including criminal justice. The NJC acts as a custodian of community justice and emphasises collaboration, relationship-building, and community ownership of the centre. Therefore, community justice is a core theoretical underpinning of the NJC and the model

seeks to gain legitimacy through this emphasis on community justice. It is also through this commitment to community justice that the NJC creates a community-orientated understanding of justice through which the centre can achieve a more legitimate approach to achieving civil order than mainstream courts, and helps to address root causes of offending, while also empowering marginalised members of the community.

(a) Centre as Custodian of Community Justice

The NJC can be considered a custodian of community justice as the principle is at the heart of everything the centre is trying to achieve. In the NJC Strategic Plan 2019-2023, a core goal of the NJC is to "strengthen the community justice model" (NJC, 2019: 7). The NJC took inspiration from Red Hook and the NLCJC, both of which cited community justice as an underlying principle. It is therefore logical that the NJC would also be built on a strong community justice foundation. According to several interviewees, the commitment to community justice as the underlying principle, and within the culture of the NJC, must remain strong. Provided the centre is dedicated to community justice, Isla states "policy will largely take care of itself because people need rules, and they need ways of thinking and behaving when they work".

The NJC's commitment to the underlying principles of community courts is also captured by Noah:

> "One thing that makes it such a great place to be is that basic philosophy, that commitment to community, commitment to social justice, commitment to wanting to be innovative or commitment or just wanting to serve the community, belief in the value of the community, and a belief in therapeutic justice principles. That is something that just really pervades, really exists through all those people who come along and do stay and do well, just have all of that".

It is important that staff at the centre also commit to the principle of community justice. Almost every participant stressed the need for staff at the NJC to have "shared values". It could be argued that community court staff must become a community within themselves. Shaw and McKay (1942), for instance, recognised the importance of shared values within a community to ensure cohesion among groups. In the NJC, these shared values must specifically be represented by a commitment to community justice, and this commitment must be preserved and promoted by the NJC as a whole.

The commitment to community justice is threatened if the wrong person is hired. Every interviewee spoke about the danger of hiring someone who does not fit the ethos of the NJC. Arthur explains that the NJC became more aware of what their culture was as an organisation in the first two or three years, which made them more confident about who they need to recruit to fit within that culture. Community justice is "a vehicle of social justice" (Clear, Hamilton and Cadora, 2011: 2) and it is acknowledged among participants that staff members need to be dedicated to social justice to work at the NJC. Furthermore, community justice is both "a strategy and a philosophy" (Clear, Hamilton and Cadora, 2011: 2). Grace notes that hiring people who do not subscribe to the principle can "pollute the atmosphere" of the NJC, while Mia holds that hiring the wrong person causes "slippage in the culture" of the NJC. These participants both observed that the culture takes effort to both create and to maintain, but it can change with one bad hire. Those who thrive in authoritarian environments are not well-suited to the NJC, according to Mia, and the authoritarian attitude can quickly influence other staff members. Notably, Lily points out that "there's a lot of really strong personalities, there's really a lot of passion" among the staff members at the NJC, which means that a "box ticker" will not fit in well there. As a custodian of community justice, the NJC must work to protect itself from those who do not commit to community justice in all aspects of their work.

(b) 'Community' before 'Justice'

The traditional criminal justice system views punishment of the offender as the solution to the problem of crime (Ashworth and von Hirsch, 1993). However, community justice recognises that a holistic approach to crime is necessary, considering the offender, those close to them, and the community as a whole (Clear, Hamilton and Cadora, 2011). To increase the chance of the community accepting a community court, it became clear that the community must come before the justice system. The focus on the community and their needs is acknowledged as important by interviewees. Isla notes that an aim of the NJC was to be "faithful to the community" and believes that they fully achieved this goal. The justice system is only employed when necessary, according to Isla, who explains that the NJC focuses on resolving problems outside the remit of the formal legal process wherever necessary. There is general agreement that the justice system and the court should not come before the community itself. Noah explains:

> "The obvious focus on the community that we have and putting that provision of services to the community at the forefront of what we do, rather than saying, well, how do we keep the mechanisms of the court going as our priority, which potentially kind of leaves the community out of that a little bit".

At the NJC, local residents and community groups attend the centre each week for activities that do not involve the court. Arthur observes:

> "About 50% of the people who walk in have no idea that there's a court room in the building. They're there for many, many other reasons: community events, community education, a whole range of other things".

Many interview participants emphasised the importance of the NJC being "a centre with a court within it, not a court with a centre around it". As mentioned in Section 2.2.4, community courts can also result in community generation, and this appears to be happening in the City of Yarra as the NJC provides residents with a place to gather and connect.

The focus on the community over the court became more difficult when the NJC was removed from the remit of the Department of Justice in Victoria to being under the Magistrates' Court of Victoria (MCOV). The reasoning behind this move is unclear, but could be due to the main political champion of the NJC, Rob Hulls, leaving his position as Attorney General. Brdulak and Banasik (2015) note that bureaucratic nature of traditional courts means that they do not employ processes that facilitate information sharing, either within the courts or with the wider justice system. In practice, community justice depends on collaboration and the sharing of information among service providers and justice agencies. According to Daisy, the NJC has become more court-centric since it has moved under the remit of the MCOV, and that while there is still an emphasis on the community, it is not as prominent as it was before the move. Interviewees claim that they were used to having more autonomy at a local level to make decisions, but now there are many more reporting structures in place, which are not beneficial to the work of the NJC. Grace argues that "justice bureaucracies you know, are the antithesis of innovative culture" which causes tensions and clashes when the NJC is trying to promote change and put the needs of the community first.

The move to the MCOV was an additional challenge, according to interviewees, because the NJC was not viewed favourably by other magistrates' courts. The NJC is criticised due to the level of funding that it receives and Daisy states that other courts view the NJC as "the privileged spoiled child" or "a Rolls Royce version of a court". Interviewees expressed the view that mainstream courts misunderstand the level of funding that the NJC receives and what it does, with Keira explaining that the NJC is "a Rolls Royce of justice on a Toyota Corolla budget". As the NJC was created under the Department of Justice without input from the MCOV, interviewees argue that jealousy developed between mainstream magistrates' courts and the NJC. Isla reveals:

> "the problem with courts is that, you know, they're fundamentals as an organisation, so unless they created you, and you look and sound like them, you're the enemy".

It is clear that putting the community above the court is an element of the NJC that mainstream courts oppose and is something the NJC must work to maintain.

(c) Collaboration

Community justice places an emphasis on strengthening community resilience and informal social controls through partnerships and relationships developed with community support services (Clear, Hamilton and Cadora, 2011). While the traditional criminal justice system is "fragmented" (Fletcher et al., 2009: 55), collaboration between staff and external organisations is critical to the work of the NJC. It was the aim of the NJC to "collaborate – not compete – with local service providers" (Victorian Auditor-General, 2011: 22). A way in which the NJC achieved this was by funding 'dual staff' within existing external organisations, who then split their time between the home agency and the NJC. Several participants explained the importance of these dual staff members in bringing their expertise to the centre while also retaining the support and opportunities provided by their organisation. Arthur explains "we want the strength of their role in their home organisation to be what they [are] bringing to the NJC". The funded staff member "acts as a conduit" from the NJC to the organisation and maintains a connection between the NJC and services within the community. The dual staff approach is also a way to ensure that there is a steady stream of clients into NJC projects and programmes for which the NJC receives funding, as the external organisation may already have clients that

would benefit from them. However, Daisy notes the difficulty of working as a dual staff member in practice:

> "That's not always easy to do either, you know, you sort of part of NJC this really forward thinking innovating hub, and then you almost step back in time into your other organisation and having to sort of balance that out, and also your mother organisation not really understanding what you're doing there".

These dual staff members, along with full NJC staff members and justice agencies, are all based in the same building, which further facilitates collaboration and information sharing. Almost all interviewees acknowledge that having staff located on the same floor within the one building helps to facilitate active collaboration.

Clear, Hamilton and Cadora (2011) note that true collaboration within the justice system requires attitudes to change within justice agencies, which can be difficult because "traditional criminal justice organizations have a sense of their "turf" and work hard to protect it". In contrast, Arthur claims that everyone who works at the NJC is confident enough in their own ability and expertise, and therefore open to collaborating with others in order to gain the benefits of their expertise. Arthur explains:

> "When I told you about that weaving of fabric, everyone's still their own thread. You know, from a distance, it looks cohesive and held together, but at the micro level, everyone is being allowed to be an expert in their own domain, and not asked to be an expert in anybody else's".

It is important for staff members to be confident in their own abilities and in the ethos of the centre, as the transparency involved in working collaboratively can be difficult for some. Lily acknowledges that staff need to always be on their "A-game" due to this transparency among all staff members. The NJC is described by several interviewees as a "fishbowl" for this reason, and this is something certain staff members find stressful at times. While acknowledging the need for accountability among staff, especially when sharing clients, Mia also notes that when a mistake is made, everyone can scrutinise it which is uncomfortable. For this reason, Lily contends that the NJC is not suitable for people who are not secure enough in their own role and expertise to truly collaborate and

share with the team, even when they make a mistake. Arthur explains: “what you want is somebody who can say, I’m confident in my patch, I’m confident in your ability to do your patch, let’s work out how we’re going to work together on this”.

The willingness to collaborate among NJC staff is something that must be instilled in the philosophy of the centre from the outset to prevent silos developing. Crawford (1994) notes that if service providers and agencies remain too focused on their own interests rather than on collaboration, the aims of partnership models become blurred and ineffective. Daisy explains:

> “If you don’t instil that culture, within people working from a certain theoretical base or foundation, you’re just going to have people working on their own and not really networking and dealing with stuff”.

Grace echoes this statement and emphasises that the culture and collaboration needs to be consistently reinforced at the centre as “it does slip from time to time”.

Collaboration among staff and justice agencies located at the NJC is highlighted as particularly important by interviewees. However, so too is the need to collaborate effectively with the community that the centre is situated within. Isla states that community justice is about actually listening to what the community wants and needs, and consulting them about any proposed solutions to make sure that they agree with them. What the community identify as their needs should be held in higher regard than what the government assumes would be helpful for that area. Keira states:

> “That’s the basis of what community justice is, its listening to the wants and needs of the community working out where the gaps are consulting about whether or not what you think might help is actually helpful. And are you really listening to what is wanted rather than, you know, what the government says”.

Feinblatt and Berman (1997) note that practitioners can find it difficult to meaningfully engage with the community because of the time pressures already associated with their jobs. For this reason, collaboration and consultation with the community should be built into the processes of a community court. Several interviewees emphasise the importance of involving the community from the outset and within the centre’s processes, including

having a community member on the interview panel for the magistrate. The NJC had a committee in the beginning made up of community members and stakeholders from the community, which meant that support was evident within the community before the centre opened. Lucas explains that prior to opening, the community consultation committee of the NJC consisted of "traders, of business groups, community groups, local agencies, all talking about better ways to solve the issues that existed in that area in a holistic way". Community consultation is critical according to Lucas, and it cannot be underestimated because by participating in community meetings and forums, it meant that there was very little community opposition to the centre. He observes:

> "the Neighbourhood Justice Centre was actually born out of the community, was nurtured by the community, for the local community. And that's why it was so successful and it works".

Similarly, Lily argues that this "coordinated, collaborative approach" with the community is necessary for such a centre to be successful within that community.

(d) Relationship-Building

O'Hare (2018: 150) notes that "creative partnerships" are a core principle of problem-solving courts in general. Building relationships and fostering them over time is also imperative to the work of the NJC. Interviewees revealed a strong culture of relationship-building at the NJC, whether that be between staff members, between the NJC and clients, the NJC and the community, or the NJC and external agencies. The NJC is described as "a bit of a web" by interviewees due to the different strands of relationships that exist and operate within it. To effectively build and maintain relationships, the centre must hire staff with the requisite personality traits and skills, and that match the ethos of the NJC. Mia notes that staff should be "quite a natural kind of person who's good at building relationships, good interpersonal skills, you know someone who is community minded". Oliver also acknowledges that people with suitable personalities are needed within the NJC who "are passionate about the model, willing to collaborate" and that "strong, aggressive personalities are not the right fit".

Again, having all staff located within the same building is invaluable when it comes to forming relationships among staff members at the NJC. Mia explains "they work together from the outset, got to know each other from the outset and also because we're in the same building, it kind of perpetuates that culture". At the NJC, staff were employed six

months before the centre opened, which gave them time to form relationships with each other. Several interviewees acknowledge the value of the leadership team at the NJC and note that they do not allow tensions among staff to fester into a larger problem. When asked if there was ever tension between the NJC's court function and the rest of the centre, Mia acknowledges that the common goal of helping the client limits any tension that does arise:

> "But, you know, it was working together. And I think that's probably why there wasn't a lot of tension, because it was just, we're all working together to try and better the quality you know to service the client. And that really helps with job satisfaction, when you've actually felt that you've helped someone".

Grace states that when it comes to the NJC, a lot of the workplace culture is due to "informal relationships between people who just enjoy working together".

Zozula (2018) argues that established mainstream courts are inherently considered legitimate, whereas newer structures, such as community courts, must actively seek to gain organisational legitimacy. In the beginning, the NJC had to work hard to build relationships with external organisations to convince them that having a dual staff member based in the NJC would be mutually beneficial. However, according to Ella, over time the NJC "became this place where people wanted to be part of" and now external organisations come to the NJC to form partnerships. A high level of trust has developed between the NJC and the external agencies it collaborates with and NJC staff are asked to sit on interview panels for both dual staff and for hires that have nothing to do with the NJC. Arthur explains that the trust between the NJC and external agencies was not immediate, and initially the external agencies were hesitant to allow the NJC to have any say in who was hired even as a dual staff member. The positive atmosphere makes the NJC something with which people want to be involved, according to Lily, who states: "you can't fake the vibe and you can't mistake the vibe" of the NJC.

The third sector refers to "voluntary, charitable and non-governmental organisations that work in the criminal justice space" (Hinde and White, 2019: 330). Third sector organisations have a long history of working within the criminal justice sphere, and the benefits of this has been recognised (Mills, Meek and Gojkovik, 2012). However, very little attention has been given to the relationships that develop between criminal justice

organisations and those within the third sector (Mills, Meek and Gojkovik, 2012). Tomczak and Buck (2019: 276) note that the voluntary sector "are key actors, with unrecognised potential to shore up criminal justice and/or collaboratively reshape social justice". Forming relationships with external agencies and services is necessary so that the NJC can "draw on that capital" when needed, according to Grace. Lily agrees that "relationships are everything" to the work of the NJC. The culture of relationship building is something that assisted the NJC at times of transition during the covid-19 pandemic. Noah explains that the strong relationships with the community and service providers assisted the NJC when the centre was forced to close and allowed for more innovative responses to justice to occur because the trust between organisations already existed. Those who work within the third sector in Australia often note that relationship building is the most important aspect of their work, whether this be with clients specifically or other agencies (Hanley, Simpson and Tauri, 2021). As voluntary organisations are often vulnerable (Maguire, 2012; Tomczak and Buck, 2019), this crucial sector could be strengthened by collaborating with funded justice innovations such as the NJC.

The relationships that exist between the NJC and external agencies are of benefit to NJC clients as they do not have to "jump through hoops" to access services – the services are available to people who reside in the catchment area of the NJC. NJC clients do not have to meet certain criteria to engage with services and there are no barriers to accessing treatment or support. Oliver describes the NJC as a "gateway to services", which allows for work to be done with the client pre-sentence to help stabilise them before they are sentenced or assessed for a community correction order. In mainstream courts, the client would need to meet criteria, go on a waiting list, get a referral, and wait months to access the necessary supports. For example, support can be provided to defendants in Magistrates' Courts in Victoria through the Court Integrated Services Programme (CISP), if they are granted bail (MCOV, 2019). However, first it would have to be confirmed that CISP is available at the Magistrates' Court where the defendant's matter is being heard. Then the defendant's eligibility to partake in the programme would have to be confirmed. Following this, the defendant would have to refer themselves or be referred by a relevant party by submitting the necessary forms to the Magistrates' Court. Finally, if accepted to the programme, the defendant would receive a case management plan, which would contain an outline of the referrals to support services. The CISP process, while beneficial in many aspects (Department of Justice, 2009), is much more

convoluted than the immediate service provision available through the NJC. The NJC process has the added benefit of being available to residents who are not charged with a crime, whereas this is a criteria to participate in CISP (MCOV, 2019).

It is also necessary for a reciprocal relationship to formulate between the NJC and the community. Clear and Karp (2018) acknowledge that community justice in practice can help address a public lack of trust in the criminal justice system. In this context, Ella holds that the NJC worked to build upon relationships with the community, and built trust and confidence in the NJC:

> "They knew where to come, they knew a face, and they, you know, even our registry staff, our court staff would go and volunteer at a soccer, at soccer, you know, the local kids soccer afternoon with the local police officers. So if and when, you know, someone had to come into court they at least knew a face in the building. So we were also, it was important to be part of the community as well".

Projects aimed at improving relations between the NJC and the community, and among different groups within the community, had certain unintended consequences. One such project, Smith Street Dreaming, which won an award from the Australian Institute of Criminology, resulted in drastically improved relationships between residents, business owners, and Aboriginal and Torres Strait Islanders in the City of Yarra. Ella claims that while they struggled to find statistics or data to show these unintended consequences, police did say that they were being called out less in the area following the project. Ella explains "the community that felt better about each other, that knew each other, they knew each other so they didn't offend against each other", while Arthur describes a "palpable change" in the City of Yarra within a decade of the NJC being established there.

(e) Community Ownership and Advocacy

Fagan and Malkin (2002) note that community justice is practiced through community courts by the partnerships formed with the community, whether they are formed through formal mechanisms or through informal relationships. They state that the community should envisage itself as having ownership over the community court. A sense of community ownership is particularly important to Aboriginal and Torres Strait Islanders to promote self-determination (McAsey, 2005). Allowing the community to have ownership of the NJC is emphasised as necessary to ensure that the centre has longevity.

If a community court experiences challenges due to changes in government or political austerity, the community can become an advocate for the community court. Arthur explains:

> "Community justice has to have a strong sense of community around it, because realistically, if the government invests and then walks away, that's actually okay, as long as the community then steps in and says we now will take stewardship of this, we will take care of ensuring that you have enough oxygen, that you have enough support. Because community justice, particularly with us, is reliant upon the strength of its community to work and to be cost effective".

Daisy also expresses the importance of showing pride in the NJC building to promote community ownership. She notes that any wear and tear of the building is repaired immediately to show respect to the centre and the community that owns it. Several participants mentioned that the NJC building has never been graffitied, which speaks to the respect that community members have for the building, and the ownership that they feel over it. Noah specifically notes that the design of the building created a welcoming atmosphere and again, this reflects the overall guiding philosophy of the NJC. Other participants note that the court should be transparent so that the community can see what is happening within it, which then symbolically demonstrates community ownership of it. Allowing the community to see into the court is "symbolically saying this is yours" to the community, according to Isla.

Having local residents as advocates is not always enough, as several interviewees claim that political will, community support and support from external agencies are all important elements to ensure the success of a community court. Grace claims that there also needs to be "backing at a high level bureaucratically", and community engagement, particularly at the beginning of the process. Lucas thinks community justice works, "it just takes leadership". However, he also notes that leadership is needed at every level, whether it be political, police or community, and that a community court needs strong advocates. Champions of the community court are also required within the police, corrections, and social services, according to Ella. What is more, in Arthur's experience, "lawyers listen to lawyers, magistrates listen to magistrates, police prosecutors listen to police prosecutors", which supports the idea that a community court needs an advocate

at every level. He warns “don’t allow the law to feel like it’s being marginalised” in the community court process because if judges, lawyers, and police are not included and listened to, they will not support the court. Moreover, Lucas enunciates:

> “when you have a whole raft of advocates, selling the message about this holistic approach to justice, it’s very hard, and then you have an independent, a number of independent evaluations showing that it saves money, all that sort of stuff, it’s very hard then to remove it as get rid of it as a permanent part of the DNA of the legal landscape in Victoria”.

Zozula (2018) argues that the flexibility that community courts demonstrate in their ability to adapt itself to different ideologies, provides them with “multiple sources of legitimacy”. Community courts can appeal to both sides of the political debate, depending on how they are framed. In order to ensure that there are advocates for the NJC at a political level, Grace stresses the importance of a neutral culture politically, even if staff have strong personal views. She observes:

> “We’re sort of more about creating the conditions for that ultimate goal to happen, but it’s not our role to be an activist organisation in that sense. So it’s more about trying to change a system or create a local response, but not running an activist campaign”.

This neutral culture protects the NJC when opposition governments gain power and look to shut it down, as it can then adapt the narrative to suit the changing political landscape and continue to build relationships with governments and agencies of opposing views.

Section 4.3.1 highlights several challenges for a community court model. The commitment to community justice is important for the successful operation of a community court, yet it is so fragile that one bad hire could have a negative impact on this culture. Therefore, it could be argued that the model is not stable or sustainable in the long term. However, community courts require those who work within the criminal justice system to respond to crime differently in a broader sense, which necessitates community court staff to also undergo this shift, and to share the values that underpin the model as a whole. The idea of a community court being “a centre with a court within it, not a court with a centre around it” is poignant and emphasises the importance of where

the model is placed bureaucratically. Even the NJC, which is widely considered a successful community court, is experiencing difficulties in this regard since being under the remit of the MCOV, and some interviewees note that the centre is becoming more court-centric. This issue could be avoided by removing the court element of the model and taking a public health approach, however, as noted in Section 4.2.2(a), the court aspect aims to address the underlying causes of crime within a community while also holding those who commit crime to account. This accountability element is important as explained below in Section 4.3.2. Once the principle of therapeutic jurisprudence guides the actions of the court in a community court, while also adhering to due process, then this model remains a more legitimate approach to maintain social order than a mainstream court.

The collaborative approach required for a community court requires attitudes to shift within justice agencies, which could be a challenge when considering territorialism in relation to funding. The NJC approach of funding dual staff members appears to adequately address this issue, although it does increase the resources required to establish the model. Creating advocates of the model within the community and fostering a sense of community ownership presents a further challenge, alongside garnering sufficient political support. A community court must be able to survive a change in government and remain politically neutral, which is difficult if it is initially implemented as a political project. While requiring political support initially for funding purposes, the model must ensure that it does not become associated with a particular political party if it is to have longevity.

4.3.2 Accountability

Another legitimating factor of the NJC is its focus on accountability. A focus on accountability is evident within the problem-solving justice literature (Butts, 2001; Berman and Feinblatt, 2005; Wolf, 2007). Accountability has been acknowledged as an important aspect of community courts and increasing accountability for harm caused to the community is a core aim of this court model (Berman and Feinblatt, 2005; Karafin, 2008; Berman, 2010). Accountability was mentioned by Arthur, who differentiated between "punitive accountability" and "an expectation of accountability". He spoke of how this "expectation of accountability" is necessary to build trust and relationships with police, as police were worried initially that the NJC would be an overly lenient model.

The police were highlighted as a difficult group to convince that the NJC was a beneficial model. For this reason, Arthur stresses the importance of including police throughout the process. Similarly, Lucas explains that police were initially sceptical of the NJC as a "road to Damascus vision", but once they got more involved with the centre, they could see that it was working. Police were tired of arresting people with mental health problems and addiction issues and could see what the NJC was trying to do, according to Lucas. The benefits of the NJC ultimately led to a remarkable volte-face in police views. Arthur, for example, states "over time the police were our staunchest allies and defenders, they are the ones that said to their commissioner, this intervention reduces the frequency that we're arresting the same person, this intervention works". This finding demonstrates that holding those who commit a criminal offence to account is necessary, and justifies the court function of the community court model. However, it is important to note that clients only appear before the court in the NJC if they would have alternatively appeared before a mainstream court.

4.3.3 Innovation

The NJC gains legitimacy by acting as a 'hub of innovation' and by trialling ideas that could also improve mainstream courts if implemented correctly. Berman and Feinblatt (2001) note that problem-solving courts developed due to the recognition that innovative ideas were needed to respond to increased caseloads in mainstream courts and the frustrations that arise from it. The NJC is both an innovation itself, and somewhere where innovation is fostered. The NJC was allowed to be innovative in its approach due to the flexibility that was instilled in the centre from the outset, according to Ella, who referred to the NJC as "the Innovation Hub". Equally, Grace describes the NJC as an "ecosystem for justice innovation" or a "living lab" through which innovations can be piloted, while Lily also observes:

> "Our processes and our philosophy and our ethos remain the same, but the way we go about things will develop or whatever or our focus will shift, depending on what were the communities at and what it needs".

Henderson and Duncanson (2018: 228) argue that "successful change is enhanced by the recognition of the intimate connection between ideology, design and practice", and they conclude that the innovation that takes place at the NJC is a prime example of where this

combination occurs. Lucas states that it was a priority "to have innovative services led by innovative people located at the court", and according to Grace, it is the culture of the NJC that allows for actions to take place with more immediacy than elsewhere. She states:

> "That's why the NJC was established, really, to try and get things happening in a different way and I think the Attorney General at the time was so frustrated by inability to get changes happening".

Innovation is an aspect of the NJC that attracts more innovation, according to Lucas:

> "And that's because some of the innovative services there and people who lead those services knew they were part of something new, part of something different and excited them. And it's important to maintain that excitement because that excitement breeds innovation. And vice versa, innovation breeds excitement".

Traditionally, courts in Victoria are formal and rigid in nature (Halsey and de Vel-Palumbo, 2018), but the NJC have tried to remove the apprehension around innovation. Lily states that the flexibility of being able to work outside of their specific role gives them the freedom to actually help people in a meaningful way. Importantly, Noah notes that the court at the NJC employs traditional court processes and that they are critical to what the NJC is trying to achieve, but there is also a willingness to be innovative while maintaining the court's integrity. Examples of these innovations include the online Family Violence Intervention Order, the Online Guilty Plea system, and the MyCase system, which are explained in more detail in Section 4.2.2(c).

Several interviewees mention how impersonable mainstream courts are in Victoria compared with the NJC. There is a clear focus on efficiency in Victorian Magistrates' Courts and resolving criminal cases quickly to minimise associated costs and delays (Victorian Law Reform Commission, 2021). Mia describes the mainstream court system in Melbourne as "a sausage factory" and a "conveyor belt" where no one has responsibility for helping the client beyond their specified role, and there are no services to offer them. Similarly, Lily uses the metaphor of a "cow at the county fair, being marched through for sale, like you're nothing" to describe how defendants are treated in mainstream courts in Victoria. At the NJC, clients are welcomed, and they are engaged in conversation to determine their specific needs. By contrast, Lily notes that in

mainstream courts, the focus is primarily on the offending, not on the person. She thinks that a core difference between mainstream courts and the NJC is that clients at the NJC "are really seen for who they are and they're known for who they are to the court". Noah also mentions that at the NJC, clients are not just treated as a number on a list but are provided with support and are treated with respect and dignity.

Isla is optimistic that courts will learn from the NJC and become more like it in the future as "it actually makes sense, it's easier, it's happier". However, Arthur suggests that every new community court established should be the "next iteration" of previous community courts, by learning from their successes and mistakes. In other words, each new community court should be an improvement on the last. Continuing to be innovative and advocating that NJC practices are the best way to move forward in justice is a further challenge. Lucas explains:

> "you've got to continue to innovate, continue to look at new ways of meeting the justice needs, the holistic justice needs of people in the community, that's the real challenge, don't go stale".

Likewise, Isla outlines the need to have a culture that is energetic and keeps people interested in pushing boundaries.

4.3.4 Location and Design

If a community court is to strengthen social bonds to increase civil order in a community, it must be situated at the centre of that community and be designed in such a way that appears welcoming to residents. Fagan and Malkin (2002: 898) note that community courts "brings the court closer – both physically and administratively – to the social and behavioural origins of the problems that it seeks to address". The NJC was located in Collingwood because it was an area with high-crime rates and social disadvantage (Richardson, 2013). All interviewees mentioned the importance of the location of a community court, along with the type of building used. Murray (2009) argues that where a community court is placed can have an impact on whether the community accepts it or not. One core aspect within the chosen location should be an established service sector that can collaborate with the centre. Keira warns that a community court should be located where community members congregate and conduct their business, as the building should be where the community actively spend their time.

When choosing the location for the community court, Arthur suggests the following markers: “how many derelict buildings are in this place? How many broken windows are they? How unsafe do you feel at night?” and selling the community court to the locality as something that will help them feel safer and make it a more comfortable place to bring their kids. However, Arthur notes that there needs to be a certain kind of offending happening in the area that, if addressed, will lead to a 10% crime reduction in a shorter period of time so that funders and the community can see the benefit of the community court while the long-term benefits are not yet visible. Moreover, Grace mentions the importance of where you situate a community court physically, but also bureaucratically. There must be an understanding as to who has control of the centre and also how to ensure that barriers to innovation are removed for community court processes. Grace warns that “bureaucracies just kind of creep back unless there’s things to really wedge change into place”.

Halsey and de Vel-Palumbo (2018) note that the NJC was trying to create an atmosphere of informality with its building design, and that rejects the hierarchical structure of mainstream courts. While the informality of the courtroom design might raise questions around due process, the informality is key to applying a therapeutic jurisprudence approach and therefore minimising the negative impact of the court process on the individual. Therapeutic jurisprudence aims to achieve better outcomes “without subordinating due process and other justice values” (Wexler and Winick, 1996: xvii). This approach attempts to introduce humanity into the formal legal system without having an impact on due process. It is especially through the combination of therapeutic jurisprudence and procedural justice that this can be achieved, as is discussed in Section 2.4. Daisy recommends having a separate, dedicated building for a community court if possible. However, Arthur states the importance of community courts establishing themselves in pre-existing buildings that have a history in the community, as mainstream courts in new buildings in Victoria tend to “become kind of interlopers”. The building design is also emphasised as needed to reflect the therapeutic nature of the community court (Smith, 2018). Bearing this in mind, Daisy states that it is important not to “scrimp and save on the actual build, interior of the building, because the architecture is really important”. Indeed, many interviewees note the lack of airport-style security when entering the NJC building and explain that while security personnel are present, they are there to maintain peace in an informal and non-intimidating way. This speaks to the

informality of the NJC and the NJC courtroom. Ella suggests that not having airport-style security also demonstrates to the community that the centre trusts them and due to this, there are very few incidents that result in police being called because there is a mutual understanding between staff and clients. Importantly, Keira considers that "the building itself is actually a part of the experience for the people who access the centre".

4.3.5 Client-focused

Individualised justice is a principle of problem-solving justice (Wolf, 2007). Interviewees are clear that clients should be treated with respect and that the complex needs of individuals do not disappear just because they are appearing before a court. Arthur explains that clients are "not suddenly different because they committed an offence". It is therefore reasonable to address those needs constructively rather than apply sentences that will not help, or that will exacerbate the issues. Noah states that the term 'offenders' will never be used by NJC staff and addresses those engaging with the NJC court as 'clients'. Donoghue and Moore (2009: 319-320) argue that the term 'offenders' projects onto individuals that they are "wanton and hopeless", whereas 'clients' are "consumers of the social services offered". They explain that the NJC will not treat people as "just a number" that needs to be ticked off a list, and that all clients are treated in a dignified and respectful way.

To be a more legitimate model to achieve social order, community courts should seek to restore the community and integrate marginalised people into the community. The model can achieve this by taking a client-focused approach, which focuses on rehabilitation an desistance. As Farrall et al. (2010) note, desistance is a process towards social inclusion. However, Healy (2012) argues that having access to the required social services is necessary for successful reintegration. Desistance from crime is not linear (Farrall, 2002; Giordano et al., 2002; Laub and Sampson, 2003; Maruna, Immarigeon, and LeBel, 2004; King, 2013; Villeneuvea, Dufour and Turcotte, 2019), and this is recognised by staff at the NJC. The staff at the NJC do not "give up" on clients if they disengage or pick up more charges. As Keira states, "we don't close the door on anyone". There is an acknowledgement that the issues their clients deal with are complex and that it will take a lot of time and engagement to adequately address issues and stabilise the client. Keira speaks of the "persistence" of the NJC staff, even when the intensity of the engagement is challenging. Oliver echoes that NJC staff and service providers do not give up on

clients when someone is not doing well. Rather, they try to address the problems that the client is facing and if they do not engage, they make them aware that the service is going to be there when they want to use it. Interviewees contend that the NJC approach is safer for the community because services are wrapped around the client immediately. The Embedded Specialist Services Model is the model of intervention employed at the centre, which is explained further in Section 4.2.2(a). This approach is described as a 'one-stop-shop' model where 19 community services that make up the Client Services at the NJC work together as a team to address the needs of clients. Oliver notes that clients of the NJC courtroom can get referrals to services that exist within the building, which allows service providers to speak directly to the client and have appointments in place before they leave the court that day. To help a client address issues in their life in general, or to address issues linked to their offending, the client may require assistance with housing, substance misuse, mental health and/or finances, to name but a few available services. The Embedded Specialist Services model of intervention involves clients having a referral to all available services at a single entry point, which prevents the client from having to repeat their story to multiple different people to get the help they need. Oliver explains:

> "they could turn up being homeless with a drug and alcohol problem, you know, unmedicated mental health issues not linked into a GP and within that day, have a number of follow up appointments, people based at the NJC and other services linked in too".

Practically, this approach requires the client and case worker to attend fewer meetings. In addition, it saves on travel time, simplifies the process for those with chaotic lifestyles, and engages the client with several supports before they leave the NJC building in a "rapid triage" approach (NJC, 2023). If the support service required is not available within the centre, the case worker can arrange a meeting within available support services in the community. The resulting treatment plan has been created by a multidisciplinary team, and information and responsibility for the client is shared among the staff (NJC, 2023). Community safety has been a prominent debate in Victoria in previous years and the suggested solution has usually revolved around expansion and strengthening of the prison system alongside increasing the availability of offender behaviour problems (Premier of Victoria, 2019). However, with a system such as that of the NJC, the services are already in place and available to support clients, while using prison as a last resort.

An element of community justice is that crime must be viewed holistically (Clear, Hamilton and Cadora, 2011) and a core aim of community courts is to address the underlying causes of offending (Karafin, 2008). Noah emphasises that the focus must always remain on the clients, and that this client-focused approach is central to the operation of the NJC. Many of the interviewees mentioned the one-client approach, whereby all services within the NJC work together to "wrap" the client in relevant supports, whether that be mental health, housing, or assistance with a criminal matter. The NJC works to take away the stigma people in the community feel if they need help with housing or managing their finances, observes Noah. However, the NJC have collaborated with agencies in the past that had a detrimental impact on the progress of NJC clients. Lily notes that this was due to the individual worker, or the organisation itself, putting their own agenda ahead of clients' needs. Lily states that it is inevitable that this would happen and that it should be addressed with the individual worker first, then a manager, and if it is not resolved, they are removed from interaction with the client.

The increased focus on the client due to the Embedded Specialist Services approach can impact the mental health of staff. Oliver explains: "if you get a number of high needs clients in a short period of time, yeah you're pretty stuffed emotionally, it's all sort of, mentally by the end of it". He also expresses that it is difficult to detach from their work:

> "They're going to be in that system for a longer period of time and you're going to have more interactions with them, and you're going to have more understanding of their complexity. And when they finish, they're going to go on a corrections order. And then if they breach that, they're back to you. So where there's more volumes, and you're based here it's hard to separate yourself from that sort of emotional investment and, and how draining it can be".

Crucially, Arthur states that staff at the NJC are going to have a much higher level of contact with clients than in mainstream courts and therefore people skills are of utmost importance among staff members, along with customer service skills, problem-solving, and managing relationships and expectations.

4.3.6 Evaluation and Monitoring

If community courts aim to address the underlying causes of offending, and strengthen social bonds to increase civil order in a more legitimate way than mainstream courts, while also reducing social exclusion and marginalisation in the community, then the model must be able to provide evidence of this, which can be difficult. The NJC has been closely monitored since it opened, and has been the subject of several large evaluations, but it has experienced difficulties quantifying the non-traditional outcomes of the centre and proving that the NJC is worth the resources that it receives (Morgan and Brown, 2015). A range of factors may result in a crime rate decline in an area which makes it difficult to pinpoint a single factor as the cause (Ross et al., 2009; Ross, 2015; Halsey and de Vel-Palumbo, 2018). Challenges exist around collecting qualitative data and disseminating that side of NJC outcomes. Oliver points out that an ongoing challenge relates to convincing people that the practices of the NJC, such as problem-solving, do work well. After conducting an evaluation of the NJC, Ross (2015) explained the problem of attributing positive outcomes to the work of the centre, particularly due to the individualised treatment received by clients and the issue of small sample sizes. Grace agrees and notes that the outcomes of the NJC are not always adequately counted, particularly the social wellbeing outcomes. She acknowledges the difficulties in demonstrating the community development and crime prevention outcomes compared to traditional criminal justice success indicators like crime rates and recidivism. Ross (2015) notes that evaluation could be improved by focusing more on outcomes that stem directly from the NJC's activities.

Clients in the NJC may present with numerous charges, addictions, and chaotic lives. While they may not be entirely sober or have stopped offending, their lives and behaviour do progressively improve over time, according to Mia. Oliver echoes this sentiment:

> "but it like I said, it's more real, it's a more realistic experience of that person's life and it's required to, to get change and again, so with certain clients if that has been the case where they've been, they've failed, they've been – you know reoffended, ended up back in custody, despite that investment of services, but then they get out and keep going, they might still fail at the end. But then if you look back they've

> been involved for a period of six to 12 months where they've actually engaged positively in the community".

Oliver also notes the difficulties associated with measuring the success of community courts, particularly when clients are vulnerable, have ongoing issues, and are still offending. He claims:

> "if you're able to provide some stability for short, medium, long term, if they come down years down the track, that doesn't necessarily mean that it's been a failure of the system and then that's you wipe your hands of a model like this, that, actually that could still represent quite a successful outcome for particular individuals".

Keira agrees that by the time an individual completes their engagement with the NJC, they may have secured housing, improved in terms of their addiction, and have successfully finished their community sentence. Interviewees are clear that while a client may reoffend, it does not mean that the NJC has failed as it may have had a positive impact on the person's life. As mentioned in Section 4.3.5 above, the desistence process is not straightforward or immediate (Farrall, 2002; Giordano et al., 2002; Laub and Sampson, 2003; Maruna, Immarigeon, and LeBel, 2004; King, 2013; Villeneuvea, Dufour and Turcotte, 2019). In this respect, Noah notes that if someone walks away from the NJC in a better place than they were when they got there, then that is success. It is clear that by focusing only on the criminal justice-related outcomes of the court aspect of the community court, the full impact of the model cannot be determined. Therefore, the outcomes of the centre, without the court included, should also be emphasised when evaluating this model.

Several interviewees express the need to have a strong evidence base to support a community court. Grace recommends having tracking data built into every process from the beginning. By incorporating evaluation mechanisms into the community court, it circumvents issues that arise later to do with ethical considerations, recruitment, and methods. Ella emphasises the need to try to quantify "the unintended consequences" of NJC operations beyond decreasing crime rates and recidivism statistics. To accurately measure re-offending rates, an extended follow-up period is required (Alper, Durose and Markman, 2018). Noah suggests managing the expectations of policymakers as to what a community court can achieve within a short certain period of time is crucial:

> "it's really about setting those outcomes at the beginning and really doing that proper programme logic modelling, the theory of change modelling, at the beginning, to really know what it is that you're trying to achieve out of this".

Another thing that the NJC does successfully is being transparent and open to evaluation, according to Isla. This is a real achievement due to the complexity and expense involved in evaluations and cost-benefit analyses. Cohen (2000) argues that, when accurately conducted, cost-benefit analyses are a valuable tool for criminal justice initiatives. However, if they are not properly carried out, this form of analysis can become "nothing but rhetorical ammunition in an ideological debate" (Cohen, 2000: 266). In terms of the NJC, Lucas notes that it been evaluated very frequently. Murray and May (2018: 227) agree that "the NJC has been the subject of extensive and continual evaluation since it opened its doors in 2007". Importantly, the evaluations have shown that it works, turns lives around, and saves money, according to Lucas, to the point where "even the conservatives kept it". This is particularly notable when one considers the amount of criticism that the Labour Party received from the Liberal Party when they were trying to establish the NJC. Arthur explains:

> "When we were established, the opposition party called us a gulag style work camp and apartheid justice. They were really against us as an idea".

The person who made those comments went on to become Attorney General, which caused anxiety among NJC staff as to whether the centre would continue to receive funding. However, Arthur notes that by this time, the NJC had established an evidence base that demonstrated that the model was an effective way of moving forward. Similar sentiments were expressed by Ella who referred to research that found that it would be more expensive to close the NJC than to keep funding it, which was also provided as a reason for the Liberal Government continuing to fund the centre when they won the election.

Demonstrating that the NJC is operating successfully is imperative to ensure the centre receives ongoing funding. However, Mia notes the difficulty in providing a high-level service that clients are used to when workloads have increased, but funding and staff numbers have not increased. She also states that it is difficult to maintain the integrity of

the model when there is more of a strain on staff and resources, and a constant external pressure to take on a greater share of cases. The outcomes produced by community courts are heavily impacted by external factors which are outside of the control of the centre (Halsey and de Vel-Palumbo, 2018). External policy decisions can have an impact on the work of the NJC and can cause the workload to increase. For example, the decision to scrap the Victims of Crime Assistance Program caused an influx of applications to the existing system while it was still operating. Equally, Lily mentions the removal of suspended sentences as a sentencing option and the tightening of parole conditions in Victoria, and how that has created challenges for the NJC as it has made the combined imprisonment order a more popular sentence, which consequently increased the workload of community corrections officers. Moreover, the abolition of suspended prison sentences meant that more resources were needed to fund community corrections, but instead funding is increasingly directed towards expanding the prison estate (Gelb, 2013). Lily also notes that parole conditions became stricter following the murder of Jill Meagher by Adrian Bailey when he was on parole which caused public outrage. She explains "that was absolutely not about practice, it wasn't about community safety or anything, it was politics and media making community feel better". These reforms were discussed in more detail in Section 4.1.5.

The lack of replication of the NJC in Australia could be seen to signal failure, according to Ella. However, Bowen and Whitehead (2016) note that community court models are replicated more infrequently than other problem-solving court models in general. Lucas suggests that another community court has not been established in Australia because "it takes leadership to push these things through", which has been lacking in other states. When describing the foundation for the NJC, Arthur states that they looked for an area with "high crime rates, social economic deprivation, strong sense of community, well established service sector, and realistically a government building we could put this in". The City of Yarra was unique as it had the highest crime rate in Victoria, highest concentration of public housing, and high levels of social and economic deprivation, along with severe issues surrounding drugs. Due to this, Arthur does not think that replication should be the indicator of success for such a centre because "there might not need to be more than one of us".

4.3.7 The Judge

A prominent element of community courts is that they are presided over by a single, dedicated judge. In the NJC, there is an emphasis on the judge having experience in, and a commitment to, therapeutic jurisprudence. Therapeutic jurisprudence has been highlighted as a practical way in which community courts gain legitimacy, and it is also seen as a core theoretical underpinning of the model. Research conducted by Goldkamp (2004) found that there are lower levels of recidivism when an offender has repeat contact with the same judge. Research has also shown that if people feel they have been treated fairly, they are more likely to view judges as legitimate and more inclined to comply with their demands (Tyler, 1990). At the time of the interviews, Magistrate David Fanning was the NJC magistrate, and had been since the NJC was established. Magistrate Fanning announced his retirement in summer 2021 while these interviews were taking place. Lily expressed anxiety about Judge Fanning retiring from his position at the NJC, due to the impact that the magistrate had on the culture of the centre. Oliver agrees that the magistrate contributes heavily to the culture and atmosphere of a community court, and notes that what Judge Fanning contributed "is pretty hard to achieve". He is sympathetic to the balance that Magistrate Fanning has endeavoured to achieve, and explains "he has an impossible job to maintain the balance between the punishment element and community protection and the therapeutic arm of rehabilitation". Magistrate Noreen Toohey joined the NJC as the magistrate in January 2022.

Magistrate Fanning was described as being a reserved character by Isla, and it is noted that he did have trouble sharing the court with the centre at times. Isla compares the more reserved nature of Magistrate Fanning with the judge who presided over the NLCJC, David Fletcher, who they describe as "flamboyant". She also compares Magistrate Fanning to Alex Calabrese at Red Hook who they describe as "a big bear of a man", due to his larger-than-life character. Isla seems to perceive Magistrate Fanning as a reserved outlier among other community court judges who tend to be very charismatic. Grace also brings up Alex Calabrese as the ideal community court judge and states "he's got the right kind of personality for it". She thinks that personality is an important aspect for a community court judge and that while they do not have to be as charismatic as Alex Calabrese, they must be "authentic and be vulnerable". Crucially, Isla acknowledged that the type of person needed to be the judge in the community court is someone who

acknowledges that their decision making should prevent the revolving door, not exacerbate it. The need for a community court judge to have the ability to talk with community members, and particularly those who have committed offences, is emphasised throughout the interviews. While this might seem like an obvious trait for any judge, Mia notes that not all magistrates possess this ability:

> "in terms of personality, it needs to be someone who's really good, quite a natural kind of person who's good at building relationships, good interpersonal skills, you know someone who is community minded".

Judges often insulate themselves from the community to maintain impartiality (Feinblatt and Berman, 1997). As noted previously, NJC staff work with a high level of transparency, and this includes the magistrate. Isla states "that was huge for David to accept that he, you know, he was in a fishbowl". Magistrate Fanning had only served as a magistrate for a short period before he was appointed to the NJC, and Arthur describes this as "quite deliberate". When the NJC was established, planners wanted a magistrate who had not yet established a way of working and who would not try to mould the centre to suit them but would be more likely to embrace the ethos of the NJC. Grace also mentions that Magistrate Fanning wanted to prove himself and prove that the NJC court was not inferior to other courts. She notes the importance of finding a judge who has courage to try new approaches, even if it does not immediately earn them respect from the judiciary:

> "some judges here don't like to step out from, you know, judicial impartiality and independence and kind of withdraw a bit from engaging with community. Yeah, ideally, you need someone who's at ease with that, and got that touch, you know, are able to mix with a wide variety of people, especially in the early phases, and establishment of a centre".

Mia also claims that a community court judge should have a relevant legal background, for example someone who has worked for legal aid. Mia explains that it should be someone "who's dealt with a different cohort of people, like the kind of people who have a legal history where they've actually talked face to face with drug users who are high".

In contrast to other problem-solving courts, community courts claim that their lack of specialisation is one of their main advantages as it enables a judge, who knows clients' backgrounds, to facilitate solutions to one problem without aggravating another (Dorf and Fagan, 2003). However, having a single dedicated judge has advantages and disadvantages. Oliver states:

> "and as opposed to a magistrate who flies in flies out, you know, just see, comes in for a week then disappears, doesn't know the clients, like in a massive metropolitan court will never remember anything about the client, doesn't understand the complexity".

Conversely, Oliver argues that there is a danger that the single judge will be either too lenient or too harsh, and thereby hinder the community court in achieving its goal. The judge needs to sufficiently hold the client to account so that the police and community residents have confidence in the model, but they cannot be too punitive in their approach. Mia thinks it is positive to have someone with the social work background that Magistrate Fanning possesses, while Arthur agrees that the "soft skills" Magistrate Fanning brought with him from his previous role have helped him build relationships and has impacted how he speaks with people. However, Mia also notes that Magistrate Fanning is "very rigid in some respects in some aspects" and therefore progress cannot be made in certain areas.

In the NJC, the magistrate speaks directly to the client about the circumstances surrounding their own case which is determined to strengthen the relationship between the client and the judge, and it is hoped that this will increase the client's respect for the law (Chan, 2012). The role of the magistrate is highlighted as a key difference between the NJC and mainstream courts, due to the deeper understanding that the NJC magistrate has of the clients that come before them. Lily argues that this understanding allows for the NJC magistrate to take a more meaningful approach in their response. If the NJC magistrate finds that a client is less stable than before, they can defer the sentence and make a referral to client services. This is something that Lily argues that judges could do in mainstream courts also, but they often choose not to do so. Mia also notes that it is unusual for the judge in mainstream courts to speak directly to the defendant as they mainly speak through the lawyer. However, at the NJC, the magistrate speaks to the client directly, asks them questions, and allows the client to tell their own story.

It is through systems such as judicial monitoring that therapeutic jurisprudence can operate (Gavin, 2021) and Lily notes that judicial monitoring is "a therapeutic intervention with the magistrate really, I suppose reinforcing positive progress or encouraging them to move forward if they haven't been doing so well". She explains that the courtroom is empty apart from the magistrate and the client so that the client is not reshamed by the process. When judicial monitoring was introduced in mainstream courts, it would take place in front of a full courtroom, which reshamed the defendant. The judges were also overwhelmed with work, and the availability of services is not the same as at the NJC, and therefore it has not translated well. Lily believes that judicial monitoring is something that could have worked well in a mainstream court if it was better supported by courts and corrections. Judicial monitoring was "shoved into the normal list" in mainstream courts which she laments meant that clients waited in court all day to be called before the judge.

Several interviewees note that a community court judge should be willing to step outside of the traditional role of a judge and be willing to innovate. Frazer (2006) agrees that the judge in a community court plays a much more pivotal role and it is through their interaction with defendants that determines the defendant's perception of fairness. Arthur states that Rob Hulls made it clear when the NJC was established that it is not a court, it is a centre with a court within it, "and that, that philosophical positioning is important that the person who sits there needs to know, you're an important part of the system, but you are not the sun, and we do not all revolve around you". Several interviewees acknowledge that a community court judge needs to be confident enough in their own ability and confident in the ability of community court colleagues to do their job and be willing to work with others to solve problems. Arthur is insistent that "in community justice, it's about that person, and the impact that they have on their community, and the community's expectation of you". This finding highlights that a unique judge is required for a community court and that hiring the wrong person for this role could result in the model being unable to meet its aims. Therefore, a community court judge should be very carefully selected and the approach of the hired judge should be monitored carefully over time to ensure it is consistent with the aims of the centre.

4.3.8 Conclusion

These findings highlight the theoretical underpinnings and legitimating factors of this community court model. From the findings, it is clear that two core theoretical underpinnings of the NJC are community justice and therapeutic jurisprudence. The NJC gains legitimacy as a model through its emphasis on community justice and it achieves rehabilitative aims through practical therapeutic jurisprudence approaches applied by the judge. Further legitimating factors stem from the NJC focusing on accountability, by acting as a 'hub of innovation', by situating itself at the centre of the community and having a design that encourages community engagement, and by taking a client-focused approach to assist rehabilitation, desistance, and social integration.

The overwhelming evidence derived from this research shows that a well-considered community court, such as the NJC, can achieve an increase in social cohesion by aiming to address the root causes of crime, maintaining civil order in a more legitimate way than mainstream courts, and by empowering marginalised and stigmatised communities. The NJC provides a more legitimate model to strengthen social bonds and increase civil order because it is not directed towards punitive outcomes, but instead focuses on reducing social exclusion and allowing community members to become key agents in the justice process. Due to this approach, the NJC creates a community-orientated understanding of justice and contributes to the paradigm shift necessary for transformative desistance to occur, as per McNeill's (2017) argument. As mentioned in Section 4.2.2(a), this paradigm shift does not involve bringing social issues into the criminal justice sphere, but rather, makes the holistic support of those who offend the norm. This approach places criminal justice under the social justice umbrella and reduces the division between the person who has offended and the community, in line with what Maruna (2017) argued is the necessary next step for approaches that aim to support desistance.

The findings from the Australian interviews also highlight the unique aspects of the establishment and operation of the NJC. The first core theme, community justice, demonstrates the commitment that is required to the underpinning principle of the community court model. It also shows how important it is to hire staff who share these values, and how the commitment to the underlying principles can be jeopardised by hiring the wrong person. The need to place the community at the centre of operations, rather than the court, is also apparent. The community-focus can become threatened, especially

when there is tension between the centre and mainstream courts. The focus of the NJC on collaborating with local support services, rather than competing with them, is clear and is achieved through the funding of 'dual staff'. Again, hiring the right staff who are willing to collaborate and work transparently is evident. Collaborative working is possible due to the culture of relationship-building at the NJC. By placing the community before the court, feelings of community ownership are fostered. The lack of strict security on the door reinforces this sense of community ownership. In return, the community is more likely to become an advocate of the NJC. The requirement of advocates at all stages – politically, within the criminal justice system, and in the community – is important to ensure the longevity of the model.

The community court model emphasises accountability (Berman and Feinblatt, 2005), to ensure that the model is not perceived as being a lenient option. The NJC is also an innovation in itself, while also being an "Innovation Hub". The centre adapts to arising circumstances in the community, while also maintaining the integrity of the courtroom. Careful consideration was given to where to locate the NJC, and the chosen building was designed to reinforce the underlying principles of the model. The response to crime at the centre is holistic and staff work to help clients to desist, while also acknowledging that this process will take time. The judge is such a prominent feature at the NJC, that the announcement of Magistrate Fanning's retirement caused concern among interviewees. Magistrate Fanning's more reserved nature did not hinder the NJC's operation because of his commitment to the underlying principles, especially therapeutic jurisprudence. A community court judge must be willing to operate outside the traditional judicial role and be confident enough to work with others for the good of the client, and of the community as a whole.

Interviewees acknowledged the difficulties that surround the evaluation of the NJC, but also how necessary it is to continuously monitor the outcomes of the centre. External factors, such as the policy changes mentioned in Section 4.1.5, can impact the operation of the NJC. Interviewees note that the NJC could be seen as unsuccessful due to the lack of replication of the model in Australia. However, it is possible that the City of Yarra is a unique community, and that the model would not have worked as well elsewhere.

The next chapter, Chapter Five, will outline the penal landscape in England, followed by an overview of the NLCJC. Chapter Five will end with a discussion of the findings from the semi-structured interviews conducted with those who were involved with the NLCJC.

5. England

This chapter will begin with an overview of the penal landscape in England, which will provide context for both the emergence of, and the subsequent closure of, the NLCJC. Following this, an outline will be provided of the NLCJC, its operation, outcomes, and closure. The final section of this chapter will discuss the qualitative findings that stem from the semi-structured interviews with participants who were involved with the NLCJC. Chapter Five addresses the research questions by explaining how a community justice and problem-solving initiative developed during a time when more punitive responses to crime were favoured politically. It further answers the research question as to the insight that can be garnered from relevant practitioners about the establishment and operation of community courts, and the associated challenges in relation to the NLCJC.

5.1 Penal Landscape in England

This section focuses on the history of harsh punishment in England, more recent political punitiveness, and how it has shaped the current criminal justice system. The background of the penal landscape in England will be considered, followed by a discussion of the indicators of a punitive turn, the court structure, the prison system, and probation. It will also address England's relationship with problem-solving courts to date. This section lays out the penal landscape that the NLCJC attempted to operate within, and failed to do so. Understanding the conditions in which the NLCJC was established and that eventually led to its closure is useful when trying to determine the challenges such a model may experience within the Irish penal landscape.

5.1.1 Background

Punitive responses to crime are embedded in England's history, and accounts of punitiveness and penal excess in countries that were under British colonial rule are plentiful. Severe methods of punishment were justified in colonial settlements as being necessary to retain control over the colonised population (Moore, 2014). As discussed in Section 4.1.1, the colonies eventually called for independence at a time when there was also public outcry in Britain due to accounts of punitiveness, immoral behaviour, and accusations of slavery, specifically from the Australian convict settlements (Cunneen et al., 2013; Kornhauser and Laster, 2014). When the transportation of prisoners to North

America and Australia ended, there was a need to find alternative punishments for crime in Britain, which resulted in the use of prison as punishment (Kornhauser and Laster, 2014). Prior to this practice, prison was mainly used as a holding cell for those awaiting trial and was rarely considered a means of punishment by itself, but this changed with the opening of state prisons in the early nineteenth century (Howard League for Penal Reform, 2021).

It was not until the introduction of the Probation of Offenders Act 1907, with its instruction to "advise, assist, and befriend", that the Probation Order was established as the first community sentence in the UK. This Act was the beginning of a more welfare-based approach to social and criminal justice policy in England, which became even more prominent after World War II. However, Hughes, Mason and Prior (2007: 217) acknowledge that the British welfare state had its own 'dark side', and that "it has always had a strong disciplinary/controlling dimension through its functions in regulating the poor and the dangerous classes in society". Nevertheless, rehabilitation, treatment, and the needs of the offender were emphasised above retribution in criminal justice policy after the war (Hudson, 2002). The Criminal Justice Act 1948 brought the abolition of penal servitude, and prison, while still at the centre of the punishment system, was joined by remand and detention centres, and borstals (Howard League for Penal Reform, 2021). A further commitment to rehabilitative ideals was evident through the Murder (Abolition of Death Penalty) Act, which passed in 1965. However, it is possible that the policies focused on rehabilitation during this time only served to further criminalise marginalised people who came into contact with the criminal justice system, and placed too much responsibility on the individual to desist without considering wider inequalities within society (Kiely and Swirak, 2021).

Crime was not overly politicised before the 1970s (Jennings et al., 2016). In fact, there had been a focus on reducing reliance on prison because of the huge cost and lack of positive results (Jennings et al., 2016). In the 1970s, crime and justice issues came to the fore of election topics, and neoliberalism surpassed the bipartisan penal-welfare approach (Reiner, 2000; Newburn, 2007). In the justice sphere, in particular, neo-liberalism has contributed to an increased focus on managerialism and actuarial justice (Muncie, Hughes and McLaughlin, 2002). McMahon (2007: 24) observes:

> "All that was solid about the post war welfare consensus – from life long employment to the welfare safety net – has been actively unravelled and seemed to have melted into air".

Neo-liberalism is an economic theory and practice that became popular in the liberal democracies of the Western world in the 1970s (Harvey, 2005; Reiner, 2007). Reiner (2007: 8) explains:

> "as an economic doctrine it postulates that free markets maximise efficiency, by signalling consumer wants to producers, optimising the allocation of resources, and providing incentives for entrepreneurs and workers".

Neo-liberalism is no longer only relevant in an economic sense and has become a huge aspect of Western social and cultural life, whereby the only indicators of success are materialism and wealth (Reiner, 2007). This practice can breed inequality and ultimately become a threat to democratic values, by making democracy available only to those who can afford it (Jacobs and Skocpol, 2005; Palast, 2004; Reiner, 2007). These policies can perpetuate the root causes of crime and ultimately worsen the crime problem through more punitive methods of policing and a harsh criminal justice system. Neo-liberalism was widely implemented in England (Wickham-Jones, 2021) and is still very evident in English policy.

5.1.2 A Punitive Turn?

Right Realists suggest that crime cannot be fully dealt with by governments, and therefore the criminal class must be controlled and punished (Wilkinson et al., 2022). The political climate of the Thatcher government in the UK emphasised that those who commit crime are rational actors who made the active choice to do so (Wilkinson et al., 2022). Margaret Thatcher has been credited with being the first politician in England and Wales to use a 'tough on crime' rhetoric to secure an election. Although Thatcher indicated that crime responses would become more punitive, she paid very little attention to crime and justice legislation while in office (Farrall, Burke and Hay, 2016). In fact, Thatcher had been out of office years before 'Thatcherite' criminal justice legislation appeared (Farrall, Burke and Hay, 2016), but she did argue that there was a need for more law and order (Savage, 1990), blamed social workers for crime increases (Riddell, 1989), and expressed support

for capital punishment (Thatcher, 1993). Some changes that signalled an increase in punitiveness were also visible through 1982 to 1988, which included increased sentence lengths, increased community controls, and changes to the burden of proof (Farrall, Burke and Hay, 2016). However, between 1993 and 1998, punitive responses to crime were enacted with force, such as attempts to lengthen sentences further, introduce more mandatory sentences, and changes to the disclosure of a defendant's case (Farrall, Burke and Hay, 2016). Criminal justice responses in England and Wales drifted further towards punitiveness as Labour began to challenge the position of the Conservatives as the party of law and order. Alternatives to prison sentences that could be promoted as punitive became necessary to reduce imprisonment rates as crime rates increased (Farrall, Burke and Hay, 2016). However, a punitive approach became the only feasible political approach to take, even for diversion. Wilkinson et al. (2022) note that the introduction of the Crime and Disorder Act 1998 by the New Labour government in England and Wales was influenced by Left Realism, and it promoted partnerships between the police and local authorities. However, this Act also symbolised a further departure from penal welfare approaches towards managerialism (Muncie, Hughes and McLaughlin, 2002).

The murder of two-year old James Bulger in 1993 by two ten-year old boys is often quoted as a turning point for penal populism in England (Green, 2008). The perpetrators, Thompson and Venables, were tried as adults, and the minimum sentence to be served was changed several times over the subsequent years, from eight, to ten, to fifteen years. The minimum sentence of fifteen years was imposed by then Home Secretary, Michael Howard, who had received a petition with nearly 300,000 signatures which campaigned for the boys never to be released, and over 20,000 cut-out coupons from the Sun newspaper demanding the same (Green, 2008). This decision was overturned because it was a breach of the separation of powers. Some years later, the European Court of Human Rights ruled that Thompson and Venables' right to a fair trial had been breached, and that government ministers could not set minimum sentences (Green, 2008). This case is a prime example of how public opinion and tabloid media is capable of influencing responses to crime in England.

It could be argued that the reaction to the Bulger murder resulted in harsher treatment of juvenile offenders in England and Wales, and also resulted in harsher policies that impacted adult offenders. Green (2008: 3) notes: "the Bulger murder appears as well to have influenced the striking increases in adult prison admissions that immediately

followed it". Tony Blair successfully used the rising crime rates in the early 1990s to make the public doubt that the Tories were capable of prioritising law and order (Downes, 1998). Margaret Thatcher may have been the first to heavily politicise law and order, as noted above in Section 5.1.1, but it was Tony Blair who then implemented the type of policies that she had promised (Farrall, Burke and Hay, 2016). As rates of crime decreased when the country began to exit recession, the 'tough on crime' approach was deemed to be a success, both publicly and politically (Downes, 1998).

The 'punitive turn' in England and Wales has often been attributed to an increased politicisation of law and order, and a focus on 'out-toughing' the opposition. However, others are quick to point out that Britain has always had a penchant for punishment, it just has not been overly evident at home (Moore, 2014). Some argue that rehabilitative tendencies are still very much visible in England and Wales (Robinson, 2002; Raynor, 2004). Robinson (2008) suggests that rehabilitation did not 'survive' or 'revive', but rather that it 'evolved'. She argues that the "re-marketing" of rehabilitation in England and Wales is considered legitimate through utilitarian, managerial and expressive penal narratives, becoming 'late modern' rehabilitation (Robinson, 2008: 430). Restorative justice initiatives are one way that this form of rehabilitation continues to exist, as these initiatives can satisfy victims and communities, even if crime is not reduced overall (Robinson, 2008). As mentioned in Section 4.2.2, the return to the moralisation of offending in late modern rehabilitation, and the resulting responsibilisation of offenders, is visible in restorative justice initiatives and also aligns with Braithwaite's (1989) reintegrative shaming, as explained in Section 2.5. However, placing the responsibility upon the individual alone is not enough for desistance and reintegration to occur. Instead, the system must be one of "mutual obligation" between society and the person who offends (Kiely and Swirak, 2021: 163).

5.1.3 English Courts and Sentencing

This section will outline how the court system operates in England, and will note the adherence of judges to sentencing guidelines in this jurisdiction. Sentencing guidelines may impact on the ability of problem-solving court judges to apply individualised sentences unless explicitly provided with the power to do so. Following this, an introduction to some of the challenges currently impacting the court system in England

will be discussed, which will facilitate a greater understanding of the findings in Section 5.3.

The criminal court system in England consists of Magistrates' Courts, the Crown Court, the High Court, the Court of Appeal, and the Supreme Court. All criminal courts begin in the Magistrates' Court and the more serious cases are sent to the Crown Court. Crown Court cases can be appealed to the High Court, or in some instances they can be appealed to the Court of Appeal or the Supreme Court. A panel of two or three lay magistrates, or a district judge, will hear summary cases in the Magistrates' Court, where the maximum possible sentence is six months in prison. The other possible sentences that can be given in the Magistrates' Court are fines, community sentences, and bans, or a combination of these sentences.

England has a unique system whereby a large number of criminal cases are heard by voluntary judges from the general public (Donoghue, 2014). Lay magistrates hear around 95% of the criminal cases in England and Wales, mainly minor offences (Nolan, 2009). Lay magistrates have no formal training in law and receive no payment, but they are assisted by a court clerk who does have legal training and can provide guidance on issues of law (Nolan, 2009). Donoghue (2014: 47) argues that "the lay magistracy is intended to be representative and inclusive of all sections of society". The use of lay magistrates goes back to the concept of 'judgement by one's peers' (Gibbs and Kirby, 2014). Crawford (2004) emphasises that it is important for lay magistrates to be representative of the community in which they sit. However, the lay magistracy is not an inclusive cohort as it mainly consists of people from a professional, managerial background, or are retired legal professionals (Donoghue, 2014). Gibbs and Birkbeck (2014: 9) note that in 2013 magistrates were "considerably older, whiter and more middle class than the general population".

Indictable offences are sent to the Crown Court, along with appeals or cases passed from the Magistrates' Courts. The defendant can elect to have their case heard in the Crown Court if it is of the nature where it could be heard in either the Magistrates' or Crown Court. The Crown Court has a jury and a judge who can hand down a range of community sentences and prison sentences, including life sentences. The criminal division of the Court of Appeal is situated in the Royal Courts of Justice in London and hears appeals against convictions or sentences. Appeals are heard by a panel of two or three judges.

The Supreme Court is the highest court of appeal and can only hear appeals on a point of law and they must be of public importance. Twelve judges sit in the Supreme Court, and they are overseen by a president and a deputy.

Judges in England are obliged to follow sentencing guidelines, unless it is not in the interest of justice (Sentencing Council, 2021). The Sentencing Council is responsible for producing sentencing guidelines for use by the judiciary. The Sentencing Code was implemented in England and Wales in December 2020, which is a consolidation of over fifty pieces of sentencing legislation, creating the Sentencing Act 2020. The aim of the sentencing guidelines is to keep sentencing consistent across England and Wales. The Conservative Manifesto, reflected in the 2020 sentencing white paper, contained commitments on sentencing reform which demonstrate a move towards more punitive approaches to sentencing. These include ending automatic halfway prison release for serious crimes and applying tougher sentences for the worst offenders, creating tougher community sentencing, tightening curfews, expanding electronic tagging and the use of sobriety tags, and continuing the ban on prisoner votes (Ministry of Justice, 2020). There were some positive commitments made such as breaking the cycle of crime related to addiction and drug deaths through treatment and improving employment opportunities for ex-offenders. There clearly remains a need to appear 'tough on crime' and therefore, to be considered viable, even community sentences need to be framed as a punitive response to crime. The requirement of judges to strictly adhere to sentencing guidelines may make problem-solving court models incompatible with the sentencing system in England. It is a particular problem for community court models as they require a more individualised and innovative approach to sentencing.

As will be discussed further in Section 5.3.2 in relation to the closure of the NLCJC, there were a large number of court closures in England from 2010 onwards (The Law Society, 2022). As a result of the court closures, magistrates tend to live outside of the area of the court they sit in, which means that they have less local knowledge and limited insight into local issues (Donoghue, 2014). Fewer courts, coupled with an increasing focus on efficiency and producing positive performance outcomes (Donoghue, 2014), has resulted in low morale among court staff in England (Gibbs, 2013). These issues have been compounded by the backlog of court cases due to the pandemic (Fouzder, 2022). The government is making an effort to recruit more judges in the coming years (Fouzder,

2022), but the combination of court closures, increased managerialism, low morale, and the backlog of cases has left the court system in a vulnerable state.

5.1.4 Prisons

This section will provide details on the prison system in England and the challenges it is facing. The Incentives and Earned Privileges Scheme (IEP) that operate within prisons, and the unintended punitive impact of the scheme, will also be discussed. The issues experienced by the court system are likely to have repercussions for the prison system in England also. There are currently 120 prison establishments across England and Wales, and of these, 13 are private prisons (Ministry of Justice, 2020). Prisons in England and Wales are monitored by the HM Chief Inspector of Prisons, Independent Monitoring Boards, the Prison and Probation Ombudsman, Non-Governmental Organisations (NGOs), and the courts (Padfield, 2018). Padfield (2018) notes that the increased privatisation of prisons in the jurisdiction is a cause for concern as it is more difficult to ensure privately-run institutions are adequately monitored to ensure that the prisoners are safeguarded.

Between 1900 and 2018, the prison population in England and Wales had quadrupled, and this increased by half from 1990 (Sturge, 2020). The Prison Reform Trust (2022) note that the average cost to keep an individual in prison for a year is £48,162. Sturge (2020) reports that the prison population is ageing, sentences are longer, and there is a disproportionate amount of people of minority ethnicity within the prison population when compared with the general population. Atkins et al. (2019) found that prison performance has declined in every key measurement in recent years. Punishments for serious crimes have become more punitive in recent decades, “on a scale which exceeds comparable countries or historical precedent” (Prison Reform Trust, 2020). Crewe, Hulley and Wright (2019) state that the number of people serving long sentences, the minimum sentence lengths before a prisoner comes before the parole board, and the amount of time spent in prison has increased considerably. The prison system in England and Wales is constantly referred to as being in ‘crisis’ due to overcrowding, staff shortages, prisoner well-being, and self-harm incidents (Hung, 2019).

IEP schemes operate in prisons across England and Wales, which were introduced with the intended purpose of encouraging good behaviour of prisoners and discouraging bad behaviour (Liebling et al., 2011). It resulted in the implementation of basic, standard and

enhanced privilege levels. The incentives available under the scheme include increased visitations from family and friends, having the ability to earn more money or spend more of the money earned, have a television in their cell, wear their own clothes, and be allowed have more out of cell time (Prison Reform Trust, 2021). In turn, these 'privileges' may be removed as punishment for bad behaviour. Prison governors have the ability to tailor the behaviour requirements for each prisoner and can create further levels of incentive above the enhanced level (Prison Reform Trust, 2021).

However, despite its initial aim, the IEP has had an unintended punitive effect within prisons. A theme that emerged through research conducted by the Prisoner Policy Network is that prisoners see the IEP scheme as a method of applying further punishment, not rewards (Wainwright, Harriot and Saajedi, 2019). There are reports that the scheme is used inconsistently and that it is much easier to lose privileges than it is to gain them (Wainwright, Harriot and Saajedi, 2019). Liebling et al. (2011) note that the IEP scheme is left entirely to the discretion of the prison officers and that the system was introduced quickly, with no training given. A book ban was introduced in November 2013 in English and Welsh prisons as part of the IEP scheme, which resulted in the UK High Court declaring that such a ban was unlawful (BBC News, 2014). The scheme also serves to further widen the power dynamic within the prison between the staff and the prisoners and was found to be detrimental to this relationship (Liebling et al., 2011).

5.1.5 Probation

Probation in England and Wales has experienced several periods of transformation in recent years, which has resulted in significant upheaval and has contributed to a decrease in confidence in the service (Carr, 2023). The functioning of the Probation Service in England and Wales has been hindered significantly by a failed part-privatisation, which caused policy makers to reconsider the over-corporatisation of criminal justice agencies. In 2015, 'Transforming Rehabilitation' (TR) changes to the Probation Service were introduced by the Conservative-led coalition and much of the service was forced into privatisation (Raynor, 2020). This reform was widely criticised, and the government announced in 2019 that the management of offenders would return to the public sector with community-based punishment and interventions remaining privatised (Raynor, 2020). However, in June 2020 it was announced that the Probation Service would take over all offender management from June 2021, and would also take over community

interventions and accredited programmes (Webster, 2020). This process left the Probation Service in a vulnerable state and the progress review of TR published in 2019 found:

> "in its haste to rush through its reforms at breakneck speed the Ministry of Justice not only failed to deliver its 'rehabilitation revolution' but left probation services underfunded, fragile, and lacking the confidence of the courts" (House of Commons, 2019: 3).

Many Community Rehabilitation Companies contracts were terminated early, and subsequently went into administration (House of Commons, 2019).

In 2021, all probation operations were moved under the remit of Her Majesty's Prison and Probation Service (HMPPS) as part of the re-nationalisation of probation. Carr (2022: 413) notes that "one may be forgiven for thinking that the dust would be allowed to settle before further reforms are enacted". However, in 2022, the Ministry of Justice announced more reforms. The changes, under the umbrella of the name 'One HMPPS', involves the amalgamation of probation and prison senior management (Carr, 2022). Probation in England is clearly still in a period of transition and has yet to stabilise, which may be contributing to the challenges that the service is experiencing with the recruitment and retention of staff (Carr, 2022).

Increased punitiveness within penal policy, court closures, the pandemic, case backlogs, prison overcrowding, and the instability of the Probation Service have contributed to an overall crisis within the criminal justice system in England. In times of crisis, when the impact of punitive penal policy change is visible within communities and within the criminal justice estate, especially due to prison overcrowding, problem-solving courts tend to become more attractive to policy-makers. The reason for this is that these court models pose a practical solution by aiming to address the root causes of offending and to use prison as a last resort (Berman and Feinblatt, 2005). However, once the cost of adequately implementing problem-solving court models with the necessary support services becomes apparent, they tend to lose political popularity again, as was the case with the NLCJC, which will be explained further in Sections 5.2 and 5.3. This political return to problem-solving courts has been evident in England in the past few years, and will be discussed below in Section 5.1.6.

5.1.6 Problem-Solving Courts in England

This section will highlight the periods of political support that problem-solving courts have received in the UK, as their popularity has fluctuated over time. The emergence of drug courts, community courts, and family drug and alcohol courts (FDAC) will be discussed in more detail here.

(a) Political support

In the 2002 Home Office White Paper, *Justice For All*, the government considered introducing more specialisation in the courts through problem-solving court initiatives (Home Office, 2002). As a result, a Courts Innovation Branch was then set up to study the problem-solving approach (Donoghue, 2014). In 2015, then justice secretary Michael Gove met with the judges of some US problem-solving courts and showed an interest in them. Liz Truss, then Lord Chancellor and Lord Chief Justice Thomas, announced that the government were exploring the use of the problem-solving court model in 2016 (Bowen, 2021). As mentioned in Section 5.1.3, in England, even alternatives to imprisonment need to be framed as 'tough on crime'. Therefore, problem-solving courts are often framed in a more punitive way due to the commitment to this rhetoric. As an example, Lord Thomas of Cwmgiedd, who was Lord Chief Justice in 2016, spoke to MPs on the justice select committee, stating:

> "the prison population is very, very high at the moment. Whether it will continue to rise is always difficult to tell. There are worries that it will. I don't know whether we can dispense with more [offenders] by really tough, and I do mean tough, community penalties. So I would like to see that done first" (Bowcott, 2016).

The most recent demonstration of support towards problem-solving courts is visible in the 2020 sentencing white paper, *A Smarter Approach to Sentencing*, which states:

> "We will bring forward plans to pilot problem-solving courts, which will incorporate a number of evidenced problem-solving components such as regular judicial monitoring and the use of graduated sanction and incentives, for offenders with a high level of needs and often prolific offending behaviour. We intend to pilot these problem-solving court models in up to five courts" (Ministry of Justice, 2020: 12).

The re-appearance of problem-solving justice approaches within penal policy in England occurs when the criminal justice system, and communities, are impacted by negative outcomes stemming from punitive penal policies (Wade, 2021). However, rather than acknowledging that punitive approaches are not working, the government attempts to frame problem-solving initiatives as 'tough on crime'.

(b) Drug Courts

Drug Courts were the first type of problem-solving courts to inspire a British counterpart. Then West Yorkshire police chief constable Keith Hellawell, visited the drug court in Miami in 1995 (Nolan, 2009), and this visit sparked a chain of events that resulted in two drug courts being introduced in West Yorkshire. Drugs Courts soon after became referred to as Drug Treatment and Testing Orders (DTTOs), which were also inspired by the American system and were put on a legislative footing in 1998 in the Crime and Disorder Act (Nolan, 2009). DTTOs became part of a larger community order process through the Criminal Justice Act 2003 and became known as a Drug Rehabilitation Requirement (DRR) (Nolan, 2009). Nolan (2009) notes that it was just eight months after DRRs came into effect that the drug court, in its initial form, experienced a revival, with one being set up in West London and one in Leeds.

Although it is true that the various English models were inspired by the American drug courts, it cannot be said that they are all directly transplanted. At times it appears that the 'tailoring' of these courts, for example, through the development of DTTOs and DRRs, is an exercise in cost-saving rather than a cultural adaptation. Many of the elements of the original American model that were subsequently lost through these alterations, such as the relationship that builds between a single dedicated judge and the defendant over time, can prove detrimental to the model as a whole.

(c) Community Courts

The first step to introducing community courts in England occurred in 2003 when then British Home Secretary David Blunkett and then Lord Chief Justice Harry Woolf went to New York to visit the Red Hook Community Justice Centre. The planning of an English community court started soon after this visit following a conference in which the Red Hook judge, Alex Calabrese, spoke to over 300 criminal justice stakeholders (Nolan, 2009). In 2003, Lord Falconer reported that a community court would be introduced in Liverpool in 2004 following his own visit to the Midtown community court in New York

(Nolan, 2009). Nolan (2009) notes a key difference between the development of community courts in the US and in England – in the US, it was a grassroots movement, whereas in England, it was government-led. The NLCJC, which will be discussed in-depth in Section 5.2, was established in its own building in 2005. Following the introduction of the NLCJC, a second community court was opened within an existing court in Salford in 2005. The SCJI was not established as a standalone community court due to the expense involved to introduce that model. In the same vein as drug courts, in efforts to reduce cost, the SCJI lacked many of the core elements associated with the original model. An overview of the SCJI will be provided in Section 5.2.6.

The NLCJC was fully closed in 2013 for several reasons, which will be outlined in Section 5.2.8. It was only two years later that Michael Gove expressed his enthusiasm for problem-solving courts and set up a working party to investigate the adoption of such models.

(d) Family Drug and Alcohol Courts

The FDAC is "an alternative family court for care proceedings", aimed specifically at parents who experience drug and alcohol misuse (Centre for Justice Innovation, 2023). The model is different to mainstream family courts as it is a problem-solving model that allows a dedicated judge to review the case in an informal hearing every two weeks (Centre for Justice Innovation, 2023). The FDAC model was introduced in London in 2008 by Judge Nicholas Crichton. There are currently 15 FDAC teams operating in 22 courts across the UK (Centre for Justice Innovation, 2023). Justice Crichton was inspired by the Family Treatment Courts in California and wanted to introduce a similar innovation in the UK. The purpose of the model is to prevent the courts repeatedly removing children from the same families by instead providing help and support to the family so that they may be then able to provide for their children (Centre for Justice Innovation, 2023). Local authorities refer cases to the FDAC after discussing the case with a specialist team, either prior to proceedings or when issuing care proceedings (Centre for Justice Innovation, 2023). Intervention plans are created with the parents and key workers liaise with them to carry out the plan. Progress is reported back to the court. The FDAC works independently to the local authority, children's social care team, and child protection teams (Centre for Justice Innovation, 2023).

As a problem-solving court model, the FDAC is showing positive outcomes. The FDAC Annual Report for 2021/2022 found that 88% of parents who took part in the programme completed it, and 40% of children were reunited with one or both parents once proceedings ended (Centre for Justice Innovation, 2023). The FDAC model is evidence that problem-solving models can work in England, and can work within existing courts. However, it is interesting to note that this problem-solving court model was initiated by a judge, rather than by the government, and that it takes place as an alternative to the mainstream family court rather than criminal court proceedings.

5.1.7 Conclusion

Punitive responses to crime are not new in England and colonial parallels with Australia are visible in this regard. The 'tough on crime' political approach is as relevant today as it was when Margaret Thatcher was trying to secure the 1979 election. It has reached a point where appearing 'tough on crime' is one of the only issues on which the political parties have reached a consensus (Downes and Morgan, 2002). Neo-liberalism and the politicisation of crime has shaped, and continues to shape, the criminal justice system in England today.

The court system has been experiencing challenges due to court closures, increased managerialism, low morale among staff, and the backlog of cases due to the pandemic. There are plans to recruit more judges to address some of these issues, but these recruits will likely have limited knowledge of the problems impacting the community in these areas. The prison system is also strained due to overcrowding, an ageing population, increased sentence lengths, and staff shortages. Schemes such as the IEP have not had their intended effect and have instead damaged the relationship between prisoners and prison staff. Probation in England has experienced periods of upheaval in recent years due to attempts to privatise the service and the subsequent re-nationalisation, which has left it in a fragile state. All of these issues have contributed to the crisis in the criminal justice system, which is a culmination of punitive penal policy and efforts to save money. It is in this environment that policymakers turn to innovative approaches such as problem-solving courts.

Problem-solving courts seem to be a politically acceptable method of attempting to repair the damage caused by past penal policy. However, judging by previous attempts to implement these court models in England, there has never been a sustained commitment

to providing them with adequate resources. However, FDACs demonstrate that problem-solving court models are capable of producing positive outcomes in England. Bowen (2021) speaks positively about the most recent revival of problem-solving courts, stating:

> "for behind this repeated call is the persistent hope that there can be solutions to recurring problems; that there can be keys to overcoming the seeming inevitability of high re-offending rates by repeat and prolific offenders; that there can be antidotes to the pessimism felt right across the whole justice system at the pointlessness of short custodial sentences; that there are cures for the suffering of offenders trapped in an endless cycle of deprivation and punishment."

Bowen sees the reinvigoration of problem-solving courts as a renewal of hope that the justice system can produce positive results. It is an acknowledgement that the traditional court system is not the only option, and oftentimes, is not the best option for justice.

The following section, Section 5.2, contains a detailed overview of the establishment, operation, and subsequent closure of the NLCJC.

5.2 The North Liverpool Community Justice Centre

This section provides an overview of the NLCJC based on government documents, academic articles, and the evaluations conducted on the centre. The NLCJC took inspiration from the Red Hook Community Justice Center and the Midtown Community Court in New York. The NLCJC is an example of a failed community court model due to its closure in 2013. The approach of the NLCJC will be compared to that of the NJC in Chapter Seven to determine the potential reasons why the NLCJC was closed while the NJC continues to operate successfully. The comparison will then be used to establish best-practice recommendations on how a community court model should be implemented. This section will outline the background to the establishment of the NLCJC, along with an explanation of the structure of the centre, community involvement with the centre, the problem-solving approach, the location and design, the judge, and the staff at the centre. An overview of the SCJI is included as an example of an English community court that was set up within an existing Magistrates' Court based on the principles of the NLCJC. Following this, the outcomes of the NLCJC will be discussed. This section will end with an outline of the potential reasons for the closure of the NLCJC.

5.2.1 Background

There were two major community justice developments in England in 2005. The first was the opening of the NLCJC as a standalone centre in September 2005, which consisted of a Magistrates' Court and numerous services for people who reside in the catchment areas of Anfield, Everton, County and Kirkdale. The second was the launch of the SCJI in November 2005, which was set up within an established Magistrates' Court rather than in a standalone building. The NLCJC was the first and only community court of its kind established in the UK. The Labour Government committed to expanding on problem-solving and specialist courts in the 2002 White Paper, *Justice For All*. Within *Justice For All*, it was stated that the scope for "introducing a greater degree of specialisation within the criminal court system" would be considered (Home Office, 2002). In 2003, then Lord Chief Justice Harry Woolf and then British Home Secretary David Blunkett visited Red Hook, became champions of the community court model, and intended to set one up in England (McKenna, 2007; Nolan, 2009). Following this enthusiasm, a national conference took place involving key stakeholders in criminal justice and Judge Alex

Calabrese from Red Hook. At this conference, the Government pledged £3 million to fund community court pilots across England (Nolan, 2009). In the 2003 Home Office White Paper, *Respect and Responsibility – Taking A Stand Against Anti-Social Behaviour*, it was stated that the Government was in the process of developing a proposal for pilot community justice centres in the UK (Home Office, 2003). Also in 2003, Lord Falconer visited New York to attend the Midtown Community Court's tenth anniversary celebration, where it was announced that a community court would be opened in Liverpool the following year (Nolan, 2009). The introduction of community courts to England was overseen by the Community Justice National Programme, who were responsible for implementing both the NLCJC and the SCJI. The intended purpose behind the development of the community justice centres in England was to "improve links between the community and the delivery of justice" (Home Office, 2003: 80). The NLCJC was technically launched in 2004, but it operated out of Liverpool Magistrates' Court while the standalone building, formerly a school, was being prepared (Mair and Millings, 2011).

Proposals were submitted vying for the community justice centre to be located in various cities across the UK. North Liverpool, specifically the areas of Anfield, Everton, County and Kirkdale, were eventually chosen because they had crime rates and levels of deprivation that were higher than average, along with other social problems (Mair and Millings, 2011). In a written response to a question asking where in Liverpool the community justice centre would be located, Paul Goggins (2004) responded that North Liverpool was the most appropriate location, stating:

> "this part of the city has experienced the problems that the Justice Centre will aim to tackle, such as anti-social behaviour and low-level criminal activity, but maintains a strong sense of community spirit and pride that the Justice Centre can build on and enhance".

Judge David Fletcher, who presided over the NLCJC from when it opened until 2012, notes that there was some hostility towards the centre from the community in the beginning. Fletcher states: "the community felt they'd had this thing dumped on them, that it was a massive PR exercise" (Center for Justice Innovation, 2005). Judge Fletcher also claims that the community had grown tired of justice initiatives that had not made a

difference in the area, and they feared that having a courtroom in the area would result in more criminal activity.

The main justification for the establishment of the NLCJC was to tackle anti-social behaviour, and there was less of an explicit focus on tackling the underlying causes of offending. In a Department for Constitutional Affairs (2004) Press Release, Lord Falconer was clear that the core purpose of the NLCJC was to address anti-social behaviour in North Liverpool. In 2005, the Department for Constitutional Affairs published *Supporting Magistrates' Courts to Provide Justice*. In this document (2005: 13), Magistrates' Courts are described as being "at the heart of delivering community justice" and that these courts should "continually search for new and innovative ways to respond to the needs of the public". The Department for Constitutional Affairs (2005) strongly emphasised the need to tackle anti-social behaviour in this report and stated this as a central aim of the court. The report describes the NLCJC as a pioneering holistic innovation that empowers local communities, delivers justice locally, and utilises a problem-solving approach. The Department of Constitutional Affairs (2005: 14) state "community justice is a locally based problem-solving approach to anti-social behaviour and crime" in the context of the work of the NLCJC. Increasing public confidence in the criminal justice system is also stated as a main aim of the NLCJC (Department of Constitutional Affairs, 2005). The report makes note of the development of the SCJI as a means to further deal with crime and anti-social behaviour in Salford (Department of Constitutional Affairs, 2005). As noted in Section 5.1.6(a), in England, problem-solving initiatives were framed punitively to fit within the 'tough on crime' political rhetoric and this is visible within the policy focus on anti-social behaviour as a justification for the NLCJC. However, as mentioned in Section 4.3.8, community courts can target the underlying causes of offending, maintain civil order in a more legitimate way, and empower marginalised communities if they are not directed towards punitive outcomes. Therefore, this framing could have contributed to the failure of the NLCJC as a community court model.

In 2008, a Cabinet Office Report, *Engaging Communities in Fighting Crime*, also known as the Casey Review, found that despite some progress, justice is still not visible enough and the justice system is still too far removed from people's day to day lives. A reply to the Casey Review was published by the Office for Criminal Justice Reform in 2009, titled *Engaging Communities in Criminal Justice*. The Office for Criminal Justice Reform

(2009) agreed with the majority of the findings and committed to increase public confidence in the criminal justice system in order to try increase public engagement. The report mentioned the NLCJC, along with the SCJI, and the eight main principles of community justice that both models apply. These principles were: courts connected to the community, justice seen to be done, cases handled robustly and speedily, strong independent judiciary, solving problems and finding solutions, working together, repairing harm and raising confidence, reintegrating offenders and building communities (Office for Criminal Justice Reform, 2009).

The Office for Criminal Justice Reform clearly expressed support for the NLCJC and the SCJI, and how their practices counteracted the criticisms within the Casey Review. However, the report also signalled the beginning of the end for standalone community courts in England. The Office for Criminal Justice Reform (2009: 15) states:

> "due to cost considerations we have ruled out as an immediate option the creation of new purpose-built centres, and instead are determined to implement elements of the approach in existing courts".

The Report contends that the community justice approach, rather than the standalone building, is the most important element and that this could be achieved by creating stronger partnerships between criminal justice organisations, the judiciary, and the community.

5.2.2 NLCJC Structure

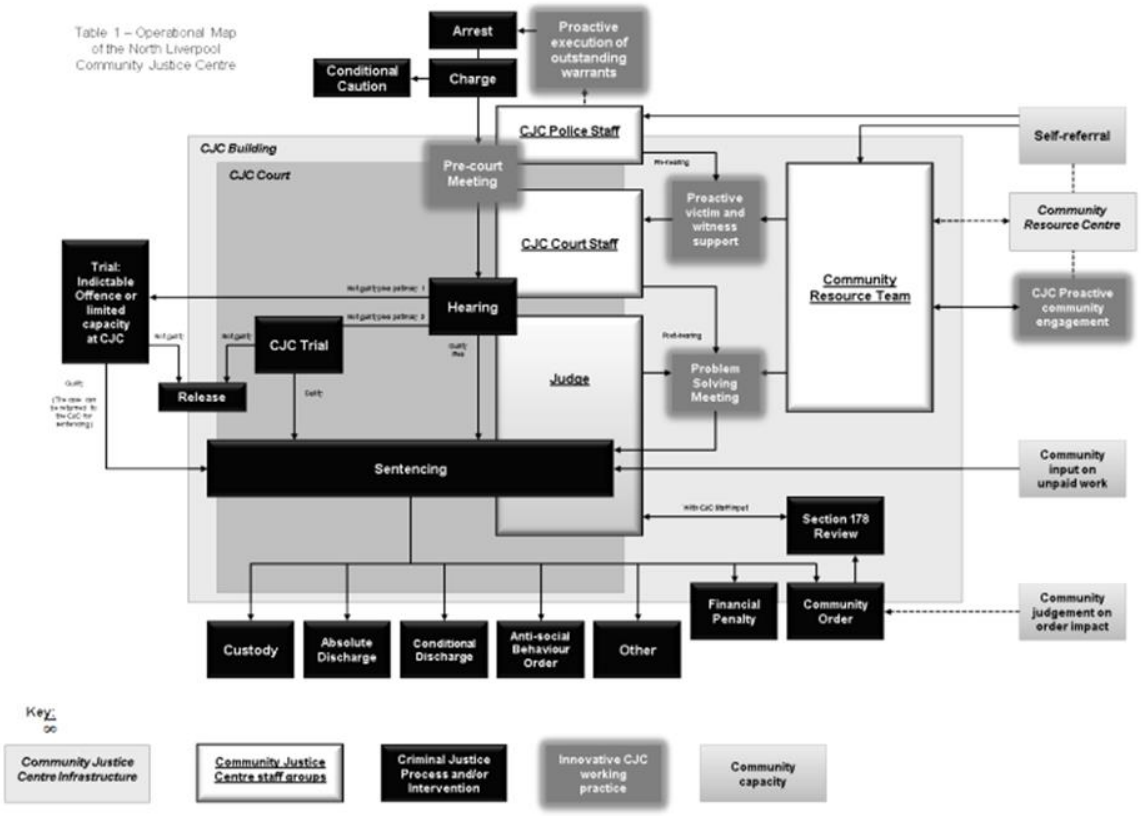
The NLCJC was the only community court programme in the UK that operated as a standalone court in its own building. The prominent features of the NLCJC were: the application of a problem-solving approach to criminal cases, a sole Judge who can sit as a District Judge or a Crown Court Judge, the co-location of the relevant criminal justice agencies, the provision of a range of services available to the community as a whole, the availability of a Community Resource Centre that can be used for a wide range of community initiatives, and a Community Engagement Team that works proactively to engage with the community (Mair and Millings, 2011).

Individuals who committed an offence that met the inclusion criteria within the catchment area, could have their case heard at the NLCJC rather than mainstream courts (Booth et al., 2012). Few offences were outside the inclusion criteria of the NLCJC, but those

excluded were sexual offences and murder for juvenile offenders, indictable only offences, summary road traffic offences, sexual offences and child abuse cases for adult offenders (Booth et al., 2012). That the NLCJC dealt with more serious offences is something that deviates from the general belief that community courts only deal with minor crimes. In an interview conducted by the Center for Justice Innovation with Judge David Fletcher, he notes that the NLCJC deals with a large range of cases, with the majority centring around anti-social behaviour and drug-related offences (Center for Justice Innovation, 2005). Judge Fletcher was also clear that the NLCJC deals with more than court cases, as community members were welcome to come to the NLCJC with their problems and receive advice (Center for Justice Innovation, 2005).

The NLCJC brought together several criminal justice agencies such as the Probation Service, the Youth Offending Service, the Crown Prosecution Service, Victim Support, housing services, the City Council Anti-social Behaviour Team, the Citizen's Advice Bureau, a community engagement team, and police (Mair and Millings, 2011). The local drug action team plus employment, financial advice, restorative justice, and victim support services all operated within the centre (The Police Foundation, 2010). The NLCJC also had a Youth Court and operated as a 'one-stop-shop' to deal with local offending (Booth et al., 2012).

Operational Map of the NLCJC – From Mair and Millings (2011: 18)



(a) Community Involvement

As established throughout the course of this research, involving the community in the justice process is a core aim of the community court model. Community members should feel a certain amount of ownership of the centre and be aware that it is not just for those involved in the criminal justice system. If a community court has good community support, the community will also act as a mouthpiece for it and advertise its process. The NLCJC had a community resource team that worked in tandem with the court and provided a variety of services such as legal support, financial counselling, victim support, substance abuse advice, housing support, advice around anti-social behaviour, and volunteer opportunities. There was a process provided by the team to pay court-imposed fines, and to report crime and anti-social behaviour. There was also a resource room available for community members to use. Mair and Millings (2011) note that these services were available to all community members, not just clients of the court.

The NLCJC did not immediately win the support of the community and it was met with trepidation from the outset (Center for Justice Innovation, 2005). Certain residents were fearful that by opening the centre, more offenders would be attracted to the area (Mair and Millings, 2011). An added issue was that some residents blamed the centre for the closure of the school and swimming pool that had existed in the building prior to the opening of the NLCJC (Mair and Millings, 2011). An argument could be made here that if the community members had been adequately consulted prior to the establishment of the NLCJC, they would have raised the issue of closing the swimming pool, and the community court planners should have taken that into account. There was also concern about NLCJC staff not being from the area and therefore not understanding the community (Mair and Millings, 2011). These fears persisted despite efforts to include community members in the process of opening the NLCJC, in terms of selecting the judge and the location of the centre. NLCJC planners conferred with the community about the problems in their area and they did try to create programmes to respond to these problems. For example, special programmes were set up to address drug use and drug dealers in the area (Mair and Millings, 2011).

Community engagement can be difficult to measure, but Mair and Millings (2011: 50) note that a possible symbol that the NLCJC was accepted in the locality "was the fact that, according to one respondent, the Centre buildings had never been vandalised or subjected to graffiti since it had opened". After the NLCJC had been open for a while and community interest started to taper off, the community engagement team focused on running open days at the centre as well as events such as mock trials, attending schools and colleges to talk about the centre, and encouraging local partners to use the facilities at the centre (Mair and Millings, 2011). However, NLCJC staff found it difficult to maintain the necessary level of community involvement in the centre. Mair and Millings (2011: 31) note:

> "the early days of the Centre saw newsletters and Community Reference Groups provide real impetus for engagement, but both of these have ended partly as a result of low attendance and a degree of community apathy".

Participants in Mair and Milling's study mentioned the need for formal structures to be put in place to include community members' voices in how the NLCJC direct their

resources, and also that NLCJC staff should be more visibly involved in the community. In addition, if the NLCJC had been designed as a community hub with a court attached, rather than a courthouse with some community focus, more community members may have engaged with the centre.

(b) Problem-Solving Meetings

Problem-solving meetings took place at the NLCJC to assess and address defendant's underlying issues. These meetings usually only took place if a defendant pleaded guilty, but they could also be used in rare cases if the defendant was found guilty (Mair and Millings, 2011). The judge could adjourn a case so that the defendant could take part in a problem-solving meeting which was then used to inform the sentencing process. Mair and Millings (2011) mention the three important components of the problem-solving meetings. The first element is informality; the meetings should be held in an informal manner to help the offender feel at ease and to promote engagement. The second element is the collaboration of NLCJC staff and those providing the client with legal representation to discuss how best to support the client. The third element is that those involved in the meeting must provide the judge with advice as to the most appropriate sentence to apply. The problem-solving meetings were only possible due to the multi-agency approach that was facilitated by the NLCJC. Mair and Millings (2011) report that 859 problem-solving meetings took place in the NLCJC between January 2006 and February 2010.

5.2.3 Location and Design

Community courts are best located in areas of high crime and social disadvantage. In order to promote community ownership, they should be placed in a central location that is easy to access for all members of the catchment area, whether by foot or by public transport. Both Red Hook and the NJC have demonstrated that using a building that is familiar to the community for a community court also works well. The decision was made to establish the NLCJC in North Liverpool as it was an area of high crime rates and high levels of socio-economic deprivation (Mair and Millings, 2011). Like Red Hook, a former school building was deemed most suitable for the NLCJC. The former school was located in Kirkdale and comprised a courtroom, holding cells, interview rooms, a waiting area, and offices to accommodate conferences and staff training (Mair and Millings, 2011). Mair and Millings (2011: 20) note that the courtroom in the NLCJC was set up more

informally than traditional courts, “with a purposefully lighter and calmer feel”. The judges’ bench was located closer to the defendant than in a traditional court (Mair and Millings, 2011). However, the formality and reverence to the judge was not completely abandoned at the NLCJC because the judge still sat at a raised bench. The retention of the raised bench is in contrast to the approach taken by the NJC, as outlined in Section 4.2.4.

As previously mentioned, the NLCJC was set up to work with the residents of Anfield, Everton, County and Kirkdale. Accounts of the NLCJC have noted that the centre was at a significant disadvantage due to its location on the periphery of the area that it was intended to serve (Mair and Millings, 2011; Murray and Blagg, 2018). A defining element of community courts in general is that they should be located in the community whose problems it intends to address and that it should be easily accessible to this community (Smith, 2018). Locating a community court on the outskirts of the area it serves makes it much more difficult to generate a sense of community ownership. Community members also reported feeling impeded from entering the NLCJC building due to the strict security at the front door and a fear of being seen entering the court (Mair and Millings, 2011). This maintained the court as the main function of the NLCJC, as community members were not comfortable enough to enter the building, and therefore could not have felt a sense of ownership of it. This discomfort, coupled with the fact that the NLCJC was difficult to access for many community members, likely resulted in the NLCJC becoming isolated from the community it was serving.

5.2.4 The Judge

Judge David Fletcher presided over the NLCJC from the outset, with Judge Clancy briefly taking over in December 2013 when Judge Fletcher stepped down. In keeping with involving the community in the community court process, two community members were included in the process of appointing Judge David Fletcher as the single, dedicated judge of the NLCJC in 2004 (Mair and Millings, 2011). Judge Fletcher could sit as a District Court and Crown Court Judge, and could host a trial in the event of a plea of not guilty at the centre. However, if the trial was for an indictable offence or required a jury, it would take place elsewhere and return to the NLCJC for sentencing. Judge Fletcher also had the ability to hear magistrates’, youth, and civil cases. To further emphasise that the NLCJC is less formal than a mainstream court, Judge Fletcher wore a dark suit rather

than judges' robes (Center for Justice Innovation, 2005). The judge also spoke directly to defendants in the court rather than their lawyer, which was often surprising to them (Center for Justice Innovation, 2005).

Mair and Millings (2011) found that both the offenders and the community participants were positive in their feedback towards Judge Fletcher. Judge Fletcher, as a single dedicated judge, could form therapeutic relationships with the offenders that came before him and also become close with those community members that remained involved in the NLCJC. Mair and Millings (2011) note that it is difficult to separate the NLCJC from Judge David Fletcher, which brings advantages and disadvantages. Participants in Mair and Millings (2011) study were complimentary about how approachable Judge Fletcher was and how he pioneered the centre in the community, his engagement with community events, and his work with the media.

It is necessary for a community court judge to be a certain type of person, one who can openly communicate with the community, and the defendants that appear before them, while also subscribing to principles of restorative justice and therapeutic jurisprudence. Mair and Millings (2011: 31) explain the danger of having to rely on such a judge: "the problem here was that if only a very special kind of individual could lead a Community Justice Centre, then the possibility of rolling out the model more widely was remote". However, the consistency of a single judge was a clear advantage to the centre (Mair and Millings, 2011).

The consistency was noted as particularly important when carrying out sentencing reviews. Judge Fletcher had special powers of review under Section 178 of the Criminal Justice Act 2003, which enabled him to bring an offender on a community sentence back before the court every six to eight weeks. The offender's probation officer provides a progress report to the magistrate, highlighting both the successes and failures of the offender throughout the order. The magistrate could encourage the offender or express their disappointment as necessary. A power that Judge Fletcher did not have, and one he claimed was necessary, was to be able to mandate residential drug treatment through the court at the NLCJC (The Centre for Social Justice, 2009).

5.2.5 Staff

Staff at the NLCJC were hopeful about what could be achieved by the centre from the ground up and Mair and Millings (2011: 33) note that "innovation was the driving force of the Centre". According to the staff who were interviewed for Mair and Milling's (2011) study, the most innovative aspects of the NLCJC were the level of community involvement, co-location of services, and the focus on problem-solving. Interestingly, staff mentioned that innovations usually emerged through the work of staff on the ground rather than from forces higher up (Mair and Millings, 2011). Staff stated that the most beneficial aspect of the NLCJC was the co-location of relevant criminal justice agencies (Mair and Millings, 2011). Key criminal justice agencies such as police, prosecution, probation, sentencers, and the Youth Offending Team, were based on-site at the NLCJC, which facilitated a multi-agency approach and provided an understanding of the work other agencies did. Multi-agency staff located on-site at the NLCJC held daily meetings to review advanced disclosure packages, to plan, and to note the underlying problems of clients (Mair and Millings, 2011). The pre-court meeting also served the purpose of identifying clients who did not present, and the on-site police officers would attempt to locate and collect them (Mair and Millings, 2011). However, staff did feel that they were left to their own devices when it came to collaborating between the different agencies and that this took a long time to negotiate (Mair and Millings, 2011).

There was also some animosity towards the NLCJC from other criminal justice agencies in the community, according to NLCJC staff (Mair and Millings, 2011). Mair and Millings (2011: 50) observe that "this had implications for the level of interest in the Centre which tended to be greater on the national and international level than locally". The resentment of local agencies towards the NLCJC was centred on funding and the NLCJC was allegedly seen as the 'rich relation'. Resentment surrounding funding is an issue that could easily arise in an Irish setting also. Attempting to collaborate with the local agencies could present problems, as local agency staff could see it as adding to their workload with little reward for their own agency.

Staff members already knew that the future of the NLCJC was precarious and expressed concern in Mair and Millings' (2011: 55) study about the centre being able to continue "in its present form". The staff could see the value of the NLCJC, but were also best placed to see the shortcomings of the centre, particularly around self-promotion and

marketing of the centre (Mair and Millings, 2011). Newsletters and fliers were used in an attempt to increase awareness of the NLCJC, but at the time of the study, these were no longer being used, but staff were continuing to attend community events and schools (Mair and Millings, 2011). Staff members at the NLCJC did a lot of work around community engagement and consulted with community members about their worries and what they expected from the centre (Mair and Millings, 2011). However, community reference groups were eventually discontinued due to low attendance, and young people's reference groups were disbanded early on as staff felt they were questioning young people who did not want to engage in the process (Mair and Millings, 2011).

5.2.6 Salford Criminal Justice Initiative

The SCJI was set up in 2005 in an established Magistrates' Court to see if the principles of community justice, that were already being applied in the NLCJC, could be implemented in a traditional court setting. If the SCJI was successful, then the costs associated with establishing standalone community courts could be avoided (Brown and Payne, 2007; Mair and Millings, 2011). The SCJI began in Salford Magistrates Court which dealt with any offence committed in Eccles, Barton, and Winton, and anti-social behaviour order (ASBO) applications from anywhere in the City of Salford. The aims of the SCJI were:

> "to engage with the local community, speed up court processes, adopt a problem solving approach in court, develop sentences which punish but provide reparation to the community and help to the offender, and monitor and support offenders to successfully complete sentences" (Brown and Payne, 2007: 2).

Certain cases were assigned to the SCJI for two days a week and were heard by a panel of magistrates who were trained in community justice principles (Brown and Payne, 2007). During the community court days, the magistrates had increased engagement with offenders and could choose to refer the offender to an alcohol worker, a mentoring service, or to the Together Women's Project – a project that sought to address the underlying causes of offending for women (Brown and Payne, 2007). Similar to the NLCJC, community members were made aware of the SCJI through local media, open days, newsletters and staff attendance at community meetings (Brown and Payne, 2007).

The SCJI was also granted powers under Section 178 of the Criminal Justice Act 2003 to allow the court to review the progress of individuals who were completing community orders. Judges were trained in how to utilise Section 178 reviews, but it was difficult to coordinate the same panel of magistrates for each review at the SCJI (Centre for Social Justice, 2009). Moreover, it was difficult to effectively carry out reviews within a mainstream court as services were not located within the same building or even within the same area (The Centre for Social Justice, 2009).

Brown and Payne (2007) conducted a process evaluation of the SCJI from February 2005 to January 2007, relying on face-to-face interviews with 156 participants. The interview participants were community members, court staff, members of the judiciary, victims, witnesses, offenders, partner agency representatives, and local media (Brown and Payne, 2007). They note that the initial aims of the SCJI were overly ambitious and that "a more realistic timeframe may need to be adopted at the implementation stage for effective relationships with partner agencies to develop and for stakeholders to be consulted" (Brown and Payne 2007: iii). It also was not clear what the intended purpose of the SCJI was or the type of work that it should carry out, which ultimately resulted in confusion among stakeholders (Brown and Payne, 2007). As with the NLCJC, key indicators were not set out in the beginning and methods for measuring the success of the project were not established, making evaluation of the SCJI difficult. While the SCJI was successful in keeping community members who wanted to engage informed on the project, it was clear that more work was needed to reach non-engaged community members (Brown and Payne, 2007).

Following their evaluation of the SCJI, Brown and Payne (2007) put forward recommendations for the other community justice initiatives that were being piloted, which are still relevant for community courts in general. These recommendations included: being clear about the achievable aims and objectives from the beginning, effectively communicating the aims to key stakeholders, establishing a committee with representatives from multiple agencies to oversee the project, and establishing a data collection method from the outset. They also recommended that the pilot initiatives should actively engage with the community by attending local meetings and events, as well as using local newspapers and media to spread awareness about the project. Further, staff from other agencies should be kept up to date with the processes of the community court and case management principles in the courtroom by implementing pre-court

briefings, while training should be provided to magistrates on community justice principles and their review powers under Section 178. Finally, they recommended that criteria be established for selecting magistrates for sitting on a community justice panel.

A later evaluation of the SCJI that was conducted alongside an evaluation of the NLCJC is discussed below.

5.2.7 Outcomes

Evaluating community courts comes with a range of challenges, especially when provisions were not made for data collection or monitoring, as was the case at the NLCJC. Mair and Millings (2011) found that evaluation and monitoring of the NLCJC represented a major failing of the initiative. This was echoed by their participants who acknowledged that the difficulties around demonstrating the effectiveness of the centre without adequate systems to monitor the work that the centre does. Murray and Blagg (2018) argue that community courts need to be proactive in establishing an evidence base through a range of strategies developed collaboratively. While they note that traditional measures are still important, they are also one dimensional (Murray and Blagg, 2018). Murray and Blagg (2018: 255) contend: "evaluations should harness methodologies that identify strengths in localities, rather than just failure and weaknesses and embed evaluations within the rich community context".

It is also important to give community court models time to embed themselves within a community before conducting major evaluations, particularly with the added challenges of finding a suitable control group, and small sample sizes engaging with targeted interventions. Evaluations following McKenna's (2007) report noted that it would have been too early to see any significant changes within the first 18-months of the centre's operation, particularly when there was no control group (Mair and Millings, 2011).

The sub-sections below outlines the main findings from the evaluations conducted on the NLCJC, which relate specifically to sentencing, recidivism rates, efficiency, and community satisfaction/awareness.

(a) Sentencing

A positive outcome of the NLCJC is that, compared to other courts, the use of community sentences and conditional discharge as sentencing options was much higher at the NLCJC

(Mair and Millings, 2011). A community payback order could be incorporated into a community sentence handed down by the NLCJC judge and community members were consulted as to what community work the court clients should do. However, Mair and Millings (2011) found that the NLCJC court also had a higher rate of immediate custody than in other magistrates' courts, which they attempt to explain as being due to the NLCJC judge being able to sit as a District or Crown Court Judge.

The judge considered several factors when it came to sentencing a court client at the NLCJC, which included the defendant entering a guilty plea, consideration of the defendant's behaviour, and the different sentencing options. If a problem-solving meeting took place, the outcomes and action plans agreed in that meeting were considered by the judge also. If a defendant had been on a Suspended Sentence Order or Community Order, their engagement with that order was taken into account. Mair and Millings (2011) explain that Section 178 and Section 191 of the Criminal Justice Act 2003 gave the judge the power to review the progress of a client on either order, which was particularly important to the work of the NLCJC.

At one point, community reference panels made up of community members were able to give feedback on the NLCJC judge's decisions, without having a direct influence on the decision of the judge. However, Mair and Millings (2011) note that at the time of their evaluation, the community reference panels had been discontinued, but that the judge still consulted the community to understand their fears relating to crime in the area.

(b) Recidivism Rates

Evaluations conducted on the NLCJC in relation to recidivism rates did not produce positive results, which ultimately contributed to the closure of the centre, as discussed below in Section 5.2.8. It is important to note that re-offending rates are more accurate if a large sample (at least 200 people) is studied over a longer period of time than one year (College, Collier and Brand, 1999). Murray and Blagg (2018: 18) argue:

> "evaluations of CJC effectiveness are problematic in that they are often conducted with small, unrepresentative sample sizes and over short study periods and can struggle to accurately appraise a CJC as a 'whole'".

This is a particular issue if baseline data collection is not in place and there are no staff dedicated specifically to monitoring and evaluation, as was the case with the NLCJC.

Joliffe and Farrington (2009) assessed the impact of the NLCJC and the SCJI on re-offending using a comparison group from Manchester as this area had a similar demographic. The court users themselves were matched according to characteristics associated with recidivism. The sample was 424 from the NLCJC, 94 from SCJI and 6016 from Manchester. Joliffe and Farrington (2009: 3) note that the small sample size in the NLCJC and SCJI meant that "only a 5-10 percentage point impact of the CJIs on re-offending rates would be detectable robustly using test of statistical significance". The evaluation found that the difference in re-offending in the first year in each area was not statistically significant (Joliffe and Farrington, 2009). In Manchester, 37% were reconvicted within a year. In the NLCJC, 38.7% were reconvicted within a year and in the SCJI, 38.3% were reconvicted within a year. Therefore, Joliffe and Farrington (2009) found that court users in the NLCJC and the SCJI were more likely to re-offend than those in Manchester. Joliffe and Farrington (2009: 3) also note that even with a larger sample size, the results would not change, they explain:

> "in order to show any marked changes of greater statistical significance for this effect size, one would need a sample of 20,000 from North Liverpool and Salford, which would take many years to collect".

The study found the NLCJC and SCJI may have been successful in achieving a reduction of offence per offender, but not in a statistically significant way. Joliffe and Farrington (2009) continue to say that these results do not signify that the NLCJC and SCJI have no impact at all, as reconviction after one year is a relatively basic measure of recidivism. Joliffe and Farrington (2009) also acknowledge that many factors contribute to the success of community courts, and that such programmes take a long time to become embedded in the community.

In an evaluation conducted by Booth et al. (2012), NLCJC court users' individual characteristics were matched with individual offenders that were sentenced in mainstream courts in England and Wales. The re-offending rates for each group were calculated one year after conviction. It was not possible, with this evaluation, to analyse re-offending rates based on the specific intervention received by the offender as this detail was not recorded by the NLCJC (Booth et al., 2012). Again, a statistically significant

difference was not found between the two groups, and there was no statistically significant difference found in re-offending frequency between the NLCJC group and the comparator group. Booth et al. (2012) also found that there was no indication that the NLCJC had any impact on re-offending when considering the type of offender, age, gender, disposal or index offence. Other factors that could have influenced the re-offending findings were noted by Booth et al. (2012: ii) as "local differences in the public propensity to report crime, policing practices or conviction ratios, quicker processes in the NLCJC or higher re-offending rates prior to the introduction of the NLCJC". The offences within the NLCJC group differed to those within the mainstream group for this evaluation. The NLCJC had a lower proportion of motoring offences compared to the national average, and a higher proportion of drug offences (Booth et al., 2012). However, despite the limitation of the evaluations, the results of studies conducted on the NLCJC demonstrate that the centre was not having the desired effect of reducing re-offending.

There were also further negative findings in relation to compliance of NLCJC clients with court orders. Booth et al.'s (2012) findings regarding compliance with conditions of court orders, in particular, reflected negatively on the NLCJC. The NLCJC group were found to be more likely to breach the court order than the mainstream group, and the difference was statistically significant. Booth et al. (2012) do note that the more intensive supervision approach of the NLCJC could have had an impact on this finding, as NLCJC clients were more likely to be in breach than those disposed of by the mainstream courts. Offenders who had gone through the NLCJC were monitored much more closely than the offenders in the comparator group and therefore offenders in the NLCJC group were more likely to be caught if conditions were breached.

(c) Efficiency

A number of findings from evaluations conducted on the NLCJC highlight that the operations of the centre were more efficient than mainstream courts. These findings specifically relate to guilty pleas and the immediacy with which cases were dealt with.

A potentially positive finding from NLCJC operations is that the NLCJC had a guilty plea rate approximately 15% higher than the national rate, and there was a lower than average number of hearings per case at the centre (Mair and Millings, 2011). This finding suggests that a plea of not guilty was not a requirement for a defendant to have a case heard at the NLCJC, which would counteract a key criticism of community courts relating

to coercion, as discussed in Section 1.4.1. Booth et al.'s (2012) study found that 64% of offenders plead guilty at the first hearing in the NLCJC, which is higher than the average 43% in England and Wales. However, they do point out that the two situations are not comparable due to the mix of cases that come before the NLCJC and it is not certain that the early guilty plea is due to the NLCJC activities (Booth et al., 2012).

A defining element of community courts is the immediacy with which cases are dealt with. In general, participants in Mair and Millings (2011) study thought the process was quicker than in mainstream courts with less adjournments and delays. Mair and Millings (2011) concluded that with the high number of guilty pleas and lower number of hearings, the NLCJC court process was speedier and more efficient than mainstream courts. Booth et al. (2012) found that the average amount of time from offence to conviction was quicker in the NLCJC, but not by much, and it certainly could not be considered immediate. The average was 61 days for the NLCJC compared to 73 days in mainstream magistrate's courts in England and Wales. Booth et al. (2012) did find that the number of hearings in trial cases were lower in the NLCJC than in mainstream courts.

(d) Community Satisfaction/Awareness

A general aim of community courts is to increase public trust in the criminal justice system. Local residents, who were aware of the community court programmes, were supportive of the intended goal of addressing the underlying causes of crime (Llewellyn Thomas and Prior, 2007). McKenna (2007) and Mair and Millings (2011) who did research around community awareness of the NLCJC and its goals, found community awareness to be low, and made recommendations for community engagement to be improved. Qualitative studies found that both victims and witnesses in the NLCJC catchment area were increasingly satisfied with the speed with which cases were resolved, and the reduction in time between arrest and sentencing (McKenna, 2007).

During the Mair and Millings (2011) study, they interviewed 40 offenders over three months. They found that most of the participants had not heard of the NLCJC prior to their first appearance there and Mair and Millings (2011: 75) note:

> "of the 10 respondents who had never been to the Centre previously – five of whom lived in the local area - 6 had not heard of the court and two of these did not know where in Liverpool they were once they had left their hearing".

It is clear from this finding that the centre was not considered a prominent part of the community, especially in the eyes of those who appeared before the court. A third of the offenders who participated in the research felt that their experience at the centre was no different to their experience in a traditional court. However, many participants mentioned that the court room was less threatening and that they were more involved in the process, and that the staff members were respectful and fair (Mair and Millings, 2011). The biggest difference noted by participants in the study was to do with the judge, and the relationship that had developed between some clients and the judge following repeat interactions (Mair and Millings, 2011).

5.2.8 NLCJC Closure

In 2013, it was reported that the NLCJC was going to be closed. The closure was announced even though the Mayor of Liverpool and Merseyside's police and crime commissioner, Jane Kennedy, led a campaign to save the centre (Weston, 2013). Jane Kennedy called the proposed closure, "an act of unnecessary vandalism" (cited in Weston, 2013). Louise Ellman, then MP for Liverpool Riverside, also fought to keep the centre open. The consultation received eighteen responses to the proposed closure of the NLCJC, five agreed with the proposal, three were neutral, and ten opposed the plan (Baksi, 2013). Those who supported the closure of the NLCJC did so because of the cost savings, and "the fact that the centre had moved away from its original community-focused role" (Vara, 2013). According to then Parliamentary Under-Secretary of State for Justice, Shailesh Vara (2013), the closure would disadvantage the provision of justice in North Liverpool, while he also noted concerns about the transfer of youth and mental health cases to Sefton.

In the House of Commons debate about the closure of the NLCJC in October 2013, Louise Ellman notes that the government's consultation on the NLCJC closure, took place six weeks before the summer recess, which gave limited opportunity to respond. The reasons provided by the government for the closure of the NLCJC were that the centre's cost when compared to its contribution was too high, and that the centre failed to successfully address crime. Ellman (2013) argued that these arguments were "deeply flawed". She argues that the centre's crime prevention work and inter-agency approach was not assessed, and that these were the centre's key objectives. Ellman (2013) notes that "the Government even have the gall to criticise the centre for reducing its community

involvement" when the community engagement team was disbanded because of government cuts to funding. She contends that the decision to close the NLCJC was entirely based on saving money and the opportunity presented by the upcoming break in the centre's lease (Ellman, 2013).

Vara (2013) explains that the decision to close the NLCJC was based on the high costs involved in running the centre, coupled with the decrease in the number of cases being dealt with at the centre. The planned last day of the NLCJC was noted as the 28th of March 2014. Vara (2013) notes that it would cost £1 million per year to run the centre which is a high cost when it is not showing the necessary results. Booth et al.'s (2012) report did not help the centre as it found no evidence that the NLCJC reduced recidivism rates or increased compliance, although it did find that cases were processed faster and hearings were reduced. Vara (2013) argued that moving the centre to Sefton would provide savings of £630,000 a year.

Money was clearly the main driving factor behind the closure of the NLCJC. In 2012, Robins stated: "you don't have to be a pessimist to suspect that in this "age of austerity" – huge cuts to the MoJ budget and a court closure program – that the pioneering court's days are numbered". The Ministry of Justice validated the closure of the NLCJC by stating "it is difficult to justify keeping a building open that is both expensive to run and has a low volume of work as a single courtroom centre" (BBC, 2013). The Police Foundation (2010) note that the problems experienced by the NLCJC were the £1.8 million a year cost of running the centre and the difficulties around proving the effectiveness of the centre. Moreover, Gavin and Sabbagh (2019: 32) point out that the NLCJC was closed "due to funding restrictions", while Mair and Millings (2011) note that the cost of the NLCJC was a core reason behind the centre not being replicated or rolled out. However, they also acknowledge that a comprehensive cost exercise was never carried out on the NLCJC and that the NLCJC did not only deal with low-level offences in response to criticisms around cost.

Murray and Blagg (2018) note that the failure of the NLCJC cannot be blamed on a single reason. They acknowledge that the location of the centre on the outskirts of the catchment area was not conducive to what the centre was trying to achieve (Murray and Blagg, 2018). Engagement with the community was not as intensive as it should have been, and there were too many barriers to meaningful change within the system (McKenna, 2007;

Murray and Blagg, 2018). While extensive community engagement prior to the centre opening was reported, there were also reports that consultation with the community was not thorough enough which resulted in a lack of trust that was not easy for staff to counteract (Mair and Millings, 2011). Murray (2022: 18) states:

> "grassroots involvement has been hailed as key to the success of the Red Hook Community Justice Centre and the Neighbourhood Justice Centre, while the community's more limited involvement and buy-in to the North Liverpool Community Justice Centre was also flagged as a reason for its eventual closure".

The community reference groups were discontinued due to low attendance by 2011 (Mair and Millings, 2011), which symbolises a removal of the community from the NLCJC.

A major contribution to the failure of the NLCJC relates to data collection, evaluation and monitoring. According to Mair and Millings (2011), the centre did contribute positively to the community in North Liverpool, the court was more efficient, and that the community was fond of the judge, but it continuously failed to demonstrate its effectiveness. Cost-benefit analyses are essential but very complex, especially since so much of a community courts' work is hard to quantify (Murray and Blagg, 2018). Murray and Blagg (2018) note three core flaws to do with data collection and evaluation in the NLCJC. The first is that data recording was not advanced enough at the centre, due to a lack of staff training and "an engrained sense of optimism that the model was working even with full knowledge of the gaps in data collection" (Murray and Blagg, 2018: 259). As mentioned in Section 5.2.7, McKenna's (2007) research was conducted within the first 18-months of the centre opening, which is acknowledged as too soon to adequately capture decreases in recidivism rates, especially with small participant numbers. However, Murray and Blagg (2018) note that the data was so limited that even if research was conducted over a longer period of time, it would still be a challenge to demonstrate improvements in recidivism rates and other justice outcomes. The second flaw acknowledged by Murray and Blagg (2018) relates to marketing the work of the centre in the community and gathering qualitative data from both court clients and community members. The third flaw was to do with planning internal reviews of court processes and internal data collection that does not depend on the assistance of external organisations (Murray and Blagg, 2018). Murray and Blagg (2018) explain that community court

planners need to inform policy-makers and evaluators that traditional criminal justice evaluation tools are not going to capture the full extent of the community court's success. Murray and Blagg (2018: 260) echo Ellman's earlier argument in the House of Commons by stating that the success of community courts should be measured against their stated objectives such as "reducing crime, improving community engagement and improved perceptions of justice processes".

5.2.9 Conclusion

The main justification within policy for the initial introduction of the NLCJC was to address anti-social behaviour using a problem-solving approach. Policy also centred on tackling anti-social behaviour with little emphasis on the underlying principles that underpin the community court model. Despite initial political support for the model, standalone models were abandoned by 2009 due to the cost involved.

The community did not immediately support the NLCJC, and some effort was made to involve the community in the operations of the centre. However, it does not appear that the NLCJC was ever accepted by the target community and there was limited awareness of its existence in the local area. The location of the court on the periphery of the area that it intended to serve could have contributed to the lack of community involvement (Mair and Millings, 2011; Murray and Blagg, 2018). It was also found that the strict security at the front door of the NLCJC building was intimidating to the community and they did not want to enter unless they had court-related business (Mair and Millings, 2011). Judge Fletcher was commended by staff, clients, and residents (Mair and Millings, 2011), which will be discussed further in the findings, in Section 5.3.7. Other staff at the NLCJC were initially hopeful about what could be achieved at the centre and were excited at the prospect of being innovative (Mair and Millings, 2011). However, staff were not provided with guidance on how to work collaboratively and that this took time. As a result of the expense involved in establishing a standalone community court, the SCJI was set up within an existing Magistrates' Court. However, the SCJI was not implemented successfully and this resulted in confusion among court staff (Brown and Payne, 2007).

It was challenging to evaluate the NLCJC due to the lack of control groups, small sample sizes, and limitations around data collection. Results relating to recidivism rates in published evaluations showed that the NLCJC was not successful in reducing re-

offending. However, these evaluations were limited due to these aforementioned factors. Evaluations also found that the NLCJC clients were more likely to breach court orders than mainstream courts. However, this could be due to the more intensive supervision approaches employed at the NLCJC. Conversely, the most positive findings were in relation to the efficiency of court processes at the NLCJC.

The following section, Section 5.3, outlines the findings from the semi-structured interviews conducted with those who were involved with the NLCJC.

5.3 English Findings

As mentioned in Section 4.3, community courts are under-theorised, which means that the theoretical framework underpinning the model tends to be drawn from disparate theories which allow the model to gain legitimacy according to the political landscape of a given time and place. This is possible because each community court is different and must be tailored to the unique community in which it is situated. Therefore, this section will consider the legitimating factors and principles that underpin the NLCJC based on the empirical evidence.

This section details the findings from the semi-structured interviews conducted with individuals who were previously involved with the NLCJC in some capacity. The section will begin with a discussion of the theme of systemic barriers, which contains a number of sub-themes: centralised system, justice system reluctance, and judicial reluctance. The remaining themes that emerged from the interviews are: court closure, re-establishment, community acceptance, collaboration, evaluation and monitoring, and the judge. These findings highlighted a number of challenges that the NLCJC experienced that are useful when considering whether a community court should be established in an Irish context. In Chapter Seven, these findings are compared with the findings from interviews with NJC stakeholders to determine the differences in approach, and ultimately to decide how such a court model should be implemented in Ireland.

5.3.1 Systemic Barriers

Over the course of the interviews, it became apparent that there were a number of systemic barriers that hindered the successful operation of the NLCJC. The centralised system in England was a challenge to the NLCJC as permission was required from central government for activities to take place at the centre. The resistance of the justice system as a whole to embrace change was a further challenge, along with the reluctance of the judiciary to accept the NLCJC. In addition, challenges around inter-agency working and funding cuts to external agencies were further systemic barriers to the successful operation of the NLCJC. It is clear that the NLCJC was introduced into, and attempted to operate within, a difficult criminal justice environment, which was generally resistant to the model. As such, the NLCJC may have encountered additional difficulties while trying to gain legitimacy within this climate.

(a) Centralised System

Nolan (2009) notes that problem-solving courts in the UK have generally been established as government-led initiatives, whereas the American models that they were based on often began as local, grassroot movements. James makes the comparison between England and Wales and the US, acknowledging that the US court system allows for a greater degree of flexibility. The shift from localisation to central control in England and Wales, and the increased government focus on performance indicators, is recognised (Donoghue, 2014). This shift is most associated with Tony Blair's and Gordon Brown's Labour governments (Bowen and Donoghue, 2013; Donoghue, 2014), which were the governments under which the NLCJC predominantly operated.

All interviewees acknowledged that the control of the NLCJC by central government gave rise to difficulties, and impeded its ability to operate as a local justice initiative. According to James, unless the court system in England becomes more localised, the community court model will never be successful. James explains, "we don't have the culture and institutional frameworks that would allow it to happen". Nolan (2009: 71) states that the introduction of problem-solving courts in England demonstrated a commitment to local initiatives, but "even there the stress on the local is, perhaps ironically, dictated from the top". Thomas agrees that the NLCJC being controlled and monitored from the central system created problems. Although Thomas was situated near the NLCJC when conducting research there, he still had to get clearance from Whitehall every time that he wanted to attend the centre to conduct interviews. Research at the NLCJC was micromanaged through London and the NLCJC was restricted in its scope due to this central control. Thomas observes:

> "So which I think was a big problem for how the community justice centre in North Liverpool could breathe, and exist and grow and establish itself was because it had this, this sense of sort of ownership and influence that came from the centre. Because ultimately, they were the, you know, they were funding it, and it was their experiment in their mind".

The central control was particularly challenging, according to Greg, because the Ministry of Justice was not interested in either community justice or community justice centres. Thomas mentions that while the NLCJC had internal champions among its staff,

especially in Judge Fletcher, there were no prominent champions of the centre within the Ministry of Justice. Without the support of and guidance from the Ministry of Justice, and a commitment to the philosophy, the NLCJC was never going to be sustainable. Thomas notes:

> "This is a, this is a new Labour, expensive vanity project that if we close it tomorrow, no one's going to notice. And in reality, pretty much that's what happened, wasn't it?".

Mair and Millings (2011) found that the lack of advocates within the government was a main contributor to the failure of the NLCJC to create meaningful change within their processes. The absence of central champions also meant that the NLCJC lacked direction and continuous funding, and was not given the time it needed to embed itself in the community. Farrington (2009) contends that it is crucial to give community courts sufficient time to become embedded in the community, but Greg argues that the lack of funding was a "short-term decision" and a "mistake". Thomas claims that if the government had given the centre the resources it was promised, and left it alone for a while, then it would have had a better chance of success.

The NLCJC was not processing as many cases as originally thought, but Thomas argues that it should have been given the space to find out what worked and what did not work. However, the lower number of cases meant that the NLCJC started to be used to ease the burden on the Liverpool Crown Court, which further diluted the purpose and philosophy of the NLCJC. Thomas reveals:

> "So all of a sudden loads of people who came to Anfield and who came to Goodison Park had too much to drink, got into fights put a brick through a window. They were being dealt with, at the community justice centre, you know, they didn't live locally".

The use of the NLCJC to deal with football-related crime is significant because football matches in Liverpool generate large numbers of arrests, and have one of the highest football-related arrest rates in England and Wales (Home Office, 2022). Thomas acknowledges that the NLCJC began to lose its purpose and its commitment to the locality, and that it became "a glorified sort of portacabin to the Crown Court in Liverpool". With models involving partnerships, Crawford (1994) warns that placing

certain interests above those that benefit each cohort involved in the collaboration can render the model ineffective as the central purpose is neglected. Thomas does not think that the NLCJC was given the time that it needed to establish itself before it was re-purposed to assist with football-related cases in the area. Neil acknowledges that even when support was growing for the NLCJC in North Liverpool, it was "not the same as getting the people who have the purse strings and at the top of the tree".

(b) Justice System Reluctance

Most interviewees note that a further challenge faced by the NLCJC was the lack of acceptance of the centre within the wider justice system. For instance, James acknowledges the particular reluctance of the courts service to participate in problem-solving court models because of limited resources and due to the additional work involved that many view as beyond their role. This view resonates with Donoghue's (2014) claim that increased managerialism within the criminal justice system has resulted in an emphasis on efficiency, which has put organisations and staff under pressure to achieve more with less resources. James observes:

> "It's because they don't care whether people, whether people's offending is better or worse, that's not their job. Their job is, at the moment is we don't have any money. We need to reduce the amount of, we need to maximise the amount of court space and court time we have because we stupidly closed all our court space. And we don't know how to squeeze this in. And frankly, we'd rather not. And if we can find ways of operationally saying this is all too difficult, and it goes away".

James notes that court closures, and pressure on the justice system to process cases faster and more efficiently, has contributed to the "bureaucratic resistance" to problem-solving court models. The high number of court closures in particular has caused frustration and low morale among court staff (Gibbs, 2013). Interviewees note that as the NLCJC was considered a central initiative, this likely created resentment at a local level and this resentment was particularly strong among struggling local courts.

Thomas argues that the criminal justice system in England and Wales is possessive, and that it is not open to surrendering ownership to non-profit organisations to run certain aspects of it, even if it would have a positive impact. For James, the centralised court

administration in England is "an extraordinarily hierarchical organisation" and therefore "local justice, local discretion, is just unacceptable to that model". Corcoran and Hucklesby (2013) found that an increase in marketisation and privatisation has introduced competition and territorialism among criminal justice agencies, particularly between justice organisations and third sector organisations. Moreover, James claims that the court system does not envisage the court as a community space. He reveals:

> "I know that there was real resistance amongst both with court administrators and the judiciary in various places to just the very idea that the community really had anything to do with the dispense how we dispense justice. And I think that comes from partly the kind of centralised nature of the state".

Reluctance within the court system also impacted the attempt to pilot the community justice principles, demonstrated by the NLCJC, within existing Magistrates' Courts. James describes the approach as an ill-conceived idea that was not implemented properly. Notably, Bowen (2020) argues that the utilisation of community sentences in courts in England and Wales has deteriorated and that individuals should be assisted to address the problems that have led to the offending in a process that is speedy, rehabilitative, responsive and collaborative. Jack is of the same opinion and remarks that if community justice principles are to be applied in mainstream courts, it needs to be asked "how can we make it as easy for a judge to send someone to mental health services as it is to convict them, or as to send them to prison?". However, Greg found that the roll out of community justice principles in existing courts was not working well even in courts that were trying hard to apply them. A study conducted by Donoghue (2012: 591) also found that "courts have not embedded community justice principles, nor have they altered their focus to incorporate a significant degree of liaison with the community". Greg does note that community justice is "a fairly radical change" and therefore may never become as embedded as it should. Greg is fearful that without a standalone court, community justice is a "half-baked notion" that does not work well. However, he surmises that "maybe in many ways a half-baked version is better than no version at all".

Due to the reluctance to accept the NLCJC, Judge Fletcher had to tread carefully in his role when dealing with people such as the Chief Constable or Chief Probation Officer, according to Neil. Some interviewees also note that local solicitors were not supportive

of the NLCJC, especially in beginning, as they felt that the initiative was being forced on them without consultation. The importance of consultation with all relevant stakeholders prior to the establishment of community courts is clear. Mair and Millings (2011) found that extensive community consultation was not carried out prior to the opening of the NLCJC, and therefore it is reasonable to surmise that limited consultation occurred with legal professionals too. However, solicitors were more likely to accept the centre once they saw it was beneficial to their clients. Neil notes:

> "They could see, once they experienced the court that we were really working very hard to try and rehabilitate, rehabilitate these people and therefore they soon came on side. But it wasn't easy in the beginning".

There were further challenges when collaborating with other justice agencies, especially with regards to alcohol and drug treatment requirements, as they had different funding streams. Interviewees note that collaboration was difficult as agencies remained in their silos. Similarly, the Criminal Justice Joint Inspection (2015: 5) observed that working in partnerships is ineffective if agencies remain fully focused on their own systems and outcomes within their own silos, and that this approach also leads to "distressing and costly consequences" for victims, offenders, and communities. Equally, Neil contends:

> "Probation, youth offending, mental health, city council, who were all within their own silos, both in terms of finance, or more particularly the way that they work. They were not used to exchanging information".

However, interviewees note that considerable work was done to build trust and share information among these agencies, but that the financial crisis had an impact on the agencies involved with the NLCJC, especially non-governmental organisations that had grants withdrawn. Halsey and de Vel-Palumbo (2018) note that external factors, such as a reduction in the level of funding received by third sector organisations, can have a negative impact on the work of a community court. The removal of funding to external agencies added to the financial pressure on the NLCJC and impacted the level of service that could be provided to clients.

(c) Judicial Reluctance

Bringing innovation into the traditional court system is difficult because judges are "very set in their ways, anachronistic, resistant to change", according to James. As Donoghue (2014) notes, even magistrates themselves dispute the application of local justice by the judiciary. This judicial reluctance was evident to interviewees, who acknowledge that very few judges were supportive of the NLCJC. Greg mentions that judges were anxious about the existence of the NLCJC because it could act as both a Magistrates' Court and a Crown Court, and this anxiety was amplified by them not being consulted on or having access to the centre. Nolan (2009: 67) describes this function as "a kind of flexibility highly unusual in a British criminal court". Neil notes the scepticism from the bench, but he personally argues that having a judge that could sit as a magistrates' judge and crown court judge was cost-effective and sensible. Judge Fletcher has previously described his ability to sit as both a Magistrates' and Crown Court judge to try to assure people that the NLCJC was not a lenient court option (Nolan, 2009).

Greg notes a sense of jealousy among judges due to the level of funding received by the NLCJC. Thomas states: "the Magistrates' Association have always been quite hostile towards the threat that they see, the model of community justice centre, that it can present to them as an organisation". The NLCJC could have coped with a higher volume of cases, according to Neil, but this was seen as a threat to the other magistrates. Neil notes that other judges "would have given their right arm" for what the NLCJC judge had in terms of facilities and services, and believed that they could have provided a better outcome if they had the same resources. However, Neil argues that North Liverpool was a high-crime area that required more intensive interventions and so it was not comparable.

There were also concerns among judges about inconsistencies in sentencing due to the NLCJC. How to address disparities in sentencing has been a long-standing debate in England and Wales (Ashworth, 2004). According to the classical theory of justice, all individuals who commit the same crime should be treated in the same way and receive the same sentence with a view to having a stronger impact in terms of deterrence (Gibbs, 1968). In contrast, positivists argue that punishment does not have the desired deterrent effect and would instead promote individualised sentencing with a view to increasing the chance for rehabilitation (Gibbs, 1968). Sentencing guidelines were introduced in part to deal with inconsistencies in sentencing, and the guidelines have had an impact on local

justice (Donoghue, 2014). Concerns have been expressed as to how local justice produces inconsistency in sentencing, which could have an impact on the public's trust in the court system (Magistrates' Association 2012). A criticism that the NLCJC encountered was to do with offenders receiving one type of sentence or intervention in North Liverpool, and other offenders receiving a different type in another part of the country. James explains:

> "I think there was always a kind of discharge between a centralising tendency which is about consistency and uniformity, and localism, devolution, and community justice".

James mentions that even with sentencing guidelines and a highly centralised system, there are still differences in sentencing in different areas across the country, and the availability of services in those areas also differs. James states that "any variation is seen as an outlier and a bad thing and actually, I'm not sure that's always the case". Consistency in sentencing is now perceived as more valuable than local justice, which demands a greater degree of flexibility (Donoghue, 2014). Whenever the NLCJC was chosen to trial something new, there were objections as to why Liverpool would have certain processes over other areas. Neil explains the attitude:

> "Why should Liverpool have that? And again, I suppose if you're from, you know, downtown Manchester or downtown Bristol, I can understand the frustration that it was somewhere you could not take advantage of that and somewhere else was having that opportunity".

It is clear that despite the sentencing disparities that exist within the justice system already, there was a particular objection to offenders in North Liverpool receiving more intensive interventions to address underlying causes of offending when these interventions were not available elsewhere.

Section 5.3.1 presents further challenges that a community court model can experience. The need for local control is highlighted and the difficulties associated with the model being controlled centrally are clearly identified. This section also notes that the model requires consistent political support to operate and it needs to be given time to determine what works and what does not. Reluctance of those within the justice system can have a negative impact on the model, especially if people view interacting with the centre as additional work beyond their role. Support services operating from separate funding

streams and having grants withdrawn is an additional challenge that this model faces. Interviewees found that judges were set in their ways and resistant to the change that the model represented. The challenges around political support, reluctance of those within the justice system, funding of support services, and judicial reluctance are all issues that could negatively affect an Irish community court also, and recommendations will be made in relation to these issues in Chapter 7.

5.3.2 Court Closure

The NLCJC fought to gain legitimacy in a hostile criminal justice environment at a time when the government was closing a considerable number of courts across the country, and the number of cases it was processing was not high enough to persuade the government to keep it open. Over half of all courts across England and Wales were closed between 2010 and 2019 (The Law Society, 2022) and there are plans to shut down a further 77 courts by 2025/26 (National Audit Office, 2019). In response to these planned closures, the Law Society (2022) have argued that there is value in having magistrates that understand local issues in the areas in which they sit. However, the decision was made to close the NLCJC, despite its local justice approach. James mentions that prior to the NLCJC being closed, the "government was closing Magistrates Courts, left, right, and centre". Due to the court closures, the negative evaluations of the NLCJC, and the cost of running the centre, James notes "the writing was painted over the walls five times". While James does observe that the evaluations showed other positive outcomes, at the end of the day, the NLCJC was "this really expensive thing doesn't reduce re-offending". James observes:

> "As soon as the agreement was made between Ken Clark and the Treasury that he was going to slash costs in the court service, and close 50% of magistrates' courts, there was I, in my view, not a hope in hell that North Liverpool was ever going to survive especially given the re-offending study".

Neil acknowledges that a series of political events resulted in the closure of the NLCJC. The centre was a New Labour project under Tony Blair's government, but after the 2010 election and the financial crisis, the NLCJC needed to demonstrate that it was having a real impact to stay open. Neil explains: "politicians will want results and unless you can

give them results and demonstrate results with evidence, then the will cut you loose". This is a particular challenge for community courts, as it is not always easy to demonstrate the success of community courts through the traditional performance indicators (Murray, 2022). The NLCJC was very closely associated with the government in power at that time, and the view of some interviewees was that a Conservative government was sure to close it down. Jack describes the NLCJC as a local project being run from the centre, that was then "orphaned" when the government changed. Thomas acknowledges that politicians have to think about short policy cycles, but initiatives such as the NLCJC are "working on generational change, and long term change". Jacobs (2016) notes that voters are also less likely to support long-term policy initiatives if they are apprehensive about the government's commitment to that initiative, especially when the money may be diverted towards an unrelated objective by current or successive governments.

Jack contends that the NLCJC should have been "the busiest courthouse in the country" when it was established, as without the volume of cases to make it legitimate, it will be susceptible to attack. Further, he does not believe that the catchment area was quite right "to create quite high enough of a volume" as it should not have had a period of time without cases. The local authority wards of Anfield, Everton, Kirkdale and County had a population of circa 65,000 at the time (Robins, 2012). With a population that size, it should not have been difficult to reach the volume of cases necessary to legitimise the NLCJC. However, it is likely that the systemic barriers discussed above, and the lack of local knowledge of the centre, contributed to the lower number of cases.

5.3.3 Re-establishment

There were conflicting views among interviewees as to whether community courts would ever be re-established in England again in the future. Thomas states that the government "let this thing wither on the vine" in 2012, but successive governments have tried to relaunch problem-solving courts ever since as if they are a completely new initiative. As mentioned in Section 5.1.6(a), the 2020 Sentencing White Paper demonstrated a political commitment to re-introducing problem-solving courts in England and Wales. Prior to this, in 2015, not long after the NLCJC was closed, then justice secretary Michael Gove met with the judges of some US problem-solving courts and expressed an interest in the court model. Neil also notes how the government returns to the idea of problem-solving courts every few years: "that's the sort of stuff we were talking about twenty years ago,

and now they're talking about it again as though it's something brand new, and it isn't". Bowen (2021) argues that problem-solving courts have a long history in the UK, and that the relationship with problem-solving approaches have been more continuous than most believe. Bowen (2021) is optimistic that the constant return to problem-solving courts is a renewed hope that the justice system can yield positive results and that "there are cures for the suffering of offenders trapped in an endless cycle of deprivation and punishment". The reinvigoration of problem-solving courts could be seen as an acknowledgement that 'tough on crime' policies do not produce positive results, and when the social consequences of these policies are felt, politicians try to remedy them through problem-solving courts (Wade, 2021). If no crime was committed, the community court model would allow for these social consequences to be dealt with outside of the criminal justice system through a hub of support services working collaboratively. If a crime has been committed, the court aspect of a community court provides an individualised sentence, in line with the positivist approach, which aims to rehabilitate the individual and provide them with the necessary support to desist from crime.

By the time Gove had returned to the idea of problem-solving courts, the Centre for Justice Innovation was no longer interested in trying to re-establish the community court model in England and Wales. James explains the reason for this:

> "Partly because I kind of I just knew that that it wasn't really going to fly and I'm not sure I wasn't really convinced that piloting another piloting of a community court would demonstrate anything particularly".

Thomas does not think that the lessons from the NLCJC were adequately considered in the years following its closure. However, James argues that "one of the things really missing from justice in England and Wales is any sense, with the possible exception of bits of policing, any sense of place, like real rooted place around communities". James notes that although, in theory, magistrates' courts in England and Wales should be considered a community justice model due to the use of lay magistrates, this has never really been true because it is "the great and the good judging the poor". The lack of local justice has been exacerbated by court closures, according to interviewees, because the knowledge that magistrates have of the local town has lessened considerably. Donoghue (2014) agrees that, due to the number of court closures, magistrates often do not live in

the area where they sit in court, which means that their knowledge of the locality and prominent issues there is limited. The NLCJC was a positive step towards "conceptually rooting justice within communities affected by crime" and was a demonstration of what local justice should look like, according to James.

The most recent revitalisation of political support for problem-solving courts focused on incorporating the principles of problem-solving within existing mainstream courts. Thomas is clear that the year that NLCJC closed was "the year that Community Justice died as a sort of standalone model in this country". Community courts are the least replicated type of problem-solving court (Bowen and Whitehead, 2016) and this could be due to the model being flawed or it could be because they only work in certain areas with a specific set of circumstances. James notes that Magistrates' Courts could reassess their operations and discover how to relate to their local communities, but this would involve some decentralisation. James is also clear that even if there were a local appetite for a community court, there are no mechanisms to action it because the court system would likely object. Neil agrees stating: "it's no good saying we're going to resurrect an idea that was a Labour Party idea in 2000 when you're a conservative government in 2021".

Conversely, Thomas opines that if a centre such as the NLCJC were to be set up now "it would find a more welcoming political climate" because of how public health approaches have entered political rhetoric. Thomas describes the court system as being in "crisis" and notes that it is only a matter of time before new models will need to be given serious consideration. Between the pandemic and the level of court closures that occurred prior to it, the court system is experiencing the consequences of cost-cutting underinvestment in the criminal justice system in England and Wales (Fouzder, 2022). The government intended to recruit over 1,000 judges in 2022, and 4,000 judges over the coming years, and the mandatory retirement age of judges was raised to 75, in an effort to address court backlogs which were worsened by the coronavirus pandemic (Fouzder, 2022). Thomas argues:

> "When people realise the scale of just how bad things are within the court system at the moment, how long and drawn out processes are, how overworked the Crown Prosecution Service is, and how what's going on at that level is impacting upon people's sense of confidence and faith in the justice system".

Thomas observes that embedding community justice principles would receive more political and judicial support now because "we need to engage our communities, to understand from them what they need and what's going on in their communities". Similarly, Greg ventures that while his vision may be unrealistic, all magistrates' courts should be sold and instead "big Victorian houses, in various parts of any city or town" should be opened with co-located services, in the same vein as the NLCJC.

The concept of localised justice appears to be important to the interviewees and may signal that a commitment to this principle as a theoretical underpinning is crucial to the successful operation of the community court model. The empirical evidence finds that the lack of support for local justice approaches from the central government in England contributed to the failure of the NLCJC and may be a valid reason why a re-established community court model would still not be successful in the jurisdiction.

5.3.4 Community Acceptance

Scraton (1999, 2004, 2013, 2020), in his extensive work on the Hillsborough disaster, captures the injustices experienced by the victims, survivors, and the people of Liverpool. The negative view perpetuated of Liverpool in the aftermath, and the inadequate government response, are some examples of how people in Liverpool have had their voices removed by the state. The response to this tragedy could be one reason why a central government initiative claiming to give a voice to the local community was met with trepidation by a community in Liverpool. A momentous amount of work with the community was required to get disillusioned people on board with a government-led project. Interviewees note that community consultation was not nearly thorough enough and therefore the community did not embrace the NLCJC from the outset. Thomas mentions that the process of bidding to be the location for the UK's first community court was strange in the sense that different areas had to prove that they were most in need of such an intervention due to how troubled it was. Thomas believes that this created mixed feelings among the community in North Liverpool because it was essentially telling the community that it was so fractured that it needed intervention. The Merseyside region is made up of five large areas, which could be an entire region in other parts of the country, so it "wasn't a fully Merseyside bid", which caused further unease.

Community justice is a core underpinning principle of the community court model. If a community court is to be considered legitimate and enable those with limited power to

become key agents in the justice process, a commitment to community justice is crucial. The model cannot strengthen social bonds in the community to increase civil order, target the root causes of offending, and empower marginalised communities if it does not actively work with the community to achieve this aim. Mair and Millings (2011) found that extensive community consultation had not occurred prior to the opening of the NLCJC, and also that the community had limited knowledge of the centre's existence, or what it was trying to achieve. There was a lack of community awareness of the NLCJC even after it had been in place for several years. Thomas states "if I got a taxi and asked that taxi to take me to the North Liverpool Community Justice Centre, they wouldn't know what I was on about, even when I said it's in Boundary Street". However, when Thomas would attend the centre, there would always be international visitors. The NLCJC received a lot of international attention and visitors, but there was limited interest in England and Wales. Thomas explains:

> "So you had this really ridiculous situation that people in this city didn't know about North Liverpool community justice centre, and yet all around the world, people were talking about and thinking about this place".

Greg agreed, stating that the NLCJC "was getting all sorts of praise, but not in its own country".

However, Greg did express that the NLCJC "took these vague community responsibilities seriously" and that the centre "operated as a kind of community centre" where community members could hold meetings. Despite this, Greg acknowledges that the NLCJC would have benefited from a full-time community engagement officer. Neil explains that there was effort put into maintaining community engagement with the centre and that sessions were held for local residents to take part in mock trials using headsets and screens. Furthermore, they were asked to explain what they would do at each stage of the process. Neil also spoke of monthly meetings where appointed groups would attend the centre to voice their concerns about the types of crime impacting the quality of life of residents in the area. However, Jack mentions that the NLCJC did not become as embedded in the community as it could have. After a few years, attendance at community reference panels had decreased to the point where they were disbanded entirely, which signalled a removal of the community from the NLCJC. This removal of the community clearly had a

negative impact on the NLCJC, as the strength of the community court model is dependent upon the strength of the relationship between the community court and the community (Mair and Millings, 2011). When interviewing community members, Thomas found:

> "They weren't sure when this thing arrived, when it stopped being a school and those sorts of things so that we can't find clear evidence of local people opposing to it being set up doesn't mean there wasn't opposition, it just means that there was a general sort of apathy, because a lot of people didn't know that this thing was being set up is what I would say to that".

However, Neil mentions that the NLCJC "did get the community onside" in the end, and the NLCJC was "seen by the end as a real community asset, if you like". James notes that a lot of local actors were lobbying to keep the NLCJC open which suggests that the centre was having a positive impact that the central government were not valuing. The consultation on the proposed closure of the NLCJC received eighteen responses, ten of which opposed the closure (Baksi, 2013).

5.3.5 Collaboration

A core element of the principle of community justice is collaboration with existing support services, justice agencies, and residents in a community. HM Inspectorate of Constabulary (HMIC) (2015) acknowledge the advantages of criminal justice agencies working in partnership, and the consequences of said agencies working in silos. When justice agencies do not share information and work in tandem, victims and witnesses are not adequately supported, offenders are not held to account, and trust in the justice system is eroded (HMIC, 2015). In interviews conducted by Mair and Millings (2011), staff at the NLCJC explained that they received little guidance on how to work collaboratively when the centre opened and that this was something that they had to develop themselves. Several participants interviewed for this doctoral project also mentioned that staff members at the NLCJC were not given much direction on how to operate the model. Greg notes that staff at the NLCJC had limited knowledge as to what they were aiming towards and therefore, everyone "was kind of making it up as it went along". Greg also

acknowledges that the centre did not have the staff available to knock on doors in the community to continue to advertise the centre. Greg explains:

> "Nobody was saying, this is how you should engage with the community. They were making it up as they went along and it seemed to me, they were doing a reasonably decent job, given the fact that none of them were full time, community engagement people".

Also, as Thomas notes, certain staff members stationed at the NLCJC were not there by choice and did not want to be involved with the centre. For example, it was the initial view of the police officers that it is their job to catch offenders and put them before the court, and that their involvement should then end. However, the longer the police officers were involved with the NLCJC, the more they appreciated what the centre was trying to achieve.

According to interviewees, people need to be confident in their own roles to not feel threatened by community court processes. Thomas states that "colocation and meaningful, integrated, multi-agency partnership working in criminal justice is, for me, one of the biggest positive aspects of this project". Thomas also acknowledges that collaborative working creates mutual respect between different groups of professionals. Hollis (2016) found that criminal justice organisations often view themselves as being in competition with each other and this creates conflict between them. Therefore, it is important for those in different areas of criminal justice to have a level of mutual respect for one another. Hollis (2016) warns that if this respect does not exist between agencies involved in the justice system, communication between them will be limited. This respect is particularly important considering the changes that were made to agencies in England and Wales, such as those made to probation, which contributed to a breakdown of relationships between justice agencies (Hollis, 2016). Thomas explains that "an operational empathy" was created among the agencies operating out of the NLCJC and that it created "a new energy, a new sort of ethos for how to work". Mair and Millings (2011) found that staff at the NLCJC considered collaborative working to be crucial to the work of the centre and that being located in the same building was much more efficient. Neil agrees that the colocation of justice services and organisations, along with it being situated in a very deprived area in the UK, were important aspects of the NLCJC.

5.3.6 Evaluation and Monitoring

As mentioned in Section 4.3.6, if community courts aim to target the underlying causes of offending and strengthen social bonds to increase civil order overall, through a reduction in social exclusion and marginalisation in the community, the model must be able to provide evidence of this, which can be difficult. Problems with data collection, evaluation, and monitoring were cited consistently throughout the interviews. Mair and Millings (2011: 99) note that there was "no sustained collection of data to help ground a proper evaluation of the Centre". Staff were aware of this issue and acknowledged their lack of expertise in the area, but it was not something that was rectified (Mair and Millings, 2011). The NLCJC staff did not know what data to collect to demonstrate the effectiveness of the centre. Greg argues "it's not at all fair when you know, they then say oh, it's not doing terribly well, but they haven't been given any drive or direction". Greg notes:

> "For new policies, innovative policies is you set them up, you set up as soon as it starts, you set up process evaluation, to look at that aspect of it and all the time as a process evaluation, you're feeding in the changes that need to be made. Some things may be done well so you carry those on, some things might need to be tweaked a little bit. So you do that, after two or three years, you do a full scale evaluation".

The lack of clear indicators of success or expertise around data collection was clear to all interviewees. Greg claims that if you are going to establish an innovation, "you need to have clear aims, and clear objectives that everyone is signed up to, and I think you need to have monitoring and evaluation". However, Greg states that innovations should not be closed down if things are not working immediately. Problem-solving court models in particular cannot be created, and then ignored, but have to adjust to address issues that become apparent over time (Wade, 2021).

Murray and Blagg (2018) note that the success of the NLCJC was never measured against its stated objectives. According to James, only tracking whether someone offends or not, "is a very crude way of assessing the value of things". However, focusing on re-offending rates is in line with actuarial risk management, which is associated with neo-liberalistic approaches to justice (Muncie, Hughes and McLaughlin, 2002). It was the process of the

NLCJC to review people more regularly, and therefore they were becoming aware of further offences at a higher rate than in mainstream courts. James explains:

> "So I, I got a sense that part of that re-offending was kind of getting close to what the actual natural rate of re-offending was, which is maybe masked by other places that don't give as much oversight and supervision".

James mentions that aside from recidivism, compliance rates at the NLCJC were relatively high, and there was qualitative data pointing to the centre having a positive impact. James states:

> "One of those classic things with innovation that's difficult is the thing that's new gets evaluated to hell while the thing that's standard and normal that kind of everyone knows it's a bit rubbish and crap, but it's only the new stuff that really gets evaluated".

Jack agrees that it is difficult to quantify some of the positive outcomes of community justice centres but that there are longer term benefits and impacts that require measuring from the outset. James notes "this is not an intervention, it is a very complex institutional change that you're trying to bring about, and therefore, judging it on one metric is just insane basically". Thomas is clear that when researching a community justice centre, "you've got to make sure you're asking the right questions, that you're using the right tools, and you're extracting the right sort of information".

The lesson to learn from the experience of the NLCJC is that "there is a need for clear and quantifiable justice data which can be used to benchmark a Centre's progress" (Murray, 2022: 51). However, Murray (2022: 52) argues that this data must be "multi-faceted" enough to take into account community engagement, well-being indicators, and court experiences. An initiative such as a community court requires a more holistic approach to measurement and evaluation. Neil states that the NLCJC could never conduct proper evaluations to demonstrate success because there were no comparison groups due to the lack of baseline assessments. In other words, he felt that they were "comparing apples and pears". Thomas argues that when "the headline figures" were not looking positive from NLCJC evaluations, a conversation should have taken place to try and remedy the issues that had arisen that were impacting the centre's functionality. Greg

agrees that "nobody learns from the failures". Interestingly, Thomas notes that the reason such a conversation did not take place was because "they took everything so personally because it felt like it was a criticism of them, of their professional conduct and of how they were working".

Besides, James notes that the NLCJC immediately experienced challenges relating to cost. He explains:

> "And because of some something about the design of their court cells it meant that they had to have the police staffing court cells rather than Serco, at which increased their cost by about 33% or something. So it made North Liverpool look, even more expensive per case than it ought to have. And I don't know if that was, but it was clearly a local design issue".

Greg agrees that "cost is the excuse". He remarks that in-depth research was not conducted into the costs associated with the centre, and that figures included the cost of probation officer, police and other staff who were based at the centre, which should not have been included. Greg also mentions that no cost-benefit analysis was conducted at any point and that no proper reconviction study was carried out stating:

> "I do think it was basically an excuse. They've made up their minds to close it. And they just thought, well, we've got to give some kind of reasoning. So you know, cost was the main factor".

Both those who supported and opposed the closure of the NLCJC acknowledged that the cost of the centre was the main deciding factor in the decision to shut it down (Vara, 2013; Ellman, 2013).

5.3.7 The Judge

Therapeutic jurisprudence has been highlighted as a practical way in which community courts gain legitimacy, and it is also seen as a core theoretical underpinning of the model. While there was no explicit mention of therapeutic jurisprudence in relation to the NLCJC, it does appear that the judge did try to apply therapeutic approaches. However, the judge still had to operate within the existing sentencing guidelines, which limited the potential for more individual and innovative sentences at the centre. Judge David Fletcher

was the sole judge in the NLCJC up until a few months before its closure, and he was lauded by all interviewees. Judge Fletcher was credited with both shaping the centre and upholding the ethos. Participants in Mair and Millings (2011: 51) study used terms like "unique, the figurehead, the kingpin" to describe Judge Fletcher. Judge Fletcher was heavily associated with the NLCJC and was well-liked by the community, according to Greg:

> "And he really was the key so the atmosphere, the ethos all of that was driven by David and although it's a bit vague you know, I'm still convinced that those things are terribly important in organisations, a good atmosphere, you know, a good ethos driven by the person who's in charge".

Mair and Millings (2011: 51) observe that "it is difficult to dissociate the Centre from Judge David Fletcher and this has considerable advantages, but also some drawbacks". Greg notes that uncertainty surrounded Judge Fletcher leaving the centre because he was so associated with it and had built such a relationship with the community and offenders. He explains:

> "So David Fletcher was in many ways the key, a single sentencer who is associated much with the centre, all sorts of pluses. But as I say the disadvantages – when that person would go, retirement or move on or promotion or whatever, then you really are struggling".

Mair and Millings (2011) acknowledge how critical the personal characteristics and temperament of the judge are to the operation of a community court, and that these characteristics are not easily replicated. Greg is clear that it was always going to be difficult when Judge Fletcher left the NLCJC because he was such an integral part of the centre, and was its main champion. While acknowledging the work of all the staff at the NLCJC, Greg claims that "the key was David Fletcher" because he was determined to make it work.

James argues that the judiciary has readily embraced sentencing guidelines so it would not be easy to convince them that it should be done differently. Research conducted in England and Wales has shown that 84% of surveyed judges supported the introduction of sentencing guidelines in 2004, particularly to improve consistency in sentencing

(Cardale, Layne and Lock, 2021). Judge Fletcher, while having a wider range of services at his disposal, was still bound by government legislation and was limited in the sentences that he could impose (Nolan, 2009). James opines that it is the attitude of some judges that they must not act outside of their traditional role because they are not social workers. He explains that "the whole structure of problem-solving is antithetical to the adversarial systems", but nonetheless he believes that you can balance the two. For example, Judge Fletcher did not undermine the adversarial system in the NLCJC, but he did apply a different approach.

Greg also recalls magistrates in other mainstream courts doing their utmost to apply community justice principles but notes that their interactions with offenders were "stilted". Greg mentions that Judge Fletcher had a natural way with people in comparison. Greg also observes that the differences between the courtroom at the NLCJC and mainstream courtrooms facilitated a more informal approach. Neil agrees that "there are judges who would be, and were, terrified at the thought of having to talk to a defendant". These judges, Neil explains, only saw their role as being to sentence people, and what happens beyond that is not their consideration. Nolan (2009: 72-73) notes that even in situations that have enabled more judicial engagement, such as review hearings, "judges have been generally hesitant to push the envelope too far". However, Neil notes that the judiciary is "getting younger and more diverse", which would hopefully mean that people would be more willing to engage further, but it is not a given.

The two most important elements of fair procedure are being treated with respect and being given a voice, according to Lind and Tyler (1988) and MacCoun (2005). James finds that the most valuable thing about community courts, and problem-solving courts in general, is the emphasis on treating people who come through the court with respect, and ensuring that they have a voice in the process. Greg surmises that the judge is such a big part of a community court because they are seen as more approachable rather than being a distant figure of authority. He cautions:

> "I mean you may appoint what you think is you know the best judge in the world, for your community justice centre but if that person cannot relate to all of his or her staff, and cannot relate to offenders and God knows, you know, most magistrates and judges don't mix very much with probation officers, youth service workers, police officers, and

> certainly not with offenders. All they do with offenders is ask one or two questions and then sentence them".

Further, Greg acknowledges that aspects of the approach needed in a community court could be learned, but a judge also needs certain personality traits that cannot be taught. Nolan (2009: 68) contends that Judge Fletcher "behaves more like an American judge" and that he "exhibits the kind of energy, drive, and charisma typical of some American problem-solving judges". Nolan (2009) notes Judge Fletcher's willingness to actively engage with clients, call them by their first name, and address them in a friendly manner. Therefore, if such models were going to be established across the country, it would drastically change how magistrates work. However, Greg recognises that this change would not be easy to implement: "people are invested in their role, and they find it difficult to think outside that box that they're in. It's threatening to them". That said, Greg is clear that judges could be "pushed/pulled out of the box a bit".

5.3.8 Conclusion

In contrast to the findings presented in Section 4.3, these findings highlight that the NLCJC lacked core theoretical underpinnings and failed to establish legitimating factors as a community court model. It is clear from the limited consultation and engagement with the community, and the difficulties associated with forming relationships to collaborate with existing support services in the community, that the principle of community justice was not a core underpinning of the NLCJC. Therapeutic jurisprudence was also not a principle that underpinned the NLCJC, although the judge did attempt to apply therapeutic approaches within the confines of existing sentencing guidelines. The NLCJC did not establish legitimating factors due to systemic barriers, including a lack of flexibility due to a centralised system, which made a localised approach difficult. Government support for localised justice was highlighted as crucial for this model to operate successfully in a jurisdiction. Without a commitment to the core principles associated with the community court model in general, and a failure to establish legitimating factors in a hostile criminal justice environment, the NLCJC could not meet the aims of targeting the underlying causes of offending, providing a more legitimate approach to achieve civil order than a mainstream court, and empowering marginalised communities. Overall, the NLCJC failed to make the holistic support of those who offend

the norm within the community and therefore also failed to create the paradigm shift required for transformative desistance to occur.

The findings from the interviews conducted with those previously involved with the NLCJC highlight several challenges experienced by the centre. The first theme discussed in this section was systemic barriers, which demonstrates how the NLCJC had problems trying to operate as a local justice initiative while being controlled by the central government. The problems with the central control were compounded by the lack of a strong political champion or general political support for the NLCJC. In addition, the centre was not readily accepted within the wider criminal justice system. Limited resources and a greater focus on efficiency created a hostile environment for the NLCJC as other courts and justice agencies tried to protect their own interests. Judges were particularly reluctant to accept the court processes of the NLCJC and did not agree with the NLCJC judge's ability to sit as both a Magistrates' and Crown Court judge.

The NLCJC was politically tied to the Labour party, which left the centre in a vulnerable position when the Conservatives took over. In addition, the NLCJC was viewed as a very expensive court model that was not producing positive results through traditional justice indicators. The centre was also not processing a high number of cases, which would have helped justify the resources assigned to it. Interviewees disagree as to whether a community court model will be re-established in England in the future, but the model is unlikely to be introduced again as a standalone model. Also, the NLCJC was never fully accepted by the community that it aimed to serve. Extensive consultation was required to get buy-in in a disillusioned community. Even after years of operation, there was a lack of awareness of the centre in the local area and the NLCJC received more praise from abroad than in England. Only one interviewee gave reference to the NLCJC operating as a community centre, which shows that it was viewed primarily as a courtroom. The success of a community court model is reliant on its acceptance within the community (Mair and Millings, 2011), and it does not appear that the NLCJC was ever fully accepted in North Liverpool.

Staff at the NLCJC were not provided with guidance on how to work collaboratively, but they acknowledge that collaboration of justice agencies was hugely beneficial to the operations at the centre. Staff were also not trained on how to collect tracking data and processes for monitoring the impact of the centre were not put in place. The lack of data

collection meant that evaluations of the NLCJC were severely limited and ultimately the centre could not demonstrate positive results through the traditional justice indicators. A positive aspect of the NLCJC was the judge. Justice Fletcher was the NLCJC's main champion and he was well-liked within the community. However, in England, community court judges' ability to apply innovative sentencing approaches is hindered by sentencing guidelines and a focus on consistency. Judges like Justice Fletcher are not easy to replicate and it can be difficult to find a judge who is willing to operate outside of the traditional role.

The following chapter, Chapter Six, will contain an outline of the penal landscape in Ireland before discussing the findings from interviews conducted with key stakeholders in Ireland. The chapter will also contain findings from the survey conducted with Tallaght residents to establish their initial thoughts towards the community court model.

6. Ireland

This chapter will begin with an overview of the penal landscape in Ireland, which will help determine whether a community court would fit within this landscape. The following section, Section 6.2, contains the findings from the semi-structured interviews conducted with key stakeholders in Ireland. The final section in this chapter, Section 6.3, contains the findings from the survey conducted with Tallaght residents to gain an insight into their initial response to the community court model. This chapter answers the research question as to the insight that can be garnered about the implementation and operation of community courts. However, the insight garnered from relevant practitioners in this chapter is from a different perspective as no community court model has ever been established in Ireland. In addition, this chapter will address the research question on how an Irish community would react to the concept of the community court model.

6.1 Penal Landscape in Ireland

Ireland's penal attitude has always been, and continues to be, complicated and ambiguous. Historically, there has been an emphasis on the importance of the family and the community, which is rooted in Ireland's reliance on the Catholic Church following independence. However, this reliance also contributed to a societal acceptance of methods of social moral control and coercive confinement. The politicisation of crime did not take hold as strongly in Ireland, when compared with Australia or England. However, it could be argued that Ireland did not experience a punitive turn, but experienced more of a 'shift' in punitiveness due to high levels of detention in religious institutions in the past. Still, the importance of the community and focus on rehabilitation is visible in Ireland today, mainly through the work of the Probation Service.

This section will provide a background as to how the penal landscape developed in Ireland. It will also contain a discussion as to whether Ireland experienced a punitive turn. An overview of the court system and approach to sentencing, prisons, probation and Ireland's relationship with problem-solving courts is included. The outline provided in this section will help to determine whether the community court model would fit within the Irish penal landscape.

6.1.1 Background

The penal landscape in Ireland has its roots in the English legal system, as Ireland was part of the UK until Irish independence in 1921. Due to this shared history, Ireland inherited the common-law system. Even after Irish independence, and the development of a separate Irish legal system, similarities with the English system remain. The two systems are often aligned as Irish courts continue to look to judgments from English courts when making decisions when no Irish precedent exists (O'Shea et al., 2021). Despite the commonalities between the Irish and English legal systems, the penal landscape in Ireland is different and has been shaped by the Irish cultural context. In this vein, Ireland's penal landscape has been strongly influenced by the history of Catholicism in Ireland. The Catholic ethos placed an emphasis on the family (particularly the family with children) and has also been framed by a 'culture of community' (Hazelkorn and Patterson, 1994). Catholic values required strong family and community values to reinforce them and this communitarian ideal was fostered "through an uncritical commitment to traditional rules and regulations", specifically the rules as laid down by the Catholic Church (Inglis, 1987: 5). However, even the commitment of Irish people to the Catholic Church links back to colonialism. In this context, White (2010) argues that Irish people held on to their religious beliefs in an effort to retain their identity and resist British rule.

In terms of the penal landscape in Ireland, there is a strong history of moral social control, evident through the flagrant use of coercive confinement, which also stems from Catholicism. Inglis (1987: 32) speaks of the power of the Catholic Church being "essentially a moral one". Following independence, the new Irish state was dependent on the church to continue to fund public services (Hornsby-Smith, 1992). It was possible for the Catholic Church to retain this moral power over Irish citizens because of their position within all aspects of Irish life, including schools, hospitals, and even within private homes (Inglis, 1987). Family and community-related ideals were determined and promoted by the Catholic Church during this time. As O'Dowd (1987: 47) notes: "it was the church rather than the state which was best placed to articulate a communalist ideology in the thirty years after Partition". To remain part of the community, it was necessary to adhere to the orders of the parish priest and the Catholic Church as a whole (Inglis, 1987).

The moral teachings of the Catholic Church emphasised that the rich should look after the less fortunate, and parish priests were responsible for looking after their flock – especially those who had fallen from grace (Inglis, 1987). When it came to the criminal justice system, it was acknowledged within this Catholic and family-orientated ethos, that returning offenders to their family and community should be the ultimate goal. Brangan (2019: 54) notes, "crucially, prisoners were understood to still be members of society; their social identities were not overturned". The prevailing idea was that people, when given the opportunity, could reform and the individual circumstances of the offender were both considered and often seen as the cause of offending (Brangan, 2019). The use of discretion was paramount in both courtrooms and prisons to focus on the rehabilitative needs of individual offenders (Brangan, 2019). Perhaps due to the importance attached to Catholicism in general in Ireland, it was common for prisoners to be granted temporary release in order to spend Catholic holidays and events with their families (Cheliotis, 2009; O'Donnell, 2017; Brangan, 2019).

A critical juncture occurred in Irish penal policy due to the commitment to welfarism and rehabilitation that was evident in the Criminal Justice Act 1960, and due to the sudden attention given to law reform during Charles Haughey's time as Minister for Justice (Rogan, 2011). This period saw a further development of what has been termed 'pastoral penalty' (Brangan, 2019). During this time, there was a further reliance within the criminal justice system on religious and charitable organisations such as the Legion of Mary and St Vincent de Paul, particularly when it came to providing rehabilitation and treatment services (Healy and Kennefick, 2017). However, 1960s Ireland also saw some of the 'tough on crime' rhetoric begin to appear in political discourse with Lenihan using the term 'war on crime' when referring to proposals to increase Garda powers (Rogan, 2011). Simultaneously, the prison population was beginning to climb. At the end of this decade, in 1969, the first significant prison riots took place in Irish prisons (Rogan, 2011).

The Catholic Church had an impact on all aspects of Irish life, and criminal justice practices were no exception. It has been argued, that rather than becoming more punitive, Ireland has become increasingly less punitive over time. This potential decrease in punitiveness is due to a divergence from the Catholic Church and the closure of many of the sites where coercive confinement took place. O'Sullivan and O'Donnell (2007: 27) explain:

> "it seems clear that rather than becoming more punitive (if this is estimated by the number of individuals coercively confined) the country has become considerably less so over the past 50 years".

It is possible that a 'culture of control' gripped some Western countries, but that the opposite occurred in Ireland. Although institutions of control began to decrease in Ireland, the prison population began to rise (O'Sullivan and O'Donnell, 2007: 42).

6.1.2 A Punitive Turn?

The Prisons Act 1970 listed rehabilitation as the aim of the penal system, but changes within society began to challenge this approach, particularly the increased prevalence of drug usage and "The Troubles" in Northern Ireland (Rogan, 2011). The 1970s saw the prison system expand at a rate not seen before in Ireland. However, Healy and Kennefick (2017: 5) note, "whereas faith in the rehabilitative ideal at an international level collapsed during the 1970s, it continued to thrive in Ireland". This commitment was reinforced through renaming the Probation Service the 'Probation and Welfare Service' and requiring new probation officers to have a social science degree (Healy and Kennefick, 2017). Penal-welfarism was common within institutions other than the prison, and it has been noted that the methods used were mainly extra-judicial (Kilcommins et al., 2004; Rogan, 2011). However, as mentioned in Section 4.2.4, a core criticism of penal-welfarism is that there is the potential to over-punish an individual under the guise of assistance (Rubin, 2011).

Kilcommins et al. (2004: 26) submit that "the penal-welfare model collapsed because its political, economic and cultural supports gave way under the weight of massive social change". The opportunity then arose for political parties to present these changes as something to be feared, and this political fostering of fear became common throughout the late 1970s and early 1980s (Kilcommins et al., 2004). In the 1980s, the Criminal Justice (Community Service) Act 1984 was enacted, which allowed for community service as an alternative to prison. The Act was quite similar to the community service legislation introduced in England and Wales over a decade earlier, but unlike England and Wales, Ireland's reasons for establishing community service did not include rehabilitation at the time (Guilfoyle, 2017). The main reason for the adoption of community service in Ireland was to address prison overcrowding (Guilfoyle, 2017). The 1980s also saw drugs, particularly heroin, permeate Irish society in a way never seen

before. It was not until this decade that crime became a core political issue in Ireland, but even still the political debate remained focused on social issues that contributed to crime (Rogan, 2011).

The prison system continued to expand in the 1990s, and there was also an increase in the politicisation of crime issues. The murders of Veronica Guerin and Jerry McCabe in 1996, coupled with this new political environment, resulted in increased political, media, and public pressure to change the penal landscape in Ireland (O'Sullivan and O'Donnell, 2003; Kilcommins et al., 2004; Rogan, 2011; Hamilton, 2014). The government reacted rapidly following the murders of McCabe and Guerin in the summer of 1996 by implementing an expansive package of anti-crime measures. The package included plans to alter the bail system, recruit more Gardaí, increase prison spaces, plans for a new remand prison at Wheatfield, more intensive supervision for those given early release, new eviction powers aimed at known drug dealers, introduction of seven day detention for serious drug charges, and the introduction of a civil process to aid with the seizure of crime proceeds (Hamilton, 2014). O'Donnell and O'Sullivan (2001: 78) describe the response as "swift, harsh, uncompromising and skewed towards punishment".

The increased politicisation of crime was evident in the approach taken by Fianna Fáil politician, John O'Donoghue, whose statements during this time painted the opposition as too incompetent to protect law-abiding citizens (Rogan, 2011). In addition, the Progressive Democrats, under the leadership of Michael McDowell, utilised crime as an issue of great political importance (Rogan, 2011). John O'Donoghue became Minister for Justice in 1997. In this role, O'Donoghue stressed zero-tolerance policing tactics, and promoted more punitive legislation and prison expansion (O'Donnell and O'Sullivan, 2001). Fianna Fáil rebranded itself as the 'law and order' party (Hamilton, 2014). Hamilton (2014) points out the significance of the introduction of a mandatory minimum sentence of ten years for trafficking drugs worth over £10,000 at the time, €13,000 now. While Hamilton (2014) does note that this was better categorised as a presumptive sentence as it did leave room for judicial discretion, its introduction remains highly symbolic. Ireland still retains a strong attachment to discretion in policing, the courts, and within prisons (Vaughan and Kilcommins, 2008). This discretion in practice often counteracts the impact of increasingly punitive penal policy in Ireland (Vaughan and Kilcommins, 2008).

According to Hamilton (2014: 39), the politically led harshness did not endure in Ireland, at least in the strictest view of 'zero-tolerance'. She also argues that penal developments in Ireland did not meet the threshold of a 'punitive turn' as described by Garland and Simon. It is generally acknowledged that Ireland did not experience as strong a punitive turn as the UK did (Hamilton, 2014; Brangan, 2019). Rather than resisting punitiveness by choice, it has been attributed more to 'stagnation' within the criminal justice system (O'Donnell, 2008; Rogan, 2011; Brangan, 2019). Interestingly, several seemingly progressive initiatives were being launched alongside the more traditionally punitive policies, including a drug court, the Children Act, and restorative justice approaches (Hamilton, 2014).

6.1.3 Irish Courts and Sentencing

The criminal court system in Ireland features the District Court, Circuit Court, Central Criminal Court, Special Criminal Court, Court of Appeal, and the Supreme Court. District Courts are local jurisdiction courts which are overseen by a single judge. The District Court deals primarily with the more minor summary offences but can also deal with indictable offences under certain circumstances. The Circuit Court is a regional court that sits with a judge and jury. Circuit Courts can try all but the most serious offences and can hear appeals from the District Court. The Central Criminal Court is the name given to the High Court when it is hearing criminal cases. This court deals with the most serious criminal offences and cases are heard by a judge and jury. The Special Criminal Court is a controversial court that hears crimes relating to terrorist and organised crime organisations. Cases are heard by a panel of three judges and no jury. The Special Criminal Court was created to deal with the criminal cases that the ordinary courts were deemed unsuitable to adequately handle, mainly due to fears around jury intimidation. The Court of Appeal hears appeals from the Circuit Court, Central Criminal Court, the Special Criminal Court, and gives rulings on questions of law from the Circuit Court. Finally, the highest criminal court and the court of final appeal is the Supreme Court.

Traditionally, in Ireland, judges have had a great deal of discretionary power when it comes to sentencing and sentencing has been based heavily on the principle of proportionality. Guilfoyle (2019) describes Ireland's sentencing system as "relatively unstructured" and discretionary. This discretion is positive in the sense that it enables judges to impose sentences based on the circumstances of each case and to tailor the

sentence to the individual offender (Guilfoyle, 2019). However, the level of discretion also leads to divergent judicial approaches whereby similar offences result in vastly different sentences (Maguire, 2010). These sentencing disparities for similar offences have led to criticisms in the past and increased pressure to develop sentencing guidelines. Discretion relating to sentencing may become more limited in the future with the passing of the Judicial Council Act 2019 and the creation of the Sentencing Guidelines and Information Committee (SGIC). The functions of the SGIC are to prepare draft sentencing guidelines, prepare draft amendments to sentencing guidelines adopted by the Council, oversee the operation of sentencing guidelines, gather data on sentences imposed by the courts, and the dissemination of that information (The Judicial Council, 2021).

However, Guilfoyle and Marder (2021) argue that current sentencing practices should be evaluated prior to the development of sentencing guidelines, which is difficult due to the limited mechanisms for data collection and analysis in Ireland. They warn that "to introduce sentencing guidelines without first ensuring the availability of comprehensive sentencing data would be to set them up for failure from the outset" (Guilfoyle and Marder, 2021: 119). Marder (2022) notes that Ireland has, to a large extent, managed to avoid a punitive approach to sentencing and it is not assumed that harsher punishment will result in greater community safety. Marder (2022) further argues that the Irish criminal justice system would benefit from processes that would allow for cases to be dealt with outside of the court to address court backlogs and better meet the needs of victims. Sentencing guidelines, according to Marder (2022), could be utilised to promote community sentences and provide for better access to services. If sentencing guidelines are to be introduced in Ireland in line with Marder's (2022) advice, then they would be conducive to the operation of a community court. However, strict sentencing guidelines could hinder the ability of community court judges to apply innovative and individualised sentences, which would have to be considered if the court model is introduced in Ireland.

6.1.4 Prisons

The Irish Prison Service, a branch of the Department of Justice, is responsible for prison operation in Ireland, and the Minister for Justice is responsible for overseeing the prison system. There are twelve prisons currently operating in Ireland, two of which are open prisons. The Irish Prison Service is responsible for prisoners' safety and security while

they are in custody and are responsible for providing prisoners with opportunities that will help them to reduce re-offending and better reintegrate into their own communities on release (Department of Justice, 2021). The mission of the Irish Prison Service has been stated as "providing safe and secure custody, dignity of care and rehabilitation to prisoners for safer communities" (Irish Prison Service, 2016). There are a number of bodies that independently monitor Irish prisons, such as The Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Criminal Justice (United Nations Convention Against Torture) Act 2000), the Inspector of Prisons, and Prison Visiting Committees. The Office of the Inspector of Prisons was established under the Prisons Act 2007 to independently carry out inspections of all prisons, including investigations relating to deaths in custody, and to report on the results to the Minister for Justice. However, there have been no general Inspection of Prisons Reports published by this office since 2017, apart from inspections in relation to the impact of covid-19. A Prison Visiting Committee is also assigned to each prison in Ireland and is made up of individuals from across society. The committee's function is to visit the prison to which they have been assigned and speak to prisoners to hear any complaints that they may have. They must then prepare a report for the Minister for Justice with any reported abuses, observations, and any urgent repairs that may be needed (Irish Prison Service, 2021a). The latest reports from visiting committees were published in 2019.

There are no private prisons in Ireland, although there have been calls to privatise in the past. In his 2004 Annual Report, then Inspector of Prisons, Mr Justice Dermot Kinlen, called upon the Government to privatise a prison to determine how this model would work in Ireland (Lally, 2005). Then Minister for Justice, Michael McDowell, showed support for part-privatisation of the prison system (IPRT, 2005). The IPRT published a report in response to these proposals, condemning the recommendation and providing evidence of the problems associated with prison privatisation (IPRT, 2005). Currently, only the prison escort system is privatised in Ireland.

The prison population in Ireland increased sharply following the events of 1996 detailed in Section 6.1.2 above. As attitudes towards people who offend changed, the number of prisoners granted temporary release declined. O'Donnell (2017: 74) notes that this was due to "a combination of secularisation, increased risk aversion and political punitiveness". Significantly, the prison population in Ireland increased by 44% from 1999 to 2019 (IPRT, 2021a). This increase in prison population could speak to the continued

punitive attitude which began, and was given a political platform, in the late 1990s. The increase in the amount of life sentence prisoners from 234 in 2006 to 352 in 2016 and the longer sentences that these prisoners are serving could also be an indicator of this punitive attitude prevailing (O'Donnell, 2017). In June 2020, it was reported that the prison population was reduced by 11% as a result of the Covid-19 pandemic (Moore, 2020). However, the prison population rapidly increased again in 2022 (Law Society of Ireland, 2023). In 2023, the amount of people in prison is exceeding the number of prison beds available, causing reform advocates to voice their concern (IPRT, 2023). It is possible for Irish prisoners to be granted early release under the Community Return Programme, which has been run by the Irish Prison Service and the Probation Service since 2011. It is an incentivised scheme that is available in every Irish prison and "targets well behaved prisoners serving sentences of between 1 and 8 years imprisonment who are making genuine efforts to desist from reoffending" (Irish Prison Service, 2021b). The IPRT (2023) has called for "careful and structured use" of both the temporary and early release measures to address the overcrowding in Irish prisons.

6.1.5 Probation

There are several non-custodial sanctions available in Ireland. These include probation orders, community service orders, suspended sentences, fines, barring orders, bonds to keep the peace, donations to the court poor box, confiscation orders, dismissal or conditional charge, curfew or exclusion orders, restriction on movement orders, and specific sanctions for driving offences. The Probation of Offenders Act 1907, mentioned previously in Section 5.1.1 in relation to the English penal landscape, was also an important piece of legislation for the Irish Probation Service, and continues to be important to this day. Continued reliance on this legislation is evidence of how stagnant criminal justice policy has remained in Ireland (Carr, 2016). However, the commitment of Probation Officers to the Probation of Offenders Act 1907 is the main way in which the welfare model has appeared to endure in Ireland. Healy (2012: 378) notes:

> "Probation officers still work within a social welfare model and focus on providing social support to people who are trying to move away from the criminal lifestyle".

Probation policies have not always reflected this social welfare approach and risk assessment tools have become a significant part of probation officers' daily tasks. However, risk assessment tools are being used by probation officers in Ireland to supplement their own methods, rather than to replace them (Healy, 2012). Healy's research has shown that probation officers still focus on welfare and building relationships with their clients, which is distinctive from the approach taken in England and Wales (Healy, 2012). In this sense, Healy (2012: 381) notes that "the Probation Service has remained almost immune from recent trends in criminal justice at home and abroad". The Irish Probation Service began to use the welfare model at a time when most other countries were deserting the approach (McNally, 2009). McNally (2009) also suggests that this commitment to the welfare model could be rooted in the Irish Probation Service's roots in volunteerism and charity organisations, particularly Catholic organisations. Many of the services focused on reintegration currently operating in Ireland are funded by the Probation Service.

The Probation Service is also involved in carrying out assessments of suitability to receive a community service order (CSO) in lieu of a prison sentence, and community service supervisors are employed by the service. CSOs were introduced to Ireland via the Criminal Justice (Community Service) Act 1983. The CSO was first introduced in England and Wales to counteract exponential prison population growth and overcrowding, and similar reasoning was employed in Ireland (Guilfoyle, 2017). The main difference is that the CSO was imposed as an alternative to imprisonment in Ireland, whereas it was imposed as an alternative to other non-custodial sanctions in England and Wales (Guilfoyle, 2017). A further difference which was noted in Section 6.1.2 is that unlike England and Wales, Ireland's reasons for establishing community service did not include rehabilitation at the time (Guilfoyle, 2017). In fact, the CSO was originally introduced in Ireland as a punitive measure that would assist with prison overcrowding (Guilfoyle, 2017).

In Ireland, a CSO can only be applied if the judiciary have considered a custodial sentence first (IPRT, 2017). The Probation Service carry out the assessments of suitability, but it is ultimately the judge who decides to give the CSO, with the offender's consent (IPRT, 2017). The judge can give between 40 and 240 hours of unpaid work to the offender when setting a CSO and if the offender does not comply with the order, they must be returned to court and the judge may impose the original sentence (IPRT, 2017). A recent review

found that the CSO in Ireland developed in "the absence of a coherent, overarching purpose and a clear guiding penal philosophy" (Kennefick and Guilfoyle, 2022: 5). It was recommended that the CSO should proceed based on the principles of desistance, restorative justice, and social justice (Kennefick and Guilfoyle, 2022). Restorative justice is a principle that underpins the operation of community courts, as outlined in Section 2.5, and Gavin and Sabbagh (2019) have argued that the community court model should be developed in line with restorative justice in Ireland. Social justice aligns strongly with the principle of community justice (Clear, Hamilton and Cadora, 2011) and community courts aim to promote desistance. Therefore, it would be beneficial to consider the recommendations within Kennefick and Guilfoyle's (2022) review if the community court model were to be progressed in Ireland. Through developing a community court model in line with social justice and desistance principles, criminal justice responses could be brought within the social justice realm, and the holistic support of those who offend could become the norm within communities. This approach would distinguish the model from one that may contribute to the criminalisation of social issues.

The above suggests that if a community court were to be established in Ireland, it would require significant buy-in from the Probation Service to be able to gain access to probation run services for its clients, have a probation officer located at the centre, and to facilitate CSOs. It is particularly important for community court planners to aim to closely collaborate with the Probation Service, and not to compete with them, to create a mutually beneficial partnership.

6.1.6 Ireland's Relationship with Problem-Solving Courts

Ireland's relationship with community courts has been outlined in Section 1.7, but a brief summary may be useful here. The first recommendation to introduce a community court in Ireland was put forward by the National Crime Council in 2007. Little progress was made in this regard until the Joint Committee on Justice, Defence and Equality made a further recommendation that a pilot community court be introduced in Dublin in 2014, and a working group was set up to consider the implementation of such a model. However, if findings exist from this working group, they have never been made publicly available and there have been no further advancements to establish a community court in Ireland. In 2015, then Tánaiste and Minister for Justice, Frances Fitzgerald, responded to a parliamentary question, stating:

> "it was not possible to progress the initiative during 2014 due to the need to dedicate resources to other priority projects including the establishment of the new Court of Appeal and also to progress other ongoing projects, such as the judicial appointments review and the reform of the family law courts" (as quoted in Gavin and Sabbagh, 2019: 25).

Gavin and Sabbagh (2019: 17) have argued that any community court established in Ireland should be developed in line with restorative justice principles and contend that "if community courts are allowed to develop in the same fashion as restorative justice has done, by making slow and steady progress, they may also have a strong future in Ireland".

As mentioned throughout this thesis, the only standalone problem-solving court in Ireland is the DDTC. The DDTC began in Dublin as a pilot programme in 2001 and was made permanent in 2006 following a 2005 review of the court, which also recommended that the court should be extended across the Dublin Metropolitan District. The Agreed Programme for Government 2007-2012 also made commitments to expand the DDTC programme, but the programme was never rolled out further. There are numerous conditions that offenders must meet in order to be considered for the programme. For example, offenders must be over 18, have pleaded guilty or been found guilty of their charge, it must be a non-violent criminal offence, they must reside in the catchment area, the alternative to taking part in the programme must be a prison sentence if convicted, the offender must have a drug dependency, give informed consent to take part in the programme, and agree to be under supervision, cease offending, take part in drug treatment and follow the programme (Department of Justice, Equality and Law Reform, 2010).

The latest evaluation of the DDTC, conducted in 2010, reported that 374 offenders were referred to the DDTC between 2001 and 2009 (Department of Justice, Equality and Law Reform, 2010). 200 offenders continued to the programme and of these 200, only 29 clients graduated (Department of Justice, Equality and Law Reform, 2010). Reasons for this lack of success of the DDTC are explored within the 2010 evaluation report. One reason given is that by the time people appear in the DDTC, their addictions have reached a serious level and they often have a history of failed treatment. The report recommended intervening earlier and implementing the programme in the Children's Court for those

who are under 18. The DDTC does not permit offenders where there was an element of violence to the crime committed and it was suggested that this should be allowed if the risk of violence is low. There was an issue with a large percentage of referrals to the DDTC being deemed unsuitable for the programme because they live outside the catchment area of Dublin 1, Dublin 7, and part of Dublin 3. It was also noted that "since the DTC was established as a pilot project, it has operated with no additional dedicated resources provided, other than the normal budgets of the agencies involved" (Department of Justice, Equality and Law Reform, 2010). In June 2019, figures were released showing that 688 people were admitted to the DDTC between 2010 and 2017, which was an improvement (Gallagher, 2019). However, only 37 of these people completed the programme at the gold level (Gallagher, 2019).

Besides, Collins et al. (2019: xiv-xv) argue that the DDTC was never going to work because it was transplanted from America, stating:

> "when applied in Ireland, the UK and in other contexts, drug courts were transplanted into an unsuitable legal system within a complex institutional ecosystem of deep social support structures, which were expected to adapt around the foreign plant".

The DDTC was never provided with the resources required and the processes were never adapted once challenges arose. Problem-solving court models cannot be established and ignored, they must adjust to address issues that they encounter, particularly in the first few years of operation (Wade, 2021). Careful consideration needs to be given to the failures of the DDTC if a community court is to be introduced in Ireland. However, the continued operation of the DDTC demonstrates that the Irish government is not opposed to problem-solving court models. This acceptance, along with the continued development and acceptance of restorative justice approaches, could signal that a community court model would fit well in the current criminal justice environment in Ireland.

6.1.7 Conclusion

The Irish penal landscape stems from the English system but has also been strongly influenced by the Catholic Church. Therefore, there is a history of social moral control, which is evidenced by the flagrant use of institutions such as mother and baby homes and residential schools. However, the influence of Catholicism also placed an importance on

the family and the community in responses to crime, which is still visible within the current penal landscape. As Kennefick and Guilfoyle (2022: 10) note: “Ireland has the benefit of a distinctive criminal justice culture which has retained and cultivated aspects that facilitate desistance and restorative justice”. The politicisation of crime did occur, but the ‘tough on crime’ rhetoric did not endure in Ireland (Hamilton, 2014). Many academics argue that this was not an active choice, but rather was a result of stagnation in the criminal justice system (O’Donnell, 2008; Rogan, 2011; Brangan, 2019).

Sentencing remains a discretionary process in Ireland. It has been suggested that the imposition of sentencing guidelines would be an opportunity to increase consistency, while also promoting the use of community sanctions and access to services (Marder, 2022). Depending on how they are introduced, sentencing guidelines also have the potential to limit the more individualised approach to sentencing in Ireland, which would hinder the more innovative sentencing approach required in a community court. Prisons in Ireland have resisted privatisation, but there are other concerning aspects such as overcrowding, the increased number of life sentence prisoners, the decline in the use of temporary release, and longer sentence lengths (O’Donnell, 2017). There are a range of non-custodial sentences available, and the work of the Probation Service in particular still demonstrates a commitment to rehabilitation (Healy, 2012). This focus on rehabilitation could be due to the roots of the service in voluntary Catholic organisations (McNally, 2009).

The longevity of a standalone problem-solving court in Ireland in the form of the DDTC is a positive indication of the political acceptance of these models. However, the DDTC is not currently meeting its potential. The implementation of the DDTC without the provision of resources and guidance necessary to operate successfully and adapt to issues arising, is an approach that should be avoided going forward. There have been repeated calls for the use of prison as a last resort in Ireland (IPRT, 2019, 2020, 2021b) and this approach could be further facilitated through a community court model. A community court model in Ireland would have an increased chance of operating successfully within the penal landscape if it were to closely collaborate with the Probation Service. This partnership would provide a community court with access to experienced professionals, community service opportunities, the services and projects that the service fund, and access to clients. However, it would be very important that the aim is to collaborate and not compete with the Probation Service. In addition, a community court should remain

an independent initiative so that the underpinning principles of the model remain the top priority.

The following section, Section 6.2, outlines the findings from the semi-structured interviews conducted with key stakeholders in Ireland.

6.2 Irish Findings

This section details the findings from the semi-structured interviews conducted with key stakeholders in Ireland. Purposive sampling was employed for the Irish interviews as it was considered most appropriate to speak with stakeholders in Ireland who had prior involvement and/or knowledge of the initial NCC proposal and recommendations to introduce a community court in Ireland. This approach was chosen with the hope of discovering why the recommendation to introduce a community court in Ireland was never acted upon and whether there were specific barriers to its implementation. Interviews were conducted with five stakeholders in Ireland, two of which were members of the DCBA and NCC at the time that the initial proposal was published. A TD involved with the Joint Committee was also interviewed and so too was the former head of a criminal justice agency who had previously been critical towards the idea of a community court at the time of the proposal. The fifth interviewee was the current head of a justice-related NGO. The core themes that emerged were: supporters, challenges, location, the Irish context, and advice.

6.2.1 Supporters

It became clear throughout the interviews that the recommended pilot community court had some strong supporters in the criminal justice system in Ireland. However, many individuals and agencies were hesitant to accept the model. Liam, who was both a member of the DCBA and NCC had lived in New York at the time community courts were established there and states: “all I knew is that one minute the place was dangerous, the next minute, the place was clean”. When back in Ireland, Liam began lobbying for community courts in Ireland by speaking to “the right people”, getting the research together, and by avoiding the media. In the beginning, he was able to generate some political commitment and support from the Gardaí. Ronan was one of these political supporters of the concept, and as the concept gained traction in Ireland, he went on a fact-finding mission to New York, concluding that the idea should be progressed. Ronan was particularly impressed by the immediacy with which cases were dealt with and the opportunities for people to receive the relevant supports while avoiding a criminal record. Expeditiously dealing with cases in a meaningful way is a core aim of the community

court model (Zozula, 2018) and this immediacy is generally possible due to the presence of services on-site (Lang, 2011).

Erin was also aware of the proposal stemming from the business community in Dublin and that it generated a lot of interest. Erin notes that the community court proposal in Ireland was "a really strong proposal from years ago", referring to the National Crime Council report in 2007. Ronan was pleased that the business community was so supportive of the idea of introducing a community court, and that they fully understood the model, as with the business community behind it "its chances of success are increased". However, Amman (2000) is particularly critical of community courts that are driven by the business community as he fears they do not have the right motivations and want to protect the local economy above individuals. Thompson (2002) also argues that the community court model is rarely enacted to assist communities in low socio-economic areas. When this criticism was put to Declan, his response was:

> "if community courts are assisting people not to reoffend, that helps society. Yes it helps the business community, but it helps society. And if you are taking people who have absolutely lost no hope or have lost hope, and they get a job, have a reason to get up, having a bit of self-respect, means an awful lot. So if they are helping people to actually have a better life, well then it's a success".

Declan claims that "people have lost respect for justice" and that a community court would help to restore faith in the criminal justice system.

It is clear from the findings from Australia and England that it is important to have strong political will and community court champions to ensure that a community court has longevity. Both Ronan and Declan mention that the Minister for Justice at the time, Alan Shatter, was interested in and supportive of the idea of establishing a community court in Ireland, while Erin remembers that the former Inspector of Prisons, Judge Michael Reilly, was a keen advocate of community courts. Declan notes that "Alan Shatter was behind this in a big way", but Ronan mentions that when Alan Shatter was no longer in his position, "it kind of lost momentum to a certain extent". Shatter's successor, Frances Fitzgerald, was also interested in the community court proposal but "it petered out", according to Declan. As mentioned in Section 6.1.6, when Frances Fitzgerald was asked a parliamentary question in 2015, she replied that the resources that could have been used

for a community court initiative were being used for different projects throughout 2014 (Response to written question 17178/15 from Finian McGrath TD on 30th April 2015). It is clear that the community court initiative was not a priority for Frances Fitzgerald. Ronan notes the need to have someone in the judiciary, the bar council, and the law society behind the idea also. Ronan explains "we did bring them all around the table at the time, as you know, and they all made very positive noises, but when Alan [Shatter] left, it was very hard to pick it back up again". This finding demonstrates the need for political will to advance the community court model. However, if political will did not sustain long enough in Ireland for a community court to surpass the proposal stage, this could signal that there would not be enough political support for the model if it was implemented, which could impact continuity of funding.

Almost all interviewees were supportive of introducing a community court in Ireland, and some expressed disbelief that it had not yet happened. When asked whether he thought a community court was worth pursuing in Ireland still, Ronan said "I did then and I do now". Erin states that having all the necessary services on-site is "a no-brainer", especially for people who have more chaotic lifestyles. The NCC (2007) proposal stated that it was not necessary for all the services to be located on-site, but that the relevant services should prioritise community court cases and be located within the catchment area. However, the co-location of services on-site is a crucial aspect of the community court model, and will be discussed further in Section 7.8. Erin emphasises the need to speak about the failures of prison rather than the failures relating to problem-solving courts, explaining: "for some reason we don't hold imprisonment to the same account that we do alternatives to prison". In a recent meta-analytic review, Petrich et al. (2021) found that the impact of imprisonment on re-offending is limited, and that custodial sentences actually have a slight criminogenic effect. Declan is still convinced that establishing a community court in Ireland is a good idea, stating that "if they needed someone to clean the toilets or to stand at the door, I'd be there". However, Liam mentions that getting the community court movement started in Ireland again would be difficult in the absence of a strong advocate.

While almost all of the interviewees were supportive of introducing a community court model in Ireland, Conor remained resistant to the model. Conor was interviewed for this study as he had opposed the introduction of a community court model in Ireland during the initial proposals. In more recent years, he began to see how problem-solving court

models could be beneficial, but this did not extend to community court models due to their more holistic approach. Conor thinks that problem-solving courts that focus on one issue are more likely to be successful, which will be discussed further in Section 6.2.2. As four out of five interviewees do consider the community court model to be one that could benefit the Irish penal landscape, once consideration has been given to the challenges they raised in Section 6.2.2, this bias must be noted. The main disadvantage of purposive sampling is that the external validity is limited due to the restrictions placed on the sample and therefore generalisation of the findings is only possible to the population that the sample was drawn from (Andrade, 2021). In this case, that sample consists of those with prior involvement and/or knowledge of the initial NCC proposal and the recommendations to introduce a community court in Ireland.

6.2.2 Challenges

The proposal to introduce a community court in Ireland came up against a number of obstacles according to interviewees. Some justice agencies and actors were not convinced that a community court was a good idea. Liam notes that the biggest obstacle in the beginning was trying to unravel the system. Liam explains: "we were running along and then suddenly the opposition started, the obstruction inside the system started". Opposition, according to Liam, came from barristers first and then from judges. Liam claims that barristers were against the idea because they would make less money from clients, and that judges were opposed because they knew that they would not be offered the job since it would require a judge with a certain temperament. Feinblatt and Berman (2001) acknowledge that some judges are hesitant to become involved with the community in a substantial way as they envision that their role is to remain entirely impartial. Feinblatt and Berman (2001: 4) also note that "many criminal justice professionals feel too overwhelmed by the daily pressures of their jobs to reach out to the community". It is difficult for criminal justice actors to agree to additional responsibilities if their resources are already stretched. Conor warns that solicitors are less likely to accept innovative court models due to financial concerns:

> "it's in the solicitors interest that you start in the court, that it doesn't go anywhere else into some innovative centre or whatever, and that you appear before that court as often as possible, because that would make more money".

Conor notes that even if solicitors and other legal actors do agree with the aims of a community court, it is very difficult to get people to change their way of operating, especially in a court setting. For this reason, Conor agrees that creating a standalone centre is the only way that it would have a chance because it would be so far removed from the rigid mainstream court system. The courts service is not good at information-sharing, according to Erin, and the information that is shared is often unintelligible. Erin argues that the courts service focus on efficiency first, not justice.

The Law Society of Ireland (2014) put forward a submission to the Joint Oireachtas Committee on Justice, Defence and Equality that acknowledged the potential benefits of the community court model, but they expressed concerns in relation to criminal procedure, constitutional rights, and sufficient resourcing. The main opposition from the Law Society's (2014) submission was that the existing range of available sentencing options were not being utilised by judges, and that similar results could be achieved by increasing funding to the Probation Service and existing restorative justice initiatives. According to Liam, there was no opposition from the Minister of Justice and that "the prison service was positive, but the probation service was hostile". Both Liam and Declan think that the proposal to introduce a community court "was killed from within". Liam claims: "somebody had to make it disappear and they're inside the system, not outside". The territorialism among criminal justice organisations and agencies, recognised by Clear, Hamilton and Cadora (2011) and Corcoran and Hucklesby (2013) could have contributed to the hesitancy described by interviewees. These findings should be noted if the community court model is to be considered in Ireland, as they are reminiscent of the issues experienced by the NLCJC, as noted in Section 5.3.1. Community court planners would have to work to build strong relationships with those who oppose the model to counteract this challenge.

The interviewees themselves expressed concerns about the introduction of a community court in Ireland. Conor notes that problem-solving courts often "sound so attractive that any reasonable person couldn't but be in favour of them". Erin also notes that it was generally agreed that community courts were a good idea in theory, but there were concerns about the amount of investment needed over a long period of time to allow the model to embed itself in the community. The amount of time needed for a community court to become embedded is an issue due to politicians thinking in terms of the election cycle, according to Erin. Declan's biggest concern is in relation to funding and the level

of commitment needed from staff to run it properly. Declan is also concerned that it would not be given the time and space to work out any issues. The need for community courts to be given sufficient time to remedy any problems that arise over time has been recognised by Wade (2021). Conor was more convinced by problem-solving courts that deal with specific issues, for example, domestic violence courts. Notably, the only existing problem-solving court in Ireland is a drug treatment court which has not experienced much success in the jurisdiction but the reason Conor was more in favour of these specific problem-solving court models is because it is "an existing court taking a particular approach and bringing more knowledge and training resources to bear on a specific issue, that's kind of adding value to the legal and judicial process". This conflicts with Conor's earlier statement that standalone centres are the only way for these innovations to have a chance of success as they cannot operate in a system as rigid as the court system. Conor remains hesitant to accept a model that widens the scope of who has responsibility for the justice process outside of the traditional court system. He does, however, acknowledge that "part of the issue is that one is trying to superimpose something, whatever it is, onto an existing well-embedded structure, and when I say well-embedded, I mean the seriously well-embedded structure that is our legal system". This point aligns with Zozula's (2018) observation that innovative court models have to fight for legitimacy whereas mainstream courts are already considered legitimate. However, the evidence presented in Chapter Four demonstrates that a well-considered community court model can be a more legitimate way to maintain civil order than mainstream courts, and can achieve this by aiming to address the underlying causes of offending and empowering marginalised communities.

Ronan raised the issue of public objections to the idea of a community court, especially those who would consider such a model to be too lenient. Ronan explains "it would take a bit of work to inform people that, you know, this is being tough on crime". Also, Ronan notes that the media could "get the wrong end of the stick" about the processes of a community court. Ronan explains:

> "The immediate 'lock them up and throw away the key' is easy to propagate, easy to promote, easy to understand, and you know, there's an emotional thing to it as well. It's a lot harder to say that we better give someone a second chance to turn their lives around and give something back to the community".

Conor mentions that, when proposing innovations in the criminal justice sphere, it is not always clear what it is that the innovation is trying to achieve, and whether the proposed model is the best way to achieve it. Erin emphasises the need to set achievable goals when introducing new programmes in criminal justice, and that the process should be responsive. Erin is clear that if certain approaches are not working, they should be addressed and improved, rather than being shut down. Murray and Blagg (2018) also emphasise the need to set out the goals of a community court and to measure its success against these goals. The Association for Criminal Justice Research and Development (ACJRD), in their submission to the Joint Committee on Justice, Defence and Equality in 2014, recommended that a pilot community court in Ireland should have processes for data collection implemented from the outset and that the court should be reviewed within a certain time period.

As an existing problem-solving court that has been operating in Ireland since 2001, the DDTC can give insight into how problem-solving models work in an Irish setting. Conor, echoing the work of Collins et al. (2019), describes the DDTC as "a classic case of trying to transplant something from America into Ireland". An argument against the transplantation of problem-solving courts from America was put forward by Nolan (2009) also, who is critical of the attempts to implement American innovations in cultural contexts that are not suited to them. Conor notes that it was originally stated that the DDTC would have sufficient funding, access to detox beds and a contract with a drug treatment service provider, but "none of that exists in Ireland". Going through the Health Service Executive (HSE) was not helpful because of the length of the waiting lists, and Conor reflected that "the pilot went on for twenty years, I'm not even sure if it still isn't a pilot". However, the DDTC has not been shut down because it would not look good politically and it continues to receive political support despite its lack of successful outcomes (Gavin and Kawalek, 2020). Conor does recognise that the DDTC did help some people who came before it and made a difference in their lives, but that it does not make sense at a policy level. Conor observes:

> "You might be talking about two people every year, you know. Like, there's 400,000 cases or something dealt with by the district court every day across the country every year. There's thousands in Dublin, there's like, I don't know, off the top of the head 10,000 heroin addicts. You don't, I mean, so you're talking about two people who were coming

through this this programme, which was fantastic for them, but you really have to question".

Conor explains that there are existing programmes that are under resourced and underutilised that could have a better impact on the people who would benefit from them. With regards the DDTC, Conor states that there is a fear of abolishing it, combined with an unwillingness to commit to establishing a similar model anywhere else in the country. The DDTC provides important lessons for any potential future problem-solving court in Ireland. Community courts go beyond other problem-solving court models due to the need to undergo a shift in philosophy when dealing with offences. This model must be designed as a community hub with a court attached. However, the drug court model is arguably much simpler than the community court model and this model still has not had the desired impact in Ireland. This perceived failure of the DDTC could signify that the community court model would likely not be successful in Ireland due to the level of commitment required from stakeholders and the need to align fully with the underlying principles of the model.

6.2.3 Location

The location of community courts is of particular importance in order to promote community ownership and engagement (Murray and May, 2018; Smith, 2018). Erin acknowledges that the location of such a court model is important because that will establish whether it is used by the community or not, with particular attention needing to be paid to public transport links. The NJC's location has worked well because it is somewhere that community members can gather in an informal way due to its accessibility in terms of the location and public transport links (Smith, 2018). The NCC (2007) recommended a community court to be set up in Dublin City Centre within the catchment area of the Store Street and Pease Street Garda Stations. When asked if the city centre would be the appropriate location for a community court, Declan notes that "those families [in the city centre] are steeped in deprivation and criminality going back generations, they're not going to change very quickly". When the suggestion of Tallaght as a location for a community court was put forward, Declan does acknowledge that it might be more suitable as "it's not quite so condensed". Tallaght is also the base for other support services that utilise creative partnerships such as the Childhood Development Initiative (CDI) located in Tallaght West. The CDI forms partnerships with children and

families through restorative justice practices and developed a Community Safety Initiative to resolve community disputes, reduce anti-social behaviour, and improve attendance in schools (Casey, 2014). Locating a community court in an area with existing embedded support services would assist with forming mutually beneficial arrangements to build upon work that has already been done in the community – and to collaborate rather than compete with the existing services.

Conor recalls the support that the community court model received from the DCBA and understood why they wanted to address anti-social behaviour and criminality in the city centre due to the impact it has on their businesses. As noted, Amman (2000) has been critical of community courts being driven by the business community as they might not have the best interests of the individuals or the community in mind. Although the first community court, Midtown Community Court, was spearheaded by the business community in Times Square and it is considered a successful community court model, Conor questions whether a court is the right solution to these issues. Conor also makes the point that often it is people who live outside the city centre that commit crime there, which is an issue that the NLCJC experienced, particularly with football fans coming to the area and committing crime, as discussed in Section 5.3.1(a).

6.2.4 The Irish Context

An interesting point made by Conor about criminal justice initiatives in Ireland is that "things can get done without necessarily needing to have political champions". However, in the case of the community court proposal made in 2007, enthusiasm for the model faded after Shatter left his position, according to Ronan. Conor notes the more flexible and discretionary approach taken within the justice sphere in Ireland, and that means that having politicians on board is not always a requirement. However, Conor warns that a centre being developed as a 'one-stop-shop' could provoke objections, which is where the support of local politicians would be useful. The historical reliance on, and ubiquitous nature of NGOs in the justice space in Ireland, could lead to complications for the community court model in an Irish context. The community court model would need to be careful not to disadvantage existing support services and also be mindful about relying on services that may have their funding reduced in the future, which would impact the level of support provided to community court clients.

As mentioned in Section 6.1.3, judges in Ireland operate with a lot of discretion due to the absence of sentencing guidelines. Waterhouse (2014: 17) describes summary decisions in District Courts in Ireland as "involving a degree of expeditiousness and informality to enable the court to dispose of that workload with as little delay as possible as well as to ensure that offences are dealt with as soon as possible after their alleged commission". The discretionary nature of sentencing in Irish District Courts has been well-recognised by academics (O'Malley, 1991; Bacik et al., 1998; O'Mahoney, 2002; Hamilton, 2005). However, Ronan explains that the length of time between appearing at court and sentencing is too long, and adequate support is not provided. Therefore, while the discretionary approach to sentencing in Ireland is significant as it gives judges the opportunity to apply individualised sentences, it is suggested that the efficiency of court processes could still be improved.

Erin notes that "Ireland, by its size and everything, you can get things done, you know, and people can work together, they have access to each other". Erin uses the example of the bail supervision scheme as "an evidence-informed approach that started small" as good practice in relation to innovations in Ireland. Ronan uses the example of the Joint Agency Response to Crime (JARC) as a successful initiative involving inter-agency cooperation. JARC pilot projects have shown positive results in terms of recidivism (Department of Justice, 2018) showing that collaborative working in the justice sphere is already having a positive impact in Ireland. Conor is positive about the direction in which the justice system is moving in Ireland, stating that "there's a whole focus on community, wellbeing and safety". Erin also senses the changes within the justice system since community courts were first proposed, stating "at the moment, there is better collaboration, or at least acknowledgement for the need to collaborate". The Irish Government released a *Community Safety Policy Paper* in 2022, which discussed the bringing together of state services who would work together to prevent crime. The paper announced the piloting of Local Community Safety Partnerships in three areas and acknowledged that different communities will have different issues to be addressed, and the needs of the community should be identified through community engagement (Department of Justice, 2022b). The Department of Justice (2022b: 5) also notes that this response would require "commitment and buy-in from State, local and voluntary service providers to work together to address those needs". The aims of this policy paper are similar to the aims of a community court, in that they intend to make the safety concerns

identified by the community a priority, improve collaboration of services in the respective areas, and build the confidence of the community in the service providers (Department of Justice, 2022b). Erin thinks that while the justice sphere has improved in terms of working together, problems still exist in trying to work collaboratively between justice agencies and those outside justice, such as health and housing. Introducing a community court in Ireland could help to address these issues of collaboration among criminal and non-criminal justice agencies, while also creating a more community-orientated understanding of justice by making the holistic support of those who offend the norm.

6.2.5 Advice

Interviewees gave advice in the event that a community court is progressed in Ireland, which includes the importance of including those with lived experience of the criminal justice system in the process, involving criminal justice professionals and providing them with the necessary training, conducting extensive community consultation, including agencies outside of the traditional justice bodies, and ensuring the initiative has sufficient political support. In addition, interviewees state the importance of monitoring and evaluating such models, and the need for replication.

Erin emphasises the need for "co-creation" of a community court with people who have experience of the system to find out what would have helped them desist from crime. Involving those with lived experience of the criminal justice system in formulating policy responses to crime has become more common, and is visible through the increasing use of the phrase 'nothing about us without us' (Buck et al., 2022). Being fully inclusive of all voices within a community, including those with lived experience, would be valuable as they would be able to give guidance as to what helped them, or would help them, to desist from crime. Ronan acknowledges the need to do extensive groundwork to inform the community about the court to increase the chance of them buying into the idea. With most existing community courts, planners created community advisory panels during the planning stage, some used focus groups or went door to door, and others had formal mechanisms for community involvement (Lee, 2000). Ronan also emphasises the need for training for both legal professionals and judges, and having the necessary support services involved. Conor makes the point that we could do more in Ireland to utilise local authorities in relation to addressing crime and offending, similar to the practice in other jurisdictions throughout Europe. Conor explains "we shouldn't confine ourselves to the,

the, you know, traditional bodies, like the guards, prisons, probation, and then mental health services, drugs and so on". Collaboration with local authorities is mentioned within the Government's *Community Safety Policy Paper* (2022) which states that under the Policing, Security and Community Safety Bill, there will be a statutory obligation on government departments, local authorities and public bodies to work together to improve community safety. These aforementioned bodies could meet these obligations by collaborating within a community court model.

A further piece of advice was to have champions at every level and political will. Ronan claims that a team of people is required to run a community court. However, he notes that "sometimes the working groups end up producing another report", whereas Ronan notes that Alan Shatter was "a doer" so it would possibly have gone further if he had been able to stay. While a working group was set up in 2014 to further investigate the possibility of introducing a community court in Ireland, whether this working group came to any conclusions in favour or against the model is unknown. If there was to be another working group, Ronan stresses the need for members of the bar counsel, business community, justice department, court service, and the guards to be involved. According to Conor, in the past these types of innovations have worked well if there has been an individual with a strong personality at the helm. However, he notes that "you don't necessarily get that on a nationwide basis in any institution or organisation".

Interviewees also mention the need for continuous monitoring and evaluation of a community court initiative. Ronan notes the need to pilot the project and monitor it carefully. Conor does agree that piloting an innovative court model in one location is valid if it is with the view to roll it out elsewhere, but that "having it in one place and stopping there doesn't really make sense". Conor argues "as a model, I think it should be, if it's applicable at all, it should be applicable anywhere". Berman and Gold (2011) note that while replication seems like an easy concept, the balance between being faithful to the model and also adapting it to local environments is a difficult task that requires thought and planning. It is possible that community courts will work well in one community and not in another, due to the specific circumstances in which they need to operate successfully. Erin states that concerns about justice being applied differently in different areas are unfounded because "that's not new, that's already happening. The trick is to pilot it and then roll it out nationally". There is a high degree of judicial discretion at the sentencing stage in Irish District Courts, and this has long been a talking point

among academics as this causes sentencing disparity between geographical locations (O'Malley, 1991; Bacik et al., 1998; O'Mahoney, 2002; Hamilton, 2005).

Liam warns against calling for a pilot project, stating "pilot projects are for slow learners or somebody who does not want it to succeed". Pilot projects are a positive approach if they are evaluated properly and adapted based on these evaluations before continuing. However, with the Dublin Drug Treatment Court, the initial evaluations highlighted problems that were never addressed and it has continued to struggle to meet its original aims (Gallagher, 2019). Liam states that community courts should be brought to Ireland, especially in large urban areas where there are problems associated with poverty and disadvantage. As mentioned in Section 1.2, it has been established that factors such as poverty, mental health, substance misuse, homelessness and marginalisation can contribute to crime (IPRT, 2019; Kiely and Swirak, 2021). There is a valid argument that combining criminal justice approaches with support services in problem-solving courts models, or through rehabilitation and reintegration policies, can result in the criminalisation of the aforementioned social issues (De Giorgi, 2017; Ruane, 2019; Collins, 2021; Kiely and Swirak, 2021). However, the evidence from this research, particularly from the NJC model, shows that the community court model can work towards addressing these social issues without contributing to their criminalisation. It achieves this by acting as a community hub with a court attached, which provides a range of services to those in the community who are not involved with the justice system, and also by making the holistic, streamlined support of those who do appear before the court the norm. Therefore, carefully considered community court models, such as the NJC, place criminal justice responses in the social justice realm and work to reduce the division between those who offend and the community. As explained in Section 4.2.2(a), this approach creates the paradigm shift required for desistance to occur, as per Maruna (2017).

The findings in this section indicate that the implementation of a community court model in Ireland would be a massive undertaking. However, the model should be given serious consideration if the Irish government want to commit to an approach that aims to address the causes of crime, maintain social order within communities in a more meaningful and legitimate way than the current mainstream court system, while also empowering marginalised communities. This form of community court model is possible and feasible

in an Irish context, but will require careful consideration, as is explained further in Chapter 7.

6.2.6 Conclusion

There was support for a community court in Ireland at the time of the initial proposal, which mainly came from the business community, politicians, and the Gardaí. However, when the main political supporter, Alan Shatter, stepped down from his position as Minister for Justice in 2014, the level of political support declined. The vast majority of interviewees still considered community courts to be a good idea but note that it would be difficult to establish one in the absence of a strong advocate. Opposition mainly came from barristers and judges. Those who do not benefit directly from the operation of a community court would be harder to convince of the model's benefits and it is difficult to implement change in how justice actors operate in a system as well-embedded as the criminal justice system. It is also difficult to overcome the territorialism that can exist between different agencies as they compete for resources. A community court is not a lenient model but there is the possibility of it being seen that way by the public and the media. It would have to be made clear what exactly the model is attempting to achieve and the DDTC should be carefully examined to learn from its mistakes in this regard.

While the initial proposal recommended that a community court be established in Dublin's inner city, a city suburb, such as Tallaght, could be a more suitable location for a flagship community court in Ireland. It is acknowledged that a court might not be the best way to address the issues within a community. However, those who would appear before the community court would alternatively be appearing before a mainstream court without access to a range of supports. Although District Courts in Ireland already operate in quite a discretionary way which allows for individualised sentences to be applied, the collaborative effort of on-site agencies and support services would allow for a holistic response to offending.

Ireland is already demonstrating good practice in terms of joint agency working among justice agencies and there is an increased emphasis on collaborative efforts to improve community safety, as is visible with the *Community Safety Policy Paper* 2022. Interviewees recommend involving those with lived experience of the criminal justice system if planning a community court, and conducting extensive community consultations. Further, they recommend that justice actors are trained sufficiently so that

they are equipped to meet the goals of a community court. A community court should be well-monitored to allow for accurate evaluation from the outset, and interviewees were supportive of piloting a community court, but only with a view to replicating the model. For a community court to work, interviewees note the need to have champions within every sector of the justice system.

The following section, Section 6.3, details the findings from the survey conducted with Tallaght residents.

6.3 Tallaght Survey

This section will outline the findings from the survey of Tallaght residents and addresses the research question as to how an Irish community would react to the concept of the community court model. This survey was conducted to determine community attitudes towards crime, safety, and community in a local area. A further intention of the survey was to inform Irish policy makers what a community's first impression of the community court model may be, and whether they would initially be supportive of such an innovation. It was decided that only residents of the Dublin suburb of Tallaght, who were over the age of eighteen, would be surveyed for this purpose. Tallaght is an area of Dublin with high crime rates (Jordan, 2020), with worsening levels of drug misuse (Fitzpatrick, 2021), and with a large number of support services located in the area. It is also an area that demonstrates great pride in their community (Tallaght Community Council, 2022).

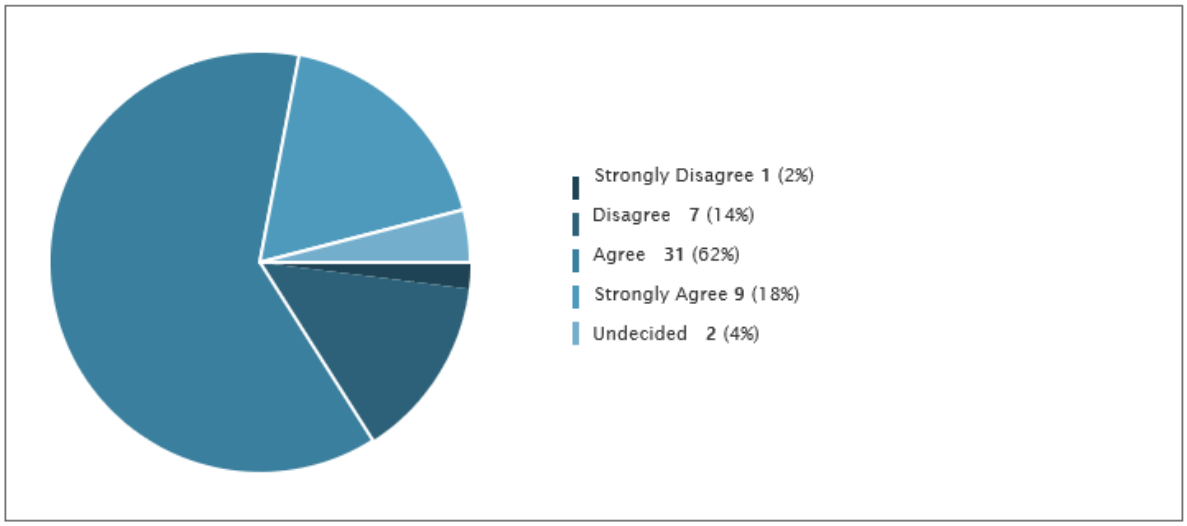
Cluster sampling was used because participants were needed from a pre-existing group – those who reside in the area of Tallaght, Dublin. This form of sampling involves identifying and defining the known population (Heap and Waters, 2019). Defining a cluster can be difficult and therefore, for the purpose of the survey, it was requested at the beginning of the survey that participants only participate if they reside in the Tallaght area. The online survey was disseminated through the social media pages set up for Tallaght residents specifically, for example, Tallaght community notice board pages, and social media notice boards set up for specific housing estates in the Tallaght area. The survey was sent to Tallaght community groups directly, for example, the Tallaght Community Council, for them to disseminate the survey as they saw fit.

It can be difficult to determine a response rate as the researcher cannot be certain how many people the online survey reached (Andrews, Nonnecke and Preece, 2003). However, the survey received 50 responses in total. As with any survey, there is self-selection bias whereby some people are more likely to take part in an online survey than others (Stanton, 1998; Thompson et al., 2003; Wright, 2005). There are also more limitations associated with sampling as very little will be known about the people who do decide to participate in the survey (Wright, 2005). For this research, participants were relied upon to only complete the survey if they reside in the Tallaght area, which is impossible to monitor. A further limitation is that the respondents likely had little knowledge of the community court model prior to completing the survey.

Pie charts have been included to complement the discussion for each question asked in the survey. The survey, including the information page and all responses, is attached as Appendix 4.

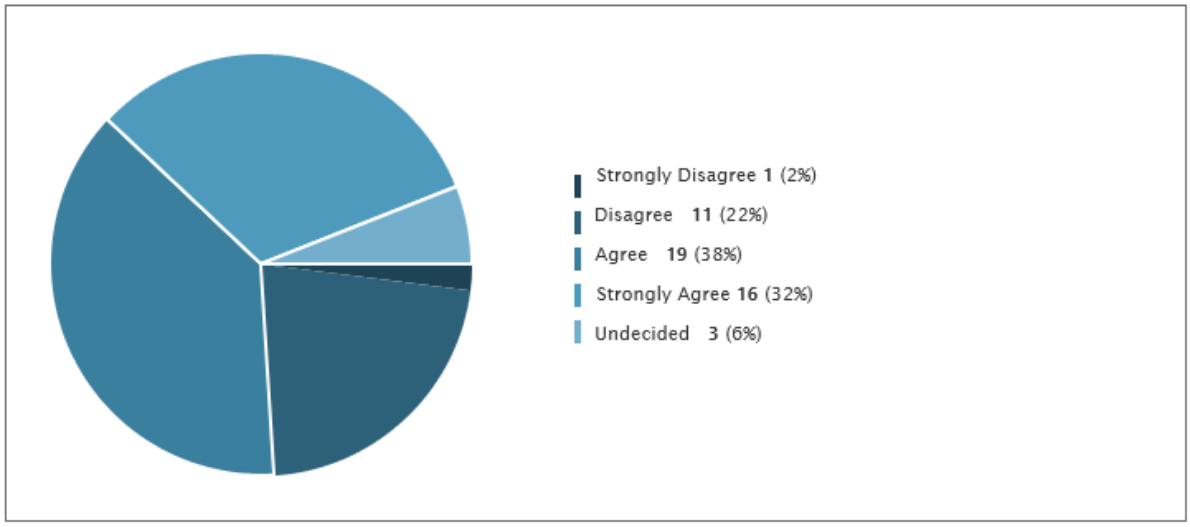
6.3.1 Survey Results

Question 1: I feel safe in my neighbourhood



Findings from interviews conducted with staff members from the NJC suggested that community courts are needed most in areas that do not feel safe. However, the majority (80%) of participants agreed or strongly agreed that they felt safe in their neighbourhood.

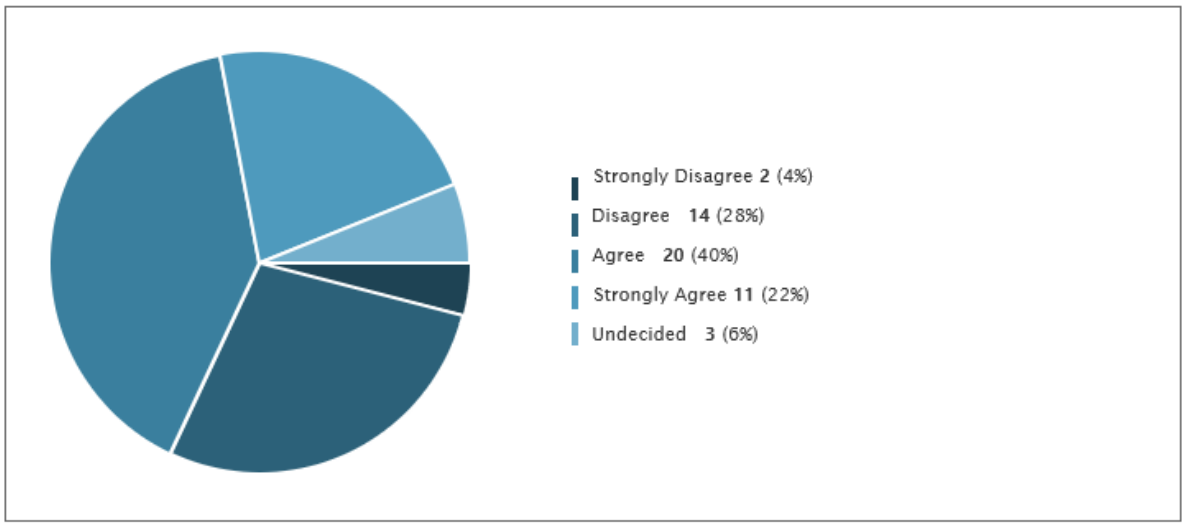
Question 2: People in my neighbourhood help one another



70% of participants either agreed or strongly agreed that people in their neighbourhood helped one another. This result could demonstrate that, according to the respondents,

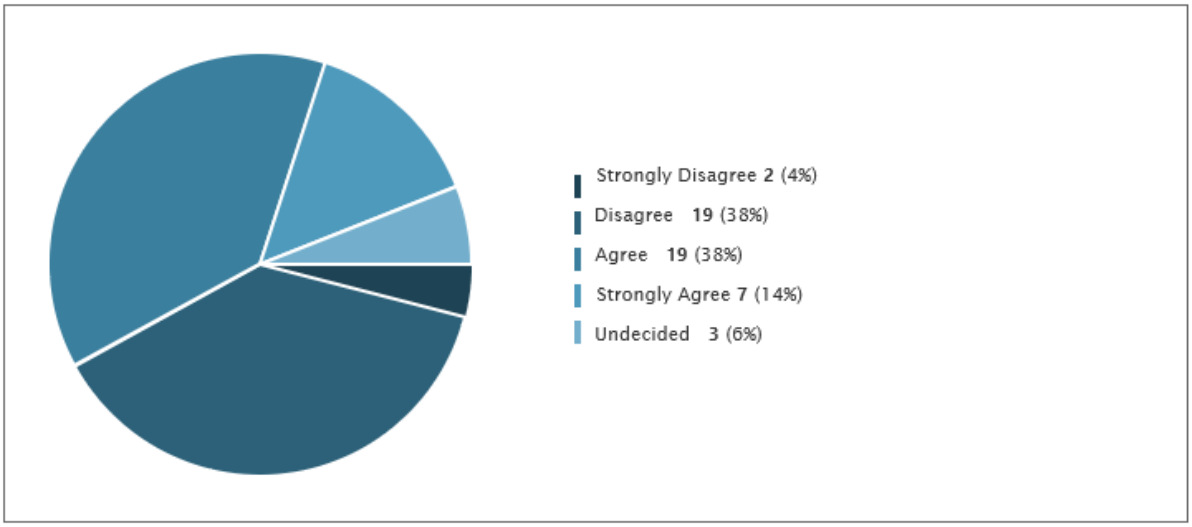
people who reside within the Tallaght area are willing to, and already do, assist others within their community.

Question 3: People in my neighbourhood are close/there is a sense of community



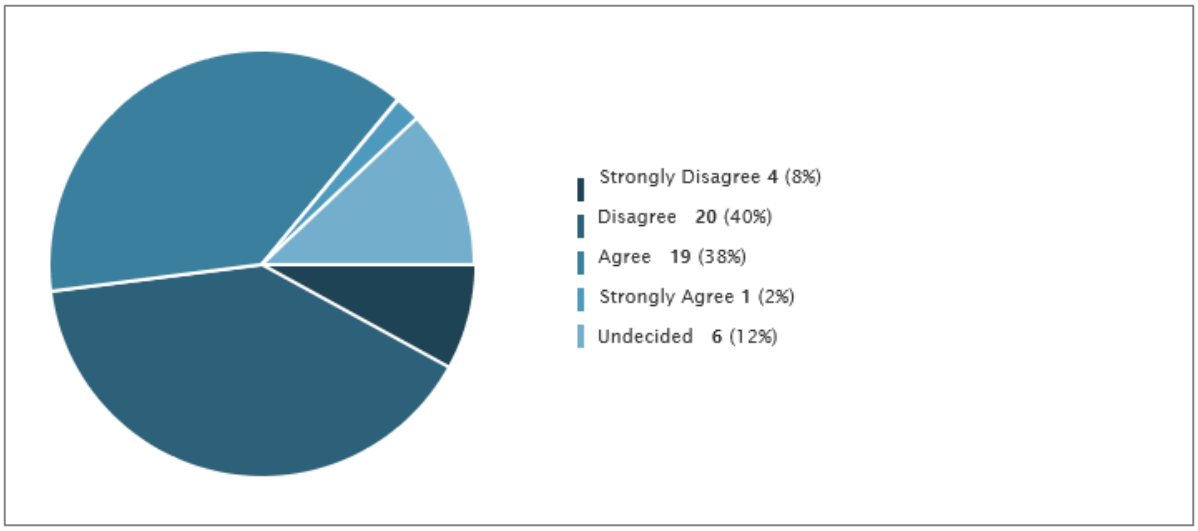
62% of respondents agreed or strongly agreed that there is a sense of community in their neighbourhood, while 28% disagreed and 4% strongly disagreed that there is no sense of community in their neighbourhood. It is possible that an existing sense of community in the location would be beneficial to a community court, as residents could be more likely to engage with the model. As previously emphasised, community engagement is a vital element of a successfully functioning community court.

Question 4: There are a range of services currently available in my community e.g. housing, substance abuse treatment, education/job training, financial counselling



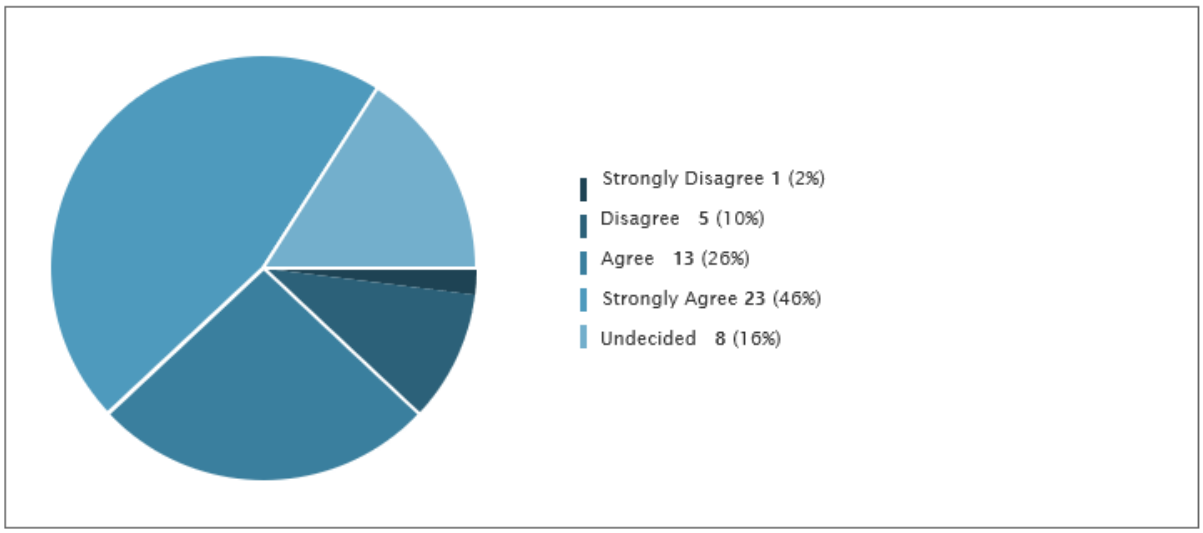
Responses were more divided when it came to whether respondents thought there was a range of services already available in the community, such as housing, treatment for substance use, education and training opportunities, and financial counselling. 38% of respondents agreed and 38% disagreed that a range of services already exist within the community. It is indeed possible that some respondents were not aware of services that exist in the locality, as they may not have had reason to seek them out.

Question 5: I feel that it is easy to access the services in my community



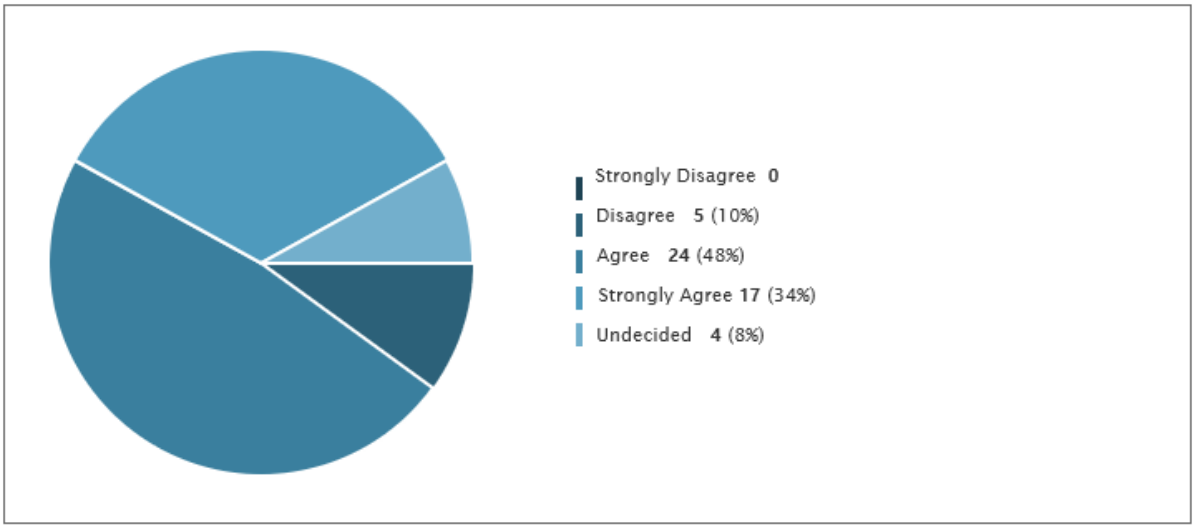
Respondents were also divided about whether they think it is easy to access the services available in the community. The responses to this question could be impacted by whether the participants in this survey had previously attempted to access support services in their locality or not. 40% disagreed and 8% strongly disagreed that it is easy to access services in the community.

Question 6: My neighbourhood would benefit from multiple services (e.g. housing, social welfare, addiction treatment, educational courses) working collaboratively under one roof i.e. working together, sharing information, problem-solving etc.



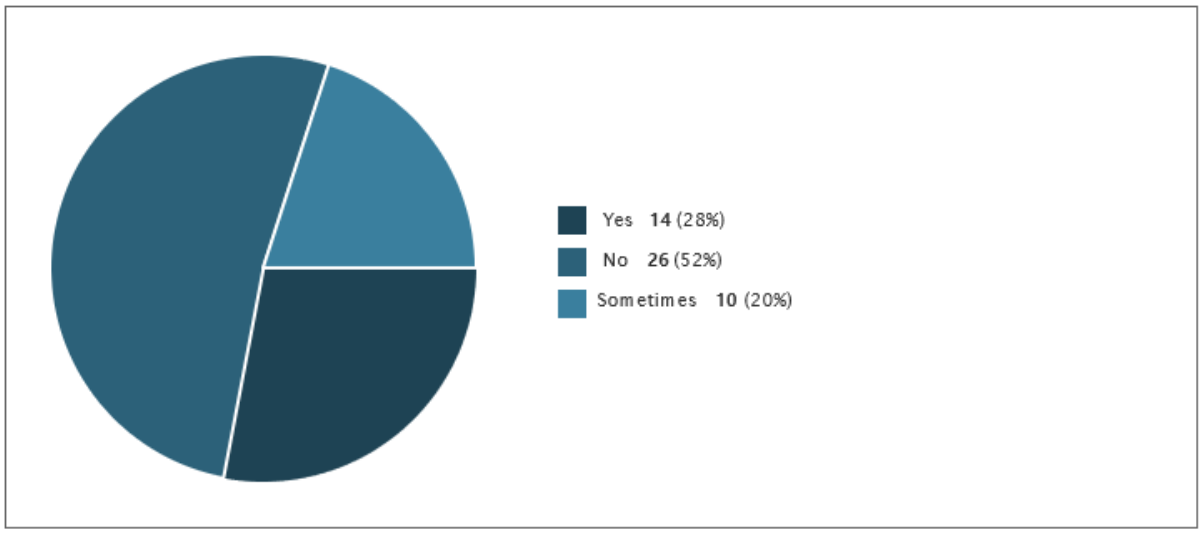
The majority of respondents agreed (26%) or strongly agreed (46%) that their neighbourhood would benefit from collaborative working among multiple support services all located in the one building to problem-solve and share information with one another. This finding suggests that Tallaght residents would be supportive of the 'one-stop-shop' or integrated services model of a community court.

Question 7: It is important to be actively involved in your local community



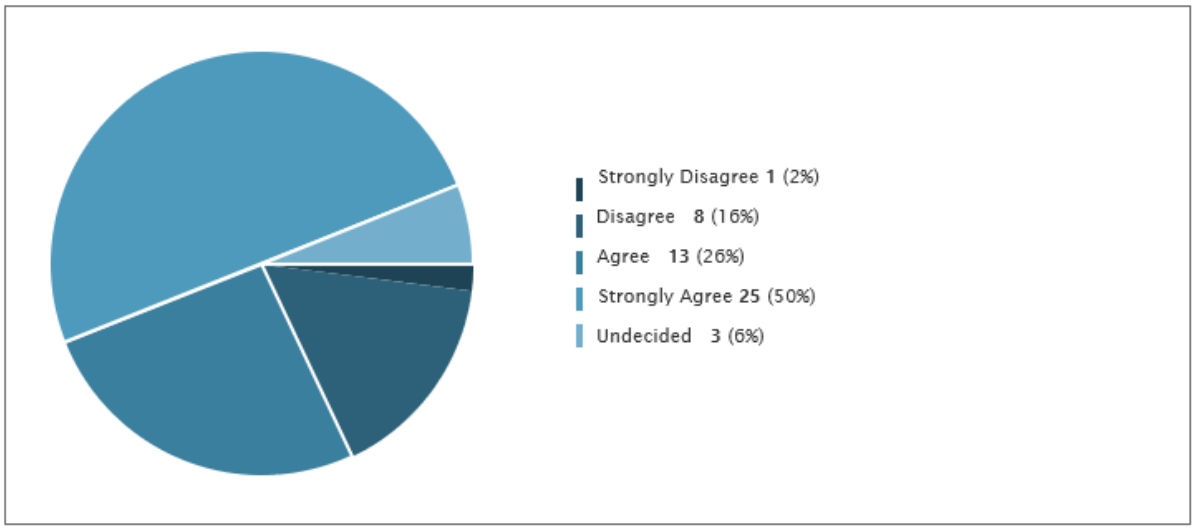
82% of respondents acknowledged the importance of being actively involved in the local community. Again, this finding could indicate that people who reside in Tallaght are willing to participate in projects that will improve their local area, and therefore may be willing to engage with an initiative such as a community court.

Question 8: Are you involved in any community organisations?



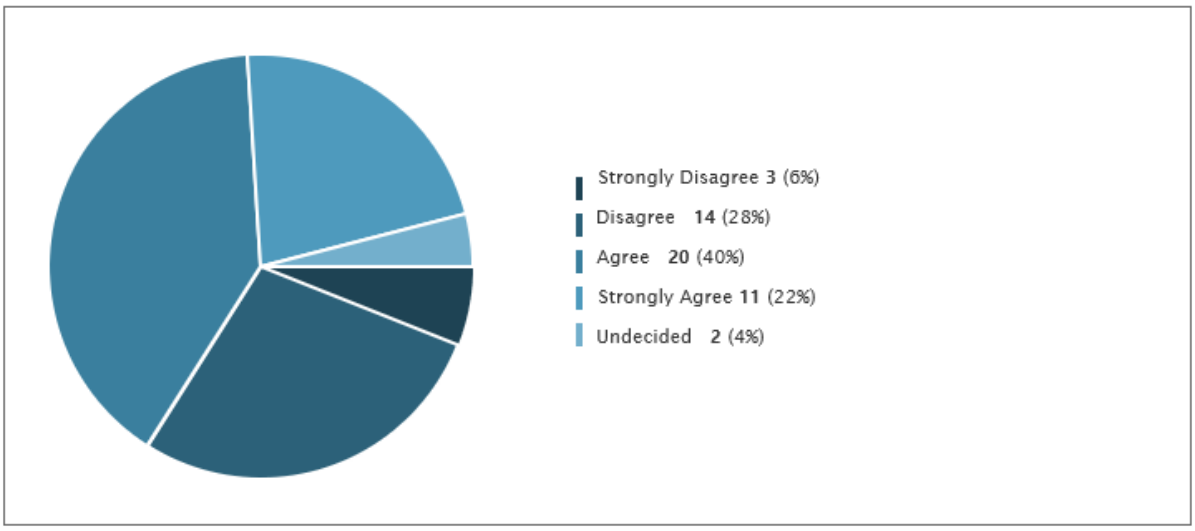
Despite the response to Question 7 above, 52% of respondents were not involved in any community organisations at the time that the survey was conducted. 20% of respondents were sometimes involved, and 28% of respondents were involved with community organisations.

Question 9: All laws should be strictly obeyed



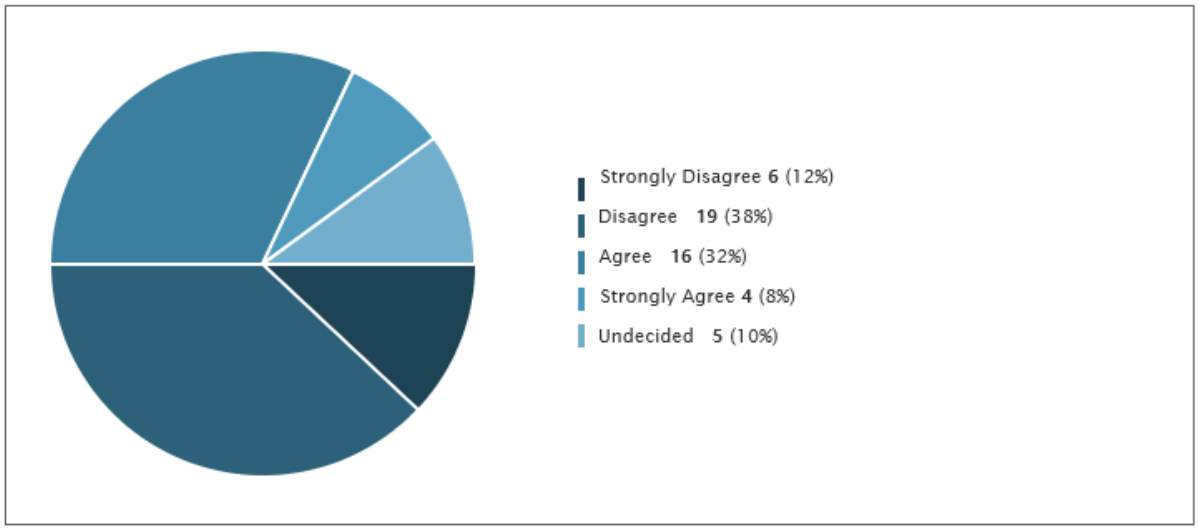
Half of all respondents strongly agreed that all laws should be strictly obeyed, with 26% agreeing with the statement. This finding could be indicative of a lack of tolerance towards those who break the law in the Tallaght community, possibly due to the level of crime in the area.

Question 10: Crime is a problem in my neighbourhood



62% of respondents agreed or strongly agreed that crime is a problem in their neighbourhood, which is at variance with the 80% of participants agreeing that they felt safe in their neighbourhood in Question 1. Tallaght Garda Station had the fourth highest recorded crime rate between 2003 and 2019 in Ireland and was the busiest Garda Station in the Dublin South division (Jordan, 2020).

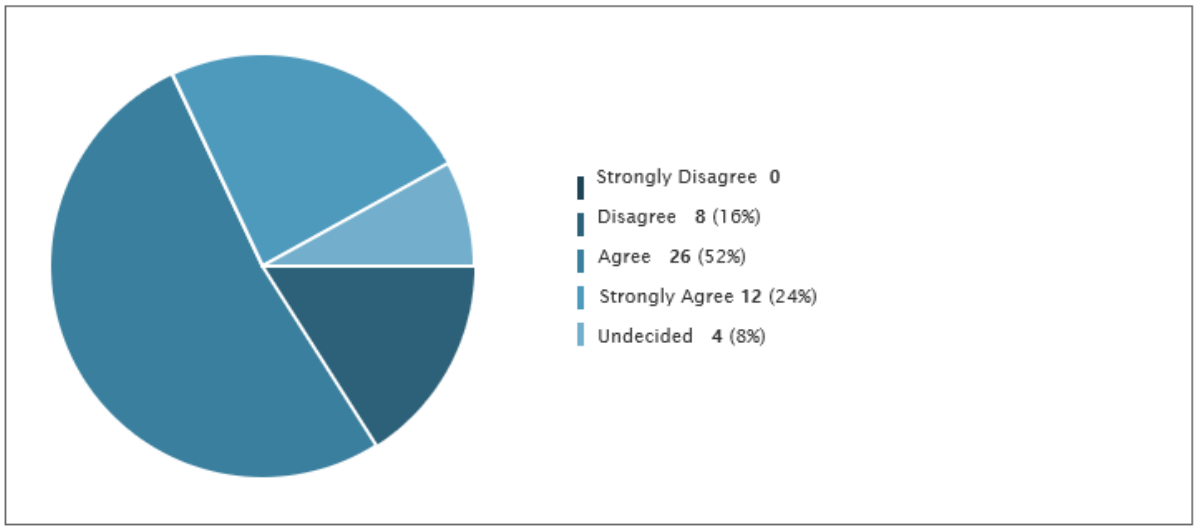
Question 11: Crime in my neighbourhood negatively impacts my quality of life



50% of respondents disagreed that the crime that exists in the neighbourhood negatively impacts on their quality of life. This finding could suggest that while Tallaght is a high crime area, and respondents acknowledge crime is a problem, the majority of respondents

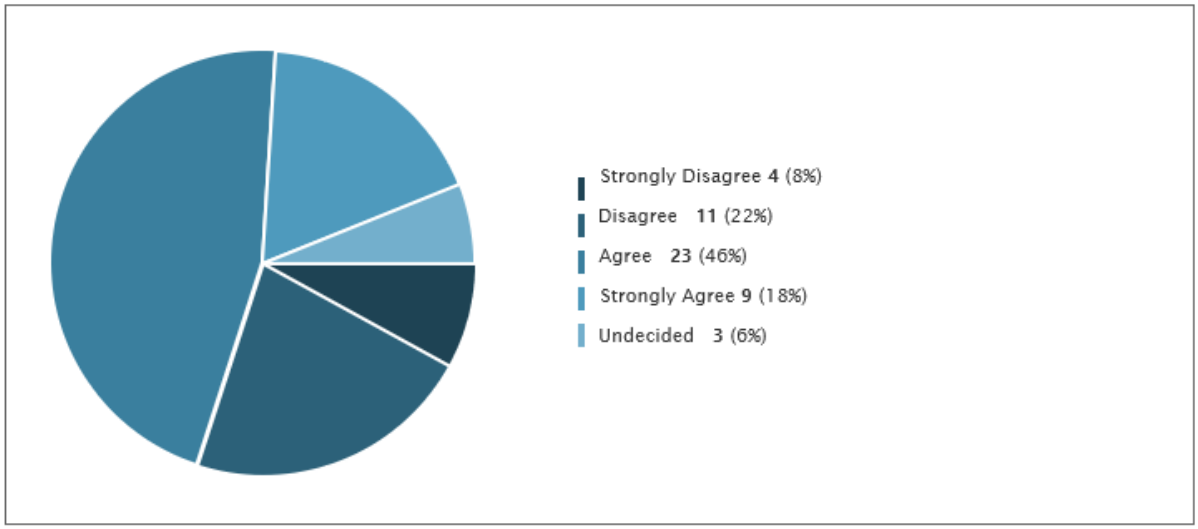
still feel safe in their neighbourhood because crime does not negatively impact on their personal quality of life.

Question 12: Low-level crime (petty theft, etc.) is more prevalent in my neighbourhood than serious crime (murder, etc.)



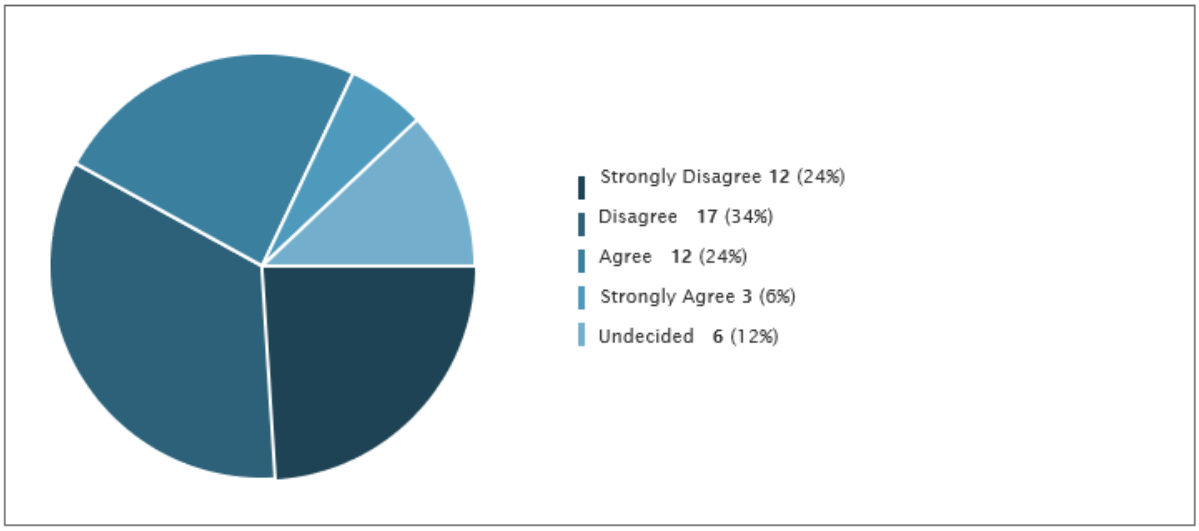
The findings from Questions 1, 10 and 11 above, are potentially explained by the responses to Question 12. 52% of respondents strongly agreed and 24% agreed that low-level crime is more prevalent in their community than serious crime. This finding further explains how there could be a perceived crime problem in the neighbourhood, without significantly impacting on the fear of crime or quality of life of respondents.

Question 13: I feel able to report crime in my neighbourhood to the Gardaí (Irish police) without fear



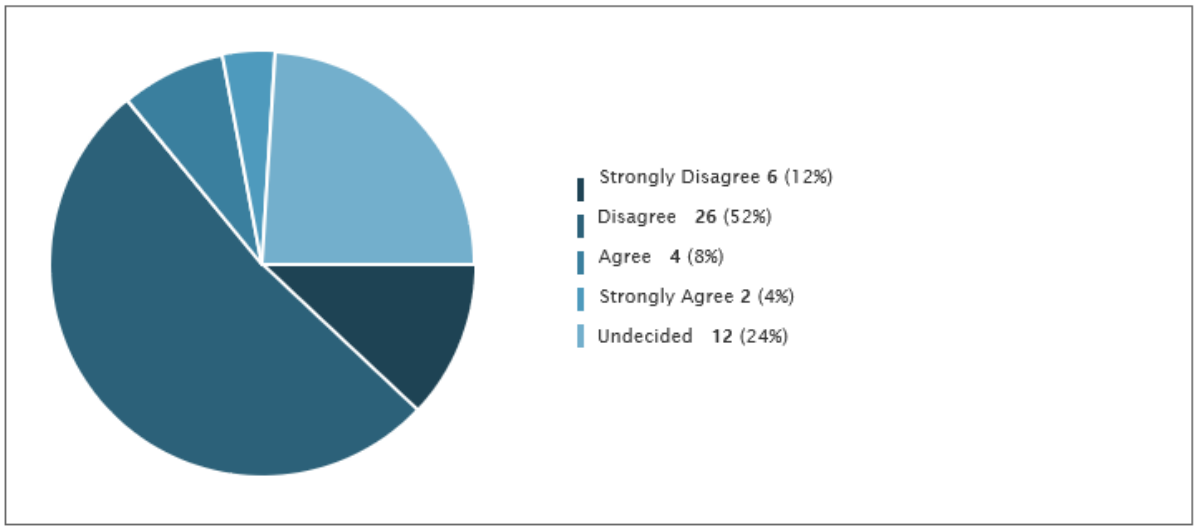
64% of respondents reported being able to report neighbourhood crime to the Gardaí, however it is concerning that 30% of participants disagreed.

Question 14: I feel that my neighbourhood is well resourced to respond to crime that occurs here



58% of respondents to the survey disagreed that their neighbourhood is well resourced to respond to the crime that occurs there.

Question 15: The Irish court system delivers fair outcomes



64% of respondents disagreed that the Irish court system delivers fair outcomes. This finding indicates that the respondents to this survey have limited trust in how the mainstream court system deals with offenders in Ireland. Survey participants were asked to further clarify their answer to Question 15 in a text box. Several responses referred to the lack of punitive punishment for rapists and paedophiles, compared with low level

offences. One respondent stated, for example, that "a paedophile gets less time than a man who gets caught with some weed". Numerous responses also emphasised that the system is "too lenient on serious crimes" and "less serious crimes are more heavily punished". One respondent stated that punishment is not always proportionate to the crime, especially for those who do not fit within the "white upper classes" with a further respondent noting "Joe Soap depending on where he is living can be presumed guilty before his [or] her case is even heard". A respondent expressed that the system leans in favour of the accused rather than the victim. The most common response was in reference to weak sentences for repeat offenders "who cause a disproportionate amount of trouble" and they also note the revolving door of repeat offenders, who often do not show up for their court dates. Two respondents mentioned the speed with which cases were dealt with, implying that it takes too long to reach an outcome. These participants would likely support the immediacy with which community courts deal with cases.

One respondent was particularly critical of the idea of a community court stating:

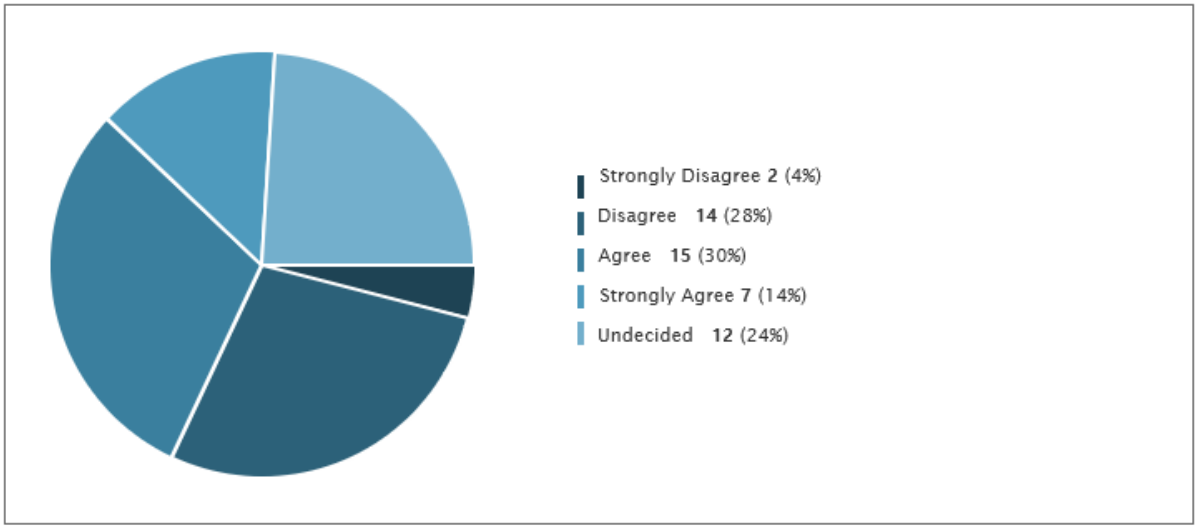
> "Build a bigger jail and start putting criminals in instead of this new umbrella group court system you thinking. We have all the supports we need in Tallaght, courthouse there already, sentencing is the issue and not more supports".

A respondent noted the lack of aftercare or rehabilitation for prisoners. A further response mentioned that sex work should be legal and drugs should be decriminalised, rather than stigmatised. Another mentioned that low-level crimes should be "outsourced" to allow more court resources to be directed towards more serious offences. A respondent noted that "people need to be helped with their addictions", and that prison leavers should be helped to address their underlying issues with a detailed plan, but also that harsh sentences should be given to those who do not follow the plan. The same respondent suggested that "the likes of restorative justice" should be introduced for low-level crimes.

While the public tend to show concern towards the leniency of sentencing, research often finds that people are not as punitive when provided with the details of a particular case (Hough and Roberts, 2012). Roberts and Doob (1990) note that most people obtain their information about sentencing from the news media, which provides limited background to the sentencing process or the principles upon which it is based. When answering opinion polls on sentencing, people tend to think about the most serious crimes and tend

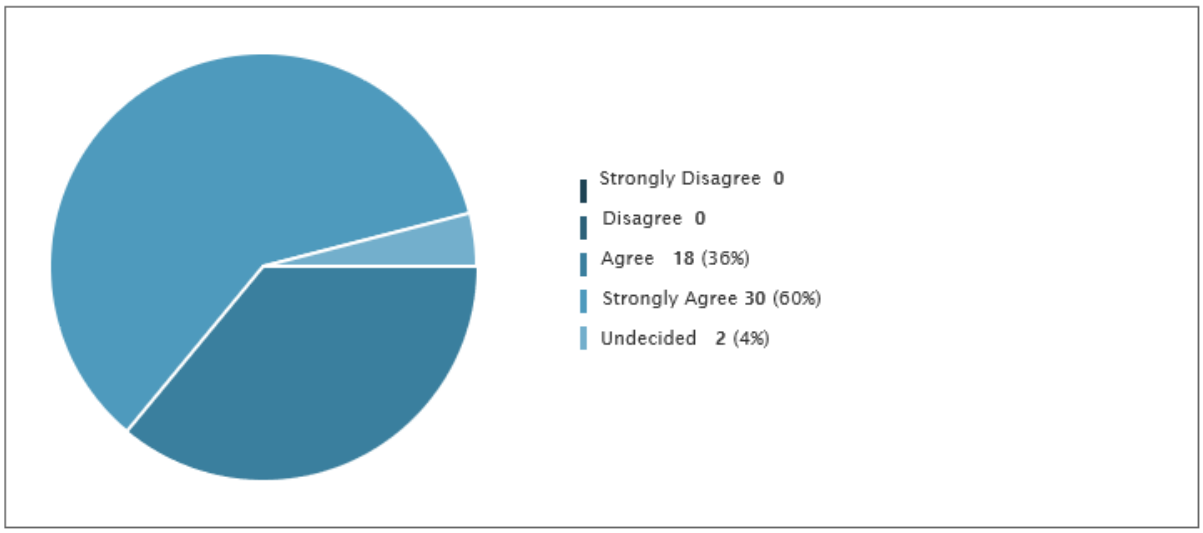
to remember cases that they thought received particularly lenient sentences (Berry et al., 2012), which can lead to heightened perceptions of unfairness. A report submitted to the Sentencing Guidelines and Information Committee, Judicial Council of Ireland, in May 2022 outlines how the lack of recent and reliable sentencing data in Ireland is impacting public confidence in the judiciary and how "in the absence of alternatives, newspaper reports can offer the only source of information in many instances" (Gormley et al., 2022: 42). The report notes that newspaper and media reports are not reliable sources on the subject of sentencing as they tend to focus on a limited number of cases, more serious offences, and those which have a "strong human interest element" (Gormley et al., 2022: 42). The cases within the media are often not representative of sentencing practices as a whole, and therefore can create misconceptions among the public and have a detrimental impact on public trust in the criminal justice system (Gormley et al., 2022).

Question 16: People should receive harsher sentences than they do currently for non-violent offences



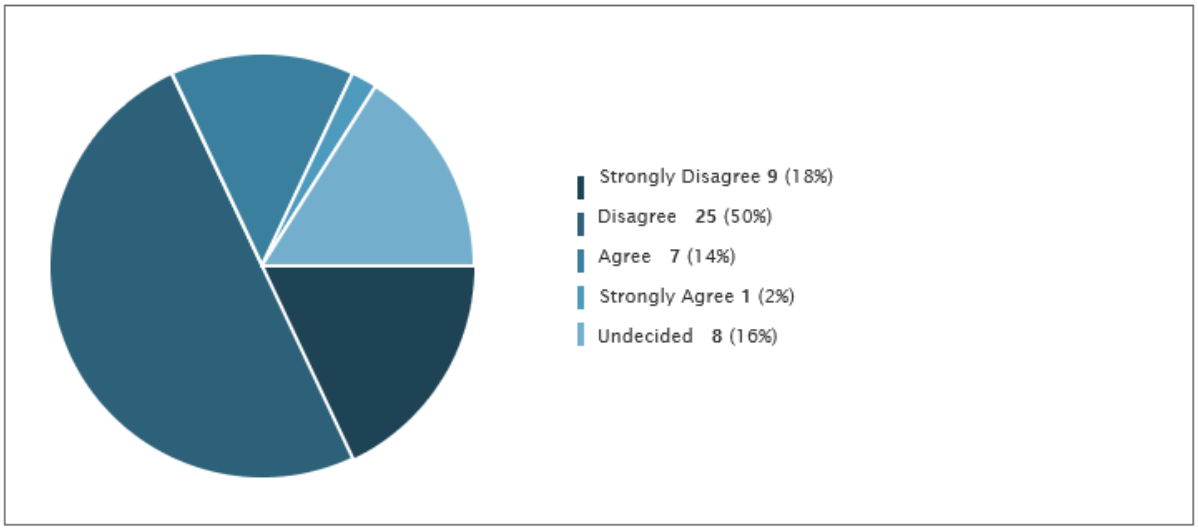
44% of respondents thought that people should receive harsher sentences than they do currently for non-violent offences. However, 56% of respondents either disagreed or were undecided, which could be indicative of an awareness among residents that more punitive responses to non-violent offences are not effective. It is understandable that respondents would be conflicted in answering this statement as they likely would still want accountability for non-violent crimes.

Question 17: People should receive harsher sentences than they do currently for violent offences



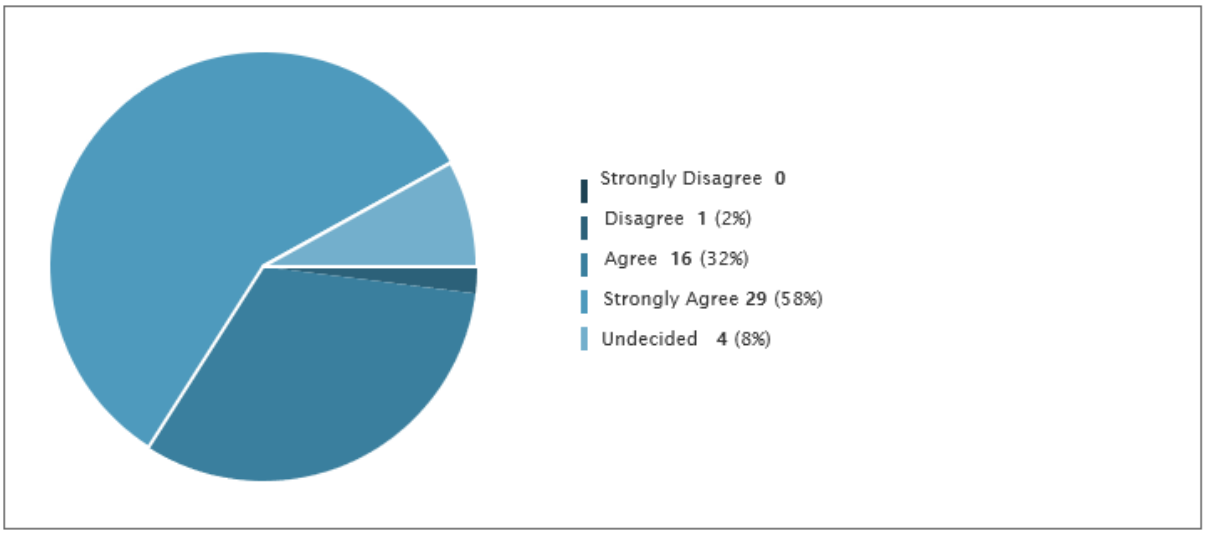
In stark contrast to Question 16, almost all respondents (96%) were in agreement that people should receive harsher sentences than they do currently for violent offences. There is a clear sense from the survey responses that participants do not perceive criminal justice responses to be just, as is evident by the answers to Question 15. The perception among participants appears to be that the justice system responses are more punitive towards low-level offenders than towards serious offenders, which creates the impression that the system is not fair.

Question 18: Prison is the most suitable response to low-level crimes



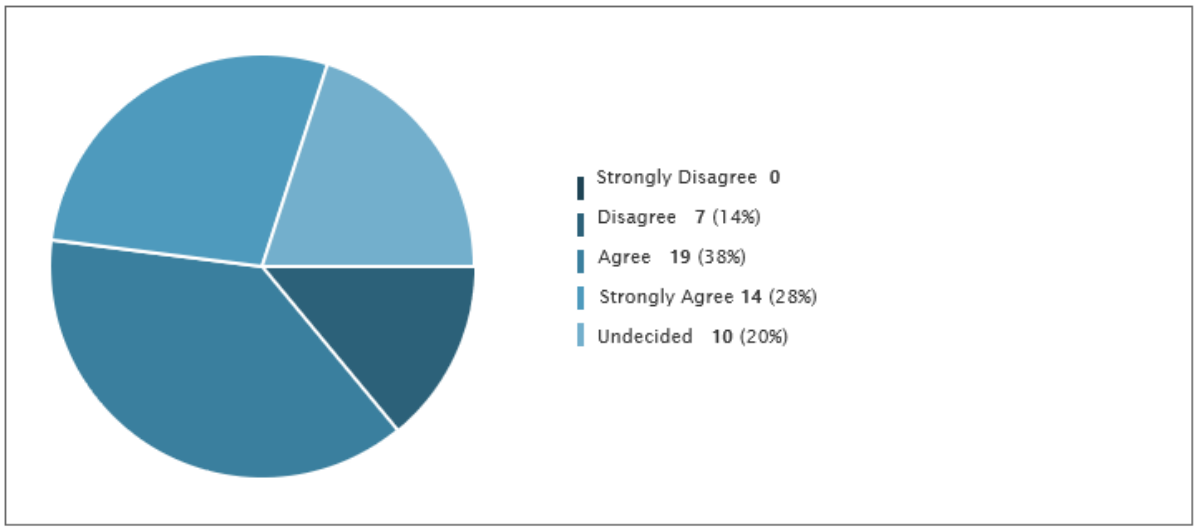
While many respondents stated that people should receive harsher sentences for non-violent crimes, the majority of respondents (68%) do not think that prison is the most suitable response to low-level crimes. This finding could indicate that accountability is valued highly among the participants, although that accountability does not necessarily have to be in the form of a custodial sentence.

Question 19: Prison is the most suitable response to serious crimes



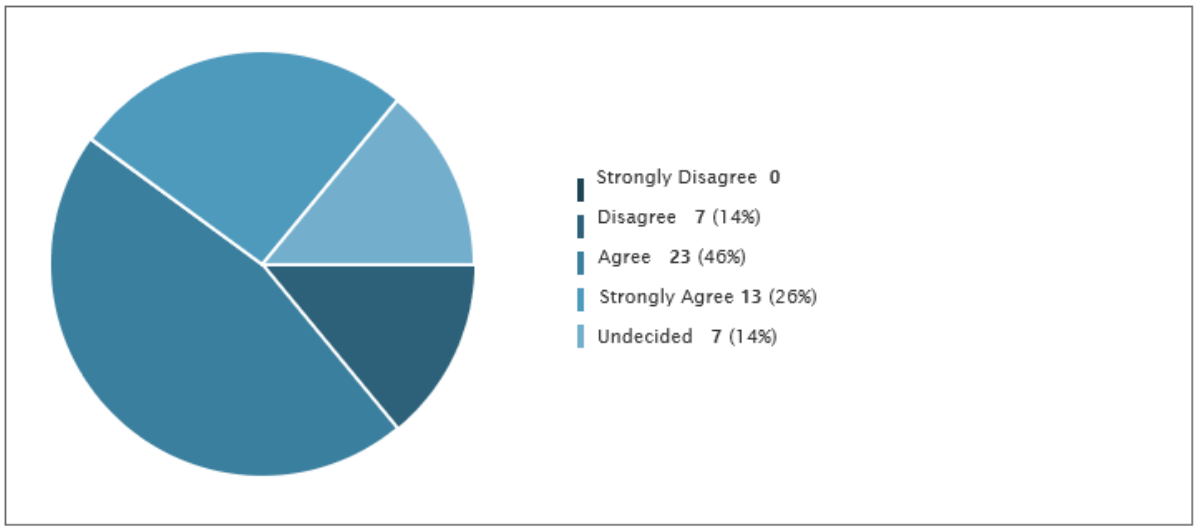
Very few respondents are not in strong agreement that prison is the most suitable response to serious crime, with only 2% disagreeing and 8% being undecided. This finding demonstrates that were the community justice approach to be considered for more serious offences, the community would be less likely to support the concept.

Question 20: The courts should hand out more community sentences (e.g. community service, referral to support services, probation orders)



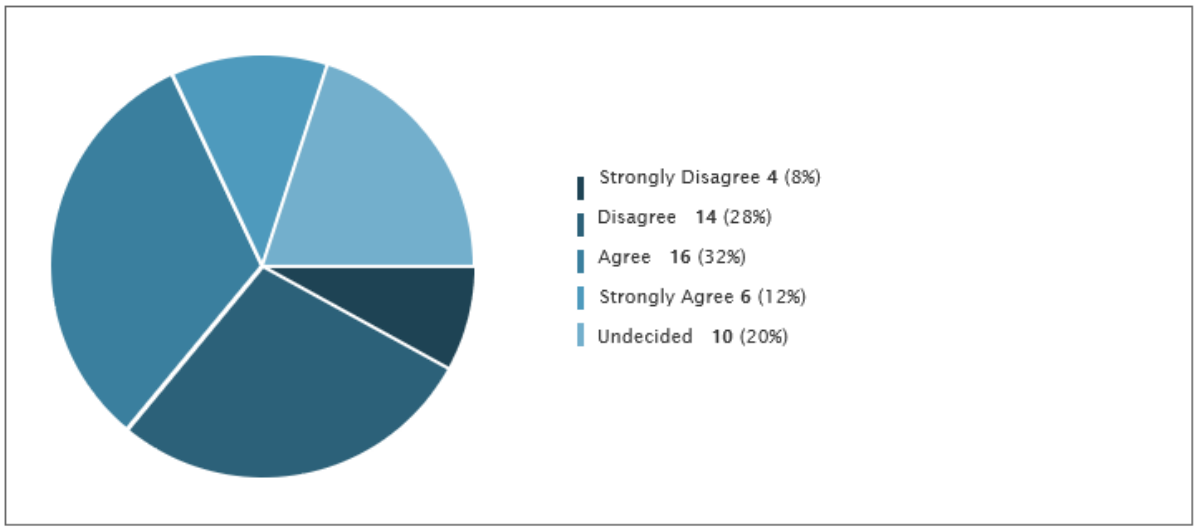
66% of respondents agreed that the courts should hand out more community sentences. This finding again demonstrates that the participants want there to be accountability for offences committed, but this does not necessarily have to be in the form of a prison sentence if the offence was not serious.

Question 21: Community service (court-ordered unpaid work for the community) should take place in the neighbourhood where the crime was committed



72% of respondents agreed that community service should take place in the neighbourhood where the crime was committed. This finding shows that reparation to the community that has been harmed is important to the majority of the participants in this survey.

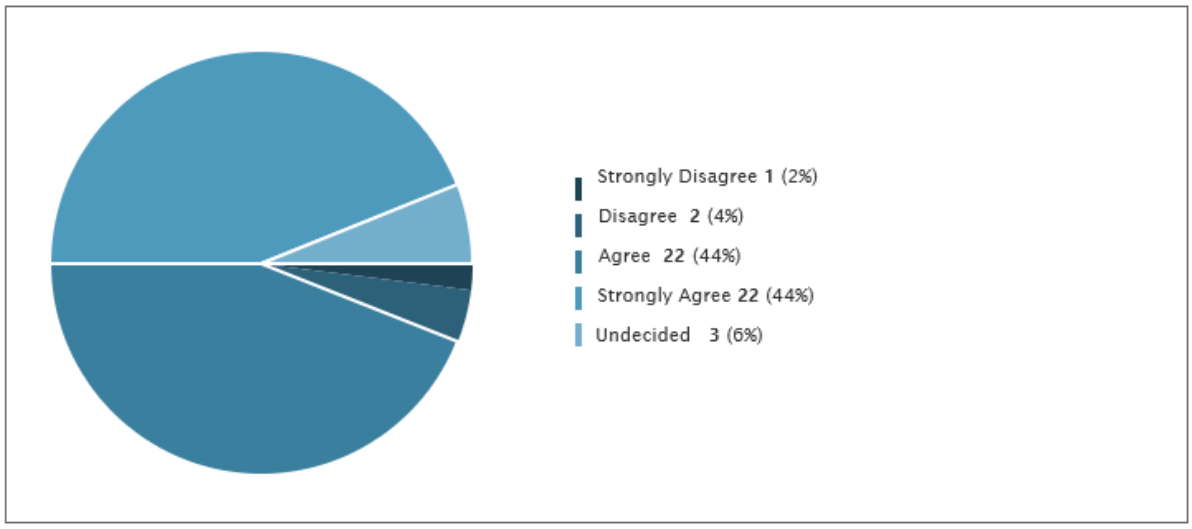
Question 22: The local community should have a say in the justice process



The question relating to whether the local community should have a say in the justice process gave rise to more conflicting responses with 44% of participants agreeing, 36%

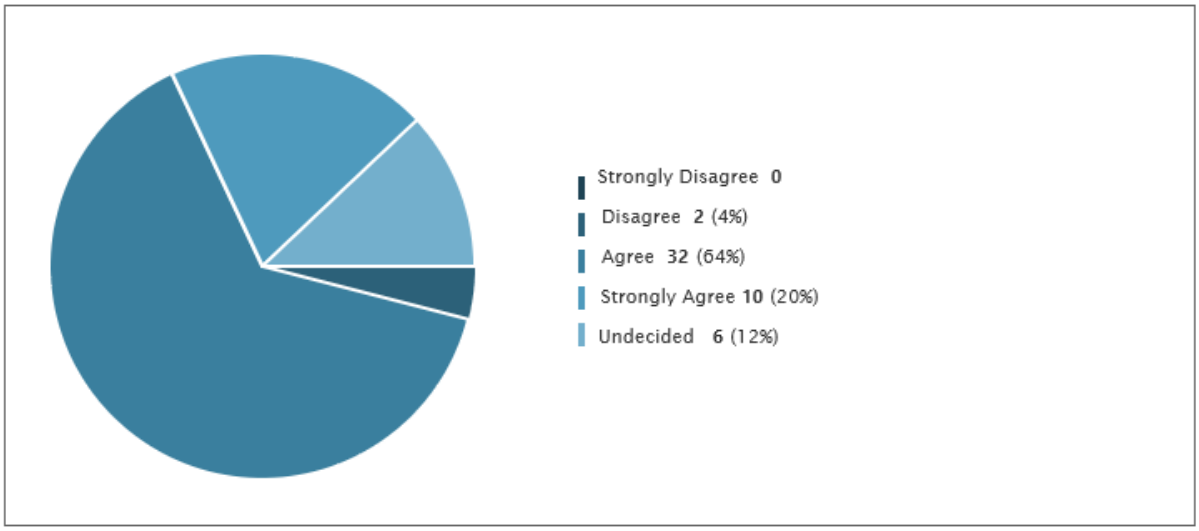
disagreeing, and 20% being undecided. Perhaps, this question should have been clearer about the local community having 'a role' in the justice process rather than specifically having 'a say' in the process.

Question 23: Offenders should receive support/treatment for any underlying (mental health/addiction or other) issues they may experience to address the causes of their offending



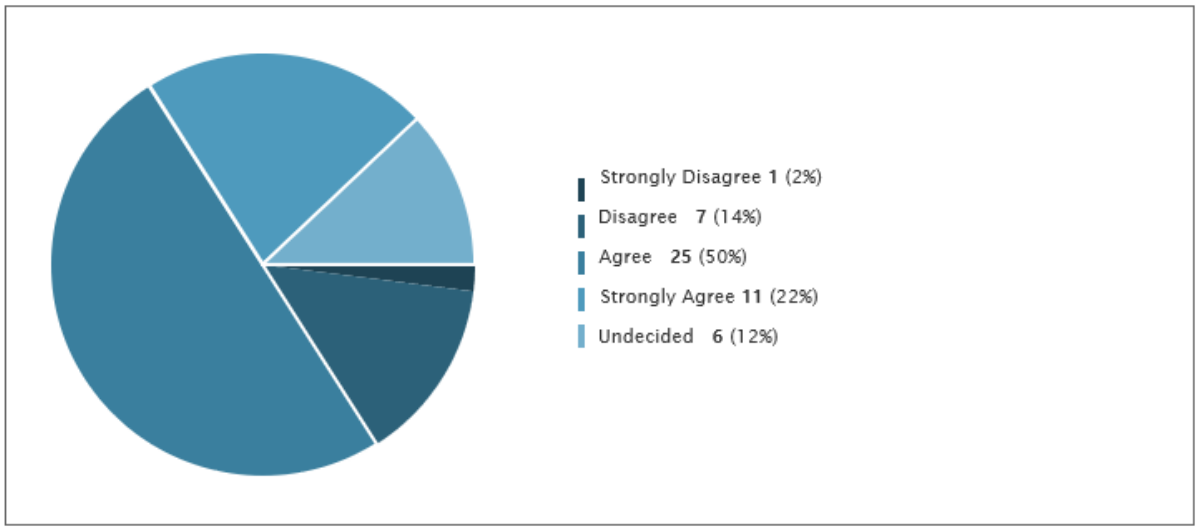
The vast majority of respondents (88%) agreed that offenders should receive support and treatment for any underlying issues that they may experience to address the causes of their offending. This finding could demonstrate that the participants would be open to supporting the community court model, as addressing the underlying causes of offending is one of the core aims of the model.

Question 24: It is important to consult the local community before introducing justice reforms (e.g. a community court) in an area



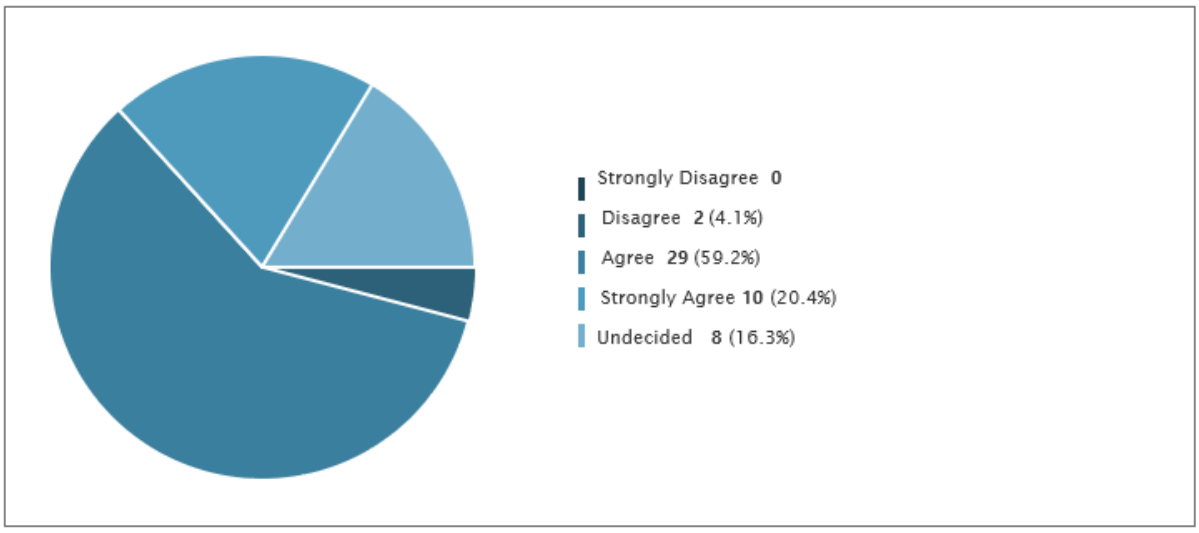
The majority of respondents (84%) agreed that it is important to consult the local community before introducing justice reforms, such as a community court, in the area. This finding is consistent with the finding in Section 4.3.1(e), that the community should be involved in community justice initiatives from the beginning in order to create a sense of ownership of the project, thereby increasing its chances of success.

Question 25: I would attend a local meeting to learn more about community courts and how they work



72% of participants responded that they would be willing to attend a local meeting to learn more about community courts and how they work. This finding indicates that the majority of the participants to this survey are open to discussing innovative court models further and learning more about them.

Question 26: I would support a community court if one was introduced in my local area



Even without further information, 69.2% of respondents agreed that they would support a community court if such a court model was introduced in their local area. This finding demonstrates a willingness among these participants from Tallaght to support new approaches to justice to help improve their community.

6.3.2 Conclusion

The purpose of this survey was to discover the opinions of Tallaght residents in relation to crime, safety, and community in their local area. A further aim was to try to determine the reaction of local residents to the concept of community courts, to ascertain whether they would be supportive of the model. The majority of the respondents to the survey feel safe in their local area, feel that neighbours help one another, that there is an existing sense of community where they live, and that it is important to get involved in their community. These particular findings indicate that Tallaght residents would be more likely to engage with an initiative that is based on members of the community assisting each other to improve the local area. The majority of participants also agreed that the collaboration of multiple-services in the one building would benefit their area, showing general support for the integrated services aspect of community courts.

A large percentage of respondents agreed that rules should be strictly obeyed which could speak to the animosity participants feel about the level of crime in their community, and the resulting harms. While respondents do acknowledge crime as a problem,

approximately half of respondents did not think that it impacts their quality of life, and the majority agreed that low-level crime is more prevalent than serious crime. The majority of respondents also feel safe to report crime to the Gardaí, indicating a level of trust between the community and the Gardaí. However, it must be acknowledged that 30% of participants did not feel safe reporting crime to the Gardaí. Most participants did not believe the community is well-resourced to respond to the crime experienced by the community.

An important finding of this survey is that only 10% of respondents think that the Irish court system delivers fair outcomes, which shows a clear lack of confidence in the court system and how it operates. The written responses highlighted that the participants to the survey value fairness and accountability. They do not think that these values are visible in the mainstream court process based on their perception that repeat offenders are not held to account, that serious crimes are treated too leniently, and low-level crimes are treated more punitively in comparison. The majority of participants did not think that harsher sentences were needed for non-violent offences, but there was a strong agreement that harsher sentences are needed for serious crimes. The majority of participants were also in favour of more community sentences, and agreed that these sentences should take place where the crime was committed, which is another element of the community court process.

The support towards offenders receiving help to address underlying causes of offending demonstrates that respondents agree with the core aim of the community court model. The majority of respondents agreed with the importance of consulting the community before implementing justice initiatives in their community, which has been emphasised previously in this project as necessary to create a sense of community ownership over initiatives such as community courts. This sense of ownership, in turn, increases the chances of the model being successful as it is more likely that there would be continued support and engagement from the local community. The majority of participants agreed that they would attend meetings to learn more about the community model, which demonstrates the willingness among this cohort to engage with projects likely to improve their local area.

The finding that 69.2% of respondents already feel that they would support a community court if it were to be introduced in their community should indicate to Irish policy-makers

that there is a good foundation of support in Tallaght for a community court. This support could be built upon further through consultation and engagement with, alongside active listening to, the community before any decisions are made. The key considerations when deciding where to place a community court are that it should be a high-crime area, well serviced by public transport, with support services already in existence that could be drawn upon. The findings of this survey provide evidence for Tallaght being a suitable and strong location for a community court, if one were to be established in Ireland.

The following chapter, Chapter Seven, includes a comparison of the findings from Chapters Four and Five, and provides recommendations based on the comparisons to Irish policymakers as to how a community court should be established in Ireland to have the best chance of success.

7. Recommendations

This chapter compares the approaches taken by the NJC and the NLCJC. Sections 4.3 and 5.3 highlighted the theoretical lessons learned from the empirical findings in relation to the NJC and the NLCJC, and these lessons will guide the framework proposed for Ireland within this chapter. The need for a commitment to the core theoretical underpinnings of the community court model was highlighted, alongside the importance of the model establishing legitimating factors. The NLCJC, in particular, demonstrated that a community court will not provide a more legitimate approach to achieve civil order than a mainstream court if the model does not become a custodian of community justice and apply therapeutic jurisprudence approaches in the courtroom, while simultaneously establishing legitimating factors within the existing criminal justice environment.

Chapter 7 also presents the findings from this research under eight headings: funding, monitoring and evaluation, location, building and design, commitment to underlying principles, community involvement, champions and political will, the judge, and collaboration and co-location of services. Following each comparison, the Irish context and findings are discussed. In addition, certain recommendations from the initial NCC (2007) proposal are discussed and developed based on the research findings. Each section will end with a series of recommendations, many of which are interconnected with each other. Therefore, these recommendations should be taken as a whole. These recommendations can be used to guide all community court planners, but due to the scope of the research, they are of particular importance in Ireland.

7.1 Funding

For a community court to have a good chance of success, significant financial investment is required from the outset. While the initial allocation of funds is crucial to ensuring a community court is implemented according to best practice, the initiative also requires a constant funding stream to enable it to operate effectively. As mentioned in Section 4.2.5, the initial allocation of funding to the NJC was approximately $9 million, and the centre had a budget of $15 million for the first four years of operation (Halsey and Vel-Palumbo, 2018). In the 2009-2010 budget, planned funding for the NJC was increased to $50 million due to an extended commitment to the centre (Victorian Auditor General's Report, 2011). Part of the initial allocation was used for dual staff members who were

funded solely by the NJC, but worked between the NJC and an external agency or service. The funding of dual staff members, which is explained in more detail in Section 4.3.1(c), was a mutually beneficial arrangement for the NJC and the external organisation. The NJC was able to benefit from the expertise of the organisation and source clients, while the external organisation gained resources, a staff member, and opportunities for collaboration. Funding dual staff members also enabled the NJC to collaborate actively with external organisations in the locality, rather than compete with them, which was a core aim of the centre (Victorian Auditor-General, 2011). This arrangement could serve to mitigate the resentment and territorialism among justice agencies that can arise when new justice initiatives receive funding.

While the initial funding allocated to the NLCLC is not known, it was found to have an operating cost of £980,000 in 2012/13 (Ministry of Justice, 2013). When the closure of the NLCJC was being proposed, the Ministry of Justice (2013) stated that the closure would result in savings of £630,000 per year. Furthermore, it was estimated that it would cost £930,000 per year to keep the centre open and it would cost over £2 million to operate for three further years. Several circumstances led to the closure of the NLCJC, such as negative evaluations, the barrage of court closures, a change in government, and the small case load. However, the main reason for the closure of the NLCJC is undoubtedly to do with the cost of the centre. The NLCJC was one of five courts closed during the 2013-2014 financial year, which followed seven court closures in 2012-2013, and over one hundred in 2011-2012 (Response to Written Question by Richard Burgon on 11th March 2019). The government was attempting to save money, and as an expensive court, the NLCJC was an obvious target. There was a misconception that the NLCJC only dealt with low-level crimes and was therefore a very costly way to approach minor offences (Mair and Millings, 2011). No data was available to demonstrate savings due to offenders serving sentences in the community rather than in prison. The governments cost-saving activities also had a negative impact on the provision of services by the NLCJC due to funding cuts to external agencies (Murray and Blagg, 2018).

Explaining to policymakers how a centre such as the NJC will save money was a prominent piece of advice provided by interviewees in Australia. They recommended focusing on the amount of money that could be saved through working with an individual in the community rather than sending them to prison. This approach, they argued, would gain support and funding for a community court. Interviewees in Ireland expressed

concern about the levels of funding required for such an initiative, particularly due to the time it takes a community court to embed and the impact that short policy and electoral cycles could have on its longevity. It was also noted that such an initiative would be heavily impacted by external factors such as HSE waiting lists and the housing crisis. It is not known how much funding the Irish government would be willing to grant a community court if this model were to be implemented in Ireland. Cost was the main reason for the closure of the NLCJC, and it will also most likely be the deciding factor in whether a community court is ever introduced in Ireland. Policymakers should consider the recommendations outlined below if they are deciding whether to financially commit to such an initiative.

7.1.1 Recommendations

The initial allocation of funding should be used to carry out extensive community consultation and to promote the community court in the first instance. It should be further utilised to ensure that an appropriate building is located and that the design of the chosen building is updated to reflect the underlying principles of community courts in the same vein, which will be discussed further in Section 7.3. Dual staff members should be funded to work in existing support services and in the community court to assist with the collaborative and relationship-building element, while limiting any competitiveness between the respective services, as explained further in Section 7.8. The funding should contribute to hiring staff with the necessary expertise and who subscribe to the underlying principles of community courts. The initial funding should also be used to put the necessary data tracking technology in place, which is detailed further in Section 7.2. Finally, this initial funding should be used to set up trial programmes that will be run by the community court, based on what the community identify as necessary through the extensive consultation process. It must be accepted that a community court is an expensive undertaking, particularly in the beginning, and cost-saving exercises at this stage could have negative knock-on effects and limit the effectiveness of the model.

7.2 Monitoring and Evaluation

As has been explained in Section 7.1 above, substantial investment is required to implement and operate a community court. For this reason, it is necessary to demonstrate that a community court is having the desired impact to justify the level of cost involved.

However, demonstrating the success of community courts can be challenging. Several large evaluations were carried out on the NJC and yet, there were still difficulties in proving the centre's effectiveness through non-traditional indicators of success (Morgan and Brown, 2015). However, the evaluations conducted on the NJC did show signs of success in certain traditional measures. For example, a cost-benefit analysis demonstrated that there was a saving of between $1.09 and $2.23 return for every $1 invested in the centre. The analysis also found a positive net benefit of $201,002 over five years due to changes in re-offending rates (Victorian Department of Justice, 2010). An evaluation of the NJC conducted by Ross (2015), which outlined the problems of attribution associated with such initiatives in detail, found that NJC clients reoffend at a rate 25% lower than those who attend other magistrates' courts in the area. Ross (2015) also found that there was a higher completion rate of community-based orders at the NJC when compared with mainstream magistrates' courts. However, interviewees did note that it was difficult to create wellbeing measures to show the extent of the NJC's success, particularly for clients who have a number of problems which may impact their ability to desist from crime within a short period. The NJC did not have client databases from the beginning, but they introduced them once the importance of monitoring data to secure funding became apparent. The NJC hired an internal Manager of Impact and Evidence who is responsible for monitoring and evaluation in 2020.

The NLCJC found it very difficult to demonstrate the impact it was having. The absence of data tracking, minimal evaluation, and lack of staff training in this regard was an enormous problem. Mair and Millings (2011) and Murray and Blagg (2018) are particularly critical of the lack of planning around data collection at the NLCJC, and of the evaluations that did take place while the centre was operational. These evaluations showed that the NLCJC was failing to address re-offending or to reduce non-compliance with court orders. It is possible that the NLCJC was showing negative results because of the higher level of supervision at the centre, meaning that breaches were discovered more often than in mainstream courts. There is no evidence of an attempt to manage policymakers' expectations as to what such initiatives can achieve in short periods of time, particularly given the small sample sizes. Evaluating such an innovative model is clearly much more nuanced than the evaluators were able to account for with traditional criminal justice measures, and the NLCJC was not evaluated based on its strengths, or even based on its core goals. There is no indication as to whether the NLCJC was making

a difference to the community in North Liverpool, to the lives of the people who came before the court, or whether it improved the residents' confidence in the criminal justice system. Community courts need to adapt to a particular locality in order to truly fulfil their purpose so it makes sense that evaluation tactics would have to adjust to consider the individual operation of the community court in question. As Murray and Blagg (2018: 260) note "cookie-cutter evaluation tools are, however, bound to fail and different mechanisms will no doubt be required for different CJCs".

Interviewees in Ireland were strong in their opinion that if a community court is to be introduced in Ireland, it should be with a view to replicate the model in numerous locations. The ability to replicate the court would demonstrate the success of the initiative. It was also stated by an Irish participant that it would be necessary to manage the expectations of policymakers and to set out achievable goals, particularly in the short-term. Neither the NJC or the NLCJC were adequately prepared for monitoring and evaluation when they opened but, significantly, the NJC rectified this oversight over time. Rather than try to retroactively implement data tracking procedures, it would be wise to input methods to monitor the community court from the outset.

7.2.1 Recommendations

Tracking data should be built-in from the commencement of a community court project in order to ensure that a community court can demonstrate the impact it is having, both through traditional and non-traditional indicators of success. Appointing appropriate experts in the area to oversee the process of monitoring and evaluation is recommended. Relationships could be formed with local universities for this purpose also. The indicators of success should be relevant to the stated aims of the community court. The outcomes of the court should be monitored and evaluated, but it should not be the only focus for evaluation. Measures such as recidivism and rates of compliance are still important, but factors such as community satisfaction and wellbeing should take priority. The level of community involvement with the centre should be monitored and so too should their engagement with the on-site services. The exclusionary power of community has been noted in Section 2.2.3, and this should be considered when measuring community involvement and community satisfaction also. Data should be collected on the background of the community members who are involved and/or were satisfied with the community court, to ensure that the model is not disproportionately benefitting certain

community members to the detriment of others. The power dynamics that exist within the community must be examined to ensure that no individual is excluded or disadvantaged for the communal good.

The expectations of policymakers should be managed by informing them of what they can realistically expect the model to achieve in short periods of time. It must be made clear to policymakers what the community court model is trying to achieve (Murray and Blagg, 2018). If policymakers turn to innovative approaches such as community courts when the consequences of punitive policies are felt in communities, and have invested resources in the model, they will often expect to see results quickly. However, the impact of small sample sizes due to individualised treatment should be explained, and policymakers should be made aware that recidivism rates could rise initially in comparison with mainstream courts due to the more intensive supervision approach. Also, to accurately measure re-offending rates, an extended follow-up period is required (Alper, Durose and Markman, 2018).

Community courts should be given the space and time to embed in the community and adjust to any initial issues before large-scale evaluations are conducted. McKenna's (2007) evaluation was carried out eighteen months after the NLCJC opened, which was too early, especially considering the lack of data collection processes in place. A community court should have a long pilot period and should not be evaluated on a large-scale until the end of this pilot period. Initial evaluations should be reflective in nature and serve as a guide to highlight what aspects should be adapted going forward to provide a better service to the community and to clients. The NCC (2007) recommended that an independent evaluation take place after three years of operation of the proposed Dublin Community Court, and this is an appropriate time frame, but only if measured against the stated aims of the model.

While Irish interviewees emphasised the importance of replicating a successful community court model, replication should be treated as a possibility rather than a necessity, especially in the beginning. An Irish community court could operate as an innovation hub to trial initiatives that could improve the operation and therapeutic nature of mainstream courts, without ever needing to be replicated as a standalone model. As noted by Kaiser and Holtfreter (2016), the rehabilitative potential of problem-solving court models could be explained by combining theories of therapeutic jurisprudence and

procedural justice. Processes such as problem-solving meetings and judicial monitoring may not work well in a mainstream court without the access to on-site services like in a community court, but this approach should still be considered. It is important to monitor the impact of innovative processes in both the community court setting and in mainstream courts, if they are rolled out. The results of all evaluations should serve as a roadmap to improvement, rather than as a reason to cease operation.

7.3 Location, Building, and Design

Where a community court is situated, the type of building used, and the design of the building are all important considerations when planning a community court. These factors will impact the environment that is created within the community court and the level of community engagement with it. Both the NJC and the NLCJC were based on the Red Hook Community Justice Centre, which is why existing education buildings were chosen in these locations, meaning that the buildings would already be recognisable to and associated with the community. Collingwood was chosen as the location for the NJC as it was an area with disproportionately high crime rates and levels of social disadvantage (Richardson, 2013). The NJC planners chose an old technical education centre building that had existed in the area since the 1940s so that it would be familiar to the community. The chosen building was very accessible by public transport and the local community were involved in the design process. Although the building was in existence for decades, planners worked on the interior design to strengthen principles of therapeutic jurisprudence and community justice, and to promote a sense of transparency as explained in Section 4.2.3. Planners purposefully designed the building so that the court was not the main focus and there is no 'airport-style' security on the front door so that community members can comfortably come and go. The courtroom itself was designed to be more informal than mainstream courts with no raised bench for the magistrate.

In England, cities vied to become the location of the community court and North Liverpool was chosen as an area with high crime rates and high levels of social disadvantage (Mair and Millings, 2011). A former school building was chosen to house the community court, but it was designed more as a courthouse and contained a courtroom, holding cells, interview rooms, a waiting area, offices, and a resource room. While the courtroom was designed to be more informal than a mainstream courtroom, it maintained elements of formality like a raised bench for the judge. A main criticism of

the NLCJC is that it was located on the outskirts of the area that it intended to serve (Mair and Millings, 2011; Murray and Blagg, 2018), which made it difficult for the target community to access. There was 'airport-style' security on the front door which dissuaded non-court users from entering the building and prevented the community from feeling a sense of ownership over it. These factors likely prevented the NLCJC from becoming embedded within the community and gaining the support of residents.

In their report, the NCC (2007) recommended that an Irish community court be placed in high population areas as a standalone court, but that they should form part of existing District Courts in more rural areas. The NCC (2007: 38) stated that community courts should be located in areas where there is "a considerable residential population, a concentration of business outlets, a significant transient/tourist population and a high footfall". For these reasons, it was suggested that the first community court ought to be established in Dublin City Centre and cover offences in the catchment areas of Store Street and Pearse Street Garda stations. The report also recommended that the community court in Dublin should have a case load that justifies its resources, but that this case load should be increased over time as the court refines its processes (NCC, 2007).

7.3.1 Recommendations

Areas with high crime rates are more likely to benefit from intensive supervision and intervention (Weisburd, 2015; Braga et al., 2019). It became apparent throughout this research that placing a community court in an area with existing support services is beneficial, especially if taking the dual staff approach. The community court should also be placed in an area that is central to the community that it is seeking to serve; somewhere where community members conduct their business and spend time. A community court should be a place where the community can gather and connect (Murray and May, 2018). It should be easily accessible to the community and well served by public transport (Murray and May, 2018; Smith, 2018). In addition, the catchment area should be carefully considered to ensure that the community court will oversee a high enough number of cases to justify the allocation of funding.

A community court should be set up as a standalone, purposefully designed building. As a standalone building, the community court can operate under community justice principles without being influenced by the hierarchical and rigid nature of traditional courts. In addition, the building should be designed so that the court is not the central

focus; the court should only be visible to those who are using the centre for court matters. This approach will make those who attend the centre for reasons unrelated to the court much more comfortable, and it is also respectful to those attending the court as they are not on display. Not having the court as the central focus of the building is imperative to foster community ownership of the centre. The courtroom itself should have a more informal design than a mainstream courtroom with no raised bench for the judge. If possible, the building should be recognisable to the community but having the right building and design is more important than using one that is recognisable. The building should not have strict security at the front door as this could discourage residents from entering it. A separate entrance should be made available to victims and safe family rooms should be provided.

The original NCC proposal recommended that a community court be set up in Dublin's inner city to address anti-social behaviour that was impacting tourists and businesses. While a community court may be beneficial in the city centre, it is recommended that a pilot community court first be set up in a city suburb such as Tallaght. Tallaght is an area with a large population, high crime rates (Jordan, 2020), rising drug use (Fitzpatrick, 2021) that also has existing support services, and a sense of community (Tallaght Community Council, 2022). In January 2023, Dublin Bus suspended services to west Tallaght from 6pm onwards following reports of 35 violent incidents. One such incident involved a female bus driver being intimated by a large group of young people who forcefully boarded the bus, which resulted in the bus driver being assaulted (Feehan, 2023). Tallaght is an area that would benefit from more intensive interventions, a one-stop-shop for services, and a strengths-based approach to bolster the community. Following the survey, it does appear that Tallaght residents are open to the community court initiative, and this could be strengthened further by extensive community consultation.

7.4 Commitment to Underlying Principles

As noted in Chapter Two, community courts have a range of underlying principles, but the main principle applicable to the model is community justice. As an International Mentor Community Court, the NJC has made a commitment to "strengthen the community justice model and facilitate the transfer of its practices to other courts and communities" (NJC, 2019: 7). The commitment of the NJC to the principle of community

justice was a main finding of this research, and is explained in more detail in Section 4.3.1. The findings show that the NJC is a custodian of criminal justice. Interviewees emphasised the need to be faithful to the principle, above everything, including criminal justice, to ensure that the community court maintains its community focus. The NJC was found to meet a number of policy commitments in *Growing Victoria Together* (2001), the Attorney-General's Justice Statement (2004), and *A Fairer Victoria* (2005), which emphasised working towards cohesive, safe and caring communities and equality. The NJC had a clear therapeutic approach which took precedence over the more retributive approach of mainstream courts. An important quote from the interviews is that the NJC aimed to be "a centre with a court within it, not a court with a centre around it". As mentioned above, the location of the NJC, the building and the design were chosen with the community in mind. The courtroom was designed in a more informal manner than mainstream courtrooms and was out of sight of those who attended the centre for non-court related reasons.

In contrast, the NLCJC was very much designed as a courthouse, although there were some deviations from traditional courts. It also became apparent throughout this project that the NLCJC placed the operation of the court and criminal justice outcomes ahead of a community justice ethos from the outset. This approach is visible through the framing of the NLCJC as a model that will aggressively target anti-social behaviour. The proposal for a pilot community court was introduced in England in the 2003 Home Office White Paper, *Respect and Responsibility – Taking A Stand Against Anti-Social Behaviour*. In 2004, Lord Falconer stated that the core aim of the NLCJC was to address anti-social behaviour. In 2004, the *Liverpool Echo* announced that a US-style court was to be established in Liverpool within 12 months and that "it will target prostitutes, drug users and gangs of yobs who make the lives of decent and honest people a misery" and that "the punishment will be decided by victims and other members of the community". The article put out a call for readers to contact them with the problems that they want addressed by the court. As an aside, the article notes that the building will also be a community centre. In 2006, an article in *The Times* reported that "American-style community justice centres in which the public has a say in penalties imposed for crime and anti-social behaviour are to be set up in England and Wales" (Gibb, 2006).

In both the media and in government reports about the NLCJC, the focus on punishing anti-social behaviour is notable. The media reports also likely gave the community the

wrong impression – while the community members should be involved in highlighting the issues that exist in the community, it is still the role of the judge to use the information at their disposal to determine the sentence. Framing a community court in this more punitive manner might garner support from community members who want tough responses to anti-social behaviour, but the way the centre goes about achieving their aims should not deviate from the basic underlying principles of community justice. Without the underlying principles, the model lacks purpose and risks becoming more like a mainstream court. The original proposal for a community court in Dublin did not mention the importance of committing to the underlying principles of the model and focused more on the model's ability to tackle quality of life crimes. Framing a community court in this way is more likely to gain political and public support. However, it is crucial that the model is designed and operated in accordance with the underlying principles of community justice, therapeutic jurisprudence, and restorative justice.

7.4.1 Recommendations

A community court should strive to be a custodian of community justice and this principle should be at the centre of all aims and processes. Community justice in practice involves the establishment of innovative partnerships and working collaboratively with community residents, local support services, businesses and organisations. Again, care must be taken to ensure that all community voices are heard, and that the processes in the community court are not utilised to exclude certain members. The focus of the model should always be to reduce social exclusion and marginalisation of individuals caught in a cycle of reoffending, and allowing those who come before the court to have their voices heard (Donoghue, 2014).

Commitment to community justice should be considered when hiring staff members as they should also commit to the underlying principles of the model. While it is necessary to recognise and support the authority of the court and the criminal justice system, consideration should always be given as to the best outcome for the community and the individual client. Community courts can be defined as an innovative model that target quality-of-life crimes in an area. A core element of the model is constructive and meaningful accountability for harm done to the community. However, the model should be framed in such a way where 'community' is placed ahead of 'justice'. Placing this commitment to the underlying principles on a legislative footing could give the approach

more legitimacy and provide direction to staff. It is through the commitment to the underlying principles that a community court can achieve the overarching aims of targeting the root causes of offending, maintaining civil order in a more legitimate way than mainstream courts, and also empowering marginalised communities. If a model is created that does not adhere to these underlying principles, such as the NLCJC, the holistic support of those who offend will not become standard and the paradigm shift necessary for transformative desistance to occur will not be achieved.

7.5 Community Involvement

The community court model gains legitimacy through the community it serves, and it relies on the community for its sense of purpose (Berman and Fox, 2005; Murray, 2009). Planners of the NJC carried out extensive consultation with the local community and the support services located there. The community were consulted on the development of the NJC, were involved in choosing the judge, and continue to be involved in the innovations that are being trialled there. The NJC has given consideration to providing culturally appropriate justice and services to local Aboriginal and Torres Strait Islander community members. The NJC staff's commitment to their local community was evident throughout the interviews and their dedication to creating a sense of community ownership over the centre was pronounced. The focus on collaboration and relationship-building, explained in Sections 4.3.1(c) and 4.3.1(d), shows that the NJC are serious about fostering and maintaining links with community residents, court clients, and agencies in the locality. Interviewees were clear that respect must be shown to the community by creating a space tailored to their needs, and by keeping it well-maintained. The use of windows, light, open spaces, and general emphasis on transparency at the NJC are used to show the community that the centre is theirs, as noted in Section 4.2.3. The findings of this research show that the community remains at the forefront of the work of the NJC, although it was noted that over time, the judge became less involved with the community.

One reason provided for the closure of the NLCJC was "the fact that the centre had moved away from its original community-focused role" (Vara, 2013). Mair and Millings (2011) found that the community had not been sufficiently consulted prior to the opening of the NLCJC, and the community lacked awareness of the centre once it was open. Mair and Millings (2011) recommended that a separate entrance be added to the NLCJC for community members who were not attending court. A separate entrance would help

create community ownership of the centre as community members would be more likely to use the centre for groups and meetings, and would not be ashamed to be seen entering a court building. The participation of the community was mostly court-focused also, as community members were involved in selecting the judge and outreach activities centred around education on court processes. Community engagement at the NLCJC was mainly facilitated through community reference panels, which were then disbanded due to low attendance. The dissolution of the community reference panels signalled the removal of the community entirely from the NLCJC, solidifying it as a courthouse. Mair and Millings (2011: 93) note "the first principle of community justice is to connect the court to the community, and when there is a lack of significant liaison between court and community the model begins to falter". That the NLCJC had more international recognition than local recognition should have been a sign that more work had to be done to include the community in its processes. Community engagement was always going to be difficult considering the NLCJC was designed more as a courthouse and non-court users did not feel comfortable entering the building.

There needed to be more work done to retain community interest and engagement in the NLCJC (Mair and Millings, 2011). The court was the main focus of local media prior to the opening of the NLCJC, rather than the community aspect. There is only one mention of the NLCJC building also being a community centre in local media (Liverpool Echo, 2004). All other articles only mention community involvement in the context of the court. The court was the most prominent aspect of the NLCJC, and therefore the purpose of it was called into question when the case load was not high enough. The NLCJC was initially met with trepidation by the community, who lamented the loss of the school building and swimming pool, and expressed concern about the staff not having knowledge of the community (Mair and Millings, 2011). Interviewees made it clear that the NLCJC was a central government initiative, as noted in Section 5.3.1(a), and the level of community engagement was lacking from the outset, as was explained in Section 5.3.4.

The NCC (2007: 43) recommended that "all avenues to formalise the involvement of the local community should be explored". Formal mechanisms of community involvement would be helpful in the beginning, but if community justice is placed at the core of all operations and ahead of the court, they may become unnecessary over time. Participants in Ireland suggested that a community court could be "co-created" with those who have lived experience of the criminal justice system, and acknowledged the need for

community buy-in. In the survey of Tallaght residents, the question was asked: it is important to consult the local community before introducing justice reforms (e.g. a community court) in an area. In response to this, respondents overwhelmingly agreed (84%). This finding suggests that the Tallaght community would not want to feel like a community court has been forced upon them without consultation.

7.5.1 Recommendations

Intensive community consultation must be carried out prior to the planning of a community court and the community's concerns should be given paramount consideration. The community should be consulted about the problems that impact their quality of life in the area, and this information should be used to determine which support services to include in the community court building, and to decide which crime prevention programmes to focus on. However, the community does not have the power to decide how the court function of the model operates or how the individuals who come before the court are treated. As Crawford and Evans (2012) note, while there is a belief that all community members share a common understanding of what constitutes social order, in reality, each person within a community will have different lifestyles and priorities. Therefore, it is necessary to protect a community court from becoming a tool of exclusion, and for this reason, the expectations of community members must be managed. By comprehensively explaining the purpose of the community court to the community, the potential for certain members of the community being excluded is limited. The community court model gains legitimacy from the community, and residents must identify the issues that they experience in such a way that does not disadvantage anyone. The model should follow Karp and Clear's (2000: 339) approach which emphasises community restoration and the social integration of those marginalised from the community. In this way, social bonds can be strengthened within the community to increase civil order.

Community involvement must be continuous and community voices should be included at all stages of the planning and design process to create a sense of community ownership of the centre. It is important for community court planners to be inclusive of all voices in the locality, not just those of the business community. If a community court does not begin as a grassroots movement, which would be difficult due to the level of funding required, it should aim to eventually become community-led. There should be a

community engagement team and officer hired from the outset, and it should be made clear to any judicial candidates that attending community meetings and becoming involved in the community is part of their role. Formal processes should be considered in the beginning to facilitate community involvement and to ensure that the judge cannot isolate themselves from the community. The most important recommendation is that, from the outset and throughout, a community court must be more community-focused than court-focused. It should be clear that the services available through the community court are available to all residents within the catchment area. It is imperative that a community court does not become just another courthouse in the eyes of local residents.

7.6 Champions and Political Will

Rob Hulls, Attorney General in Victoria 1999 to 2010, was a prominent advocate for problem-solving courts and oversaw the implementation of drug courts and Koori courts in Victoria. Hulls introduced the idea of a community court to Victoria following a visit to Red Hook (Murray, 2009). The initiative was very much led by Hulls and he remained a political champion of the NJC throughout his time in office. Interviewees were clear that having support at such a high level politically was crucial to ensure that the NJC could operate innovatively without bureaucratic barriers. Interviewees also stated that champions of the community court were required at every level of the justice system and in the community. They stressed the need to have supporters within the police, corrections, social services, and among court actors. Moreover, they acknowledged that by creating a sense of community ownership over the centre, the community itself becomes an advocate and protector of the community court, which is explained further in Section 4.3.1(e). Although the NJC was clearly a government-led initiative, spearheaded by Rob Hulls, there were enough champions of the centre among other levels of the system to ensure that it survived once Hulls left office. This is a testament to the relationship-building that took place and how embedded the NJC became in the local community.

In England in 2003, then Lord Chief Justice Harry Woolf and then British Home Secretary David Blunkett became advocates of the community court model following a trip to Red Hook (McKenna, 2007; Nolan, 2009). In the same year, Lord Falconer visited the Midtown Community Court and announced that a community court would be set up in Liverpool the next year (Nolan, 2009). Beyond this initial support, there is no

indication in the literature that the NLCJC had a political champion. Throughout the interviews, it became clear that the NLCJC did not have consistent support at a government level. The lack of political champions impacted the work of the NLCJC as the centre came up against a large number of bureaucratic barriers that prevented innovative responses to local problems, as explained in Section 5.3.1. Participants in Mair and Millings' (2011) study highlighted that there were too many barriers to meaningful change in the processes of the NLCJC. In order for a community court to be truly innovative, these barriers need to be removed so that programmes can be trialled effectively. It was not possible for the NLCJC magistrate to mandate residential drug treatment or apply more meaningful interventions than were already available to the court. Politicians may have been reluctant to champion the NLCJC due to the need to appear 'tough on crime' to secure votes. This research also found that court actors were particularly reluctant to accept the NLCJC, as seen in Sections 5.3.1(b) and 5.3.1(c). These issues, coupled with the lack of community engagement and ownership explained above, meant that the NLCJC did not have the level of support required to survive, especially due to the level of court closures occurring at the time. This is not to say that the NLCJC had no supporters, as people such as the then Mayor of Liverpool, Merseyside's Police and Crime Commissioner, and local MPs did oppose the closure of the centre.

In Ireland, the community court proposal was spearheaded initially by the DCBA. The business community as a driving factor of community courts has been heavily criticised by Amman (2000) as this group may not act in the best interests of individuals. It became clear following interviews with two key DCBA members that while a community court initiative could have helped their businesses by increasing footfall in the city centre, they did seem to want individuals to receive the supports that they needed to desist and lead a more fulfilling life. There can be downfalls to having businesses as the main motivation to introduce a community court but having the support of the business community would be beneficial. According to interviewees, Alan Shatter was the main political supporter of the NCC's community court proposal, but political support for the initiative dwindled once he was no longer in government.

7.6.1 Recommendations

As mentioned in Section 2.2, the idea of 'community' can be utilised by politicians to transfer the responsibility for crime problems to the public (Lacey and Zedner, 1995) and to gain approval through invoking feelings of nostalgia for a 'community' that likely never existed (Duff, 2001). Community court planners should ensure that politicians do not use the community court to place the responsibility for crime in the area on the residents, or to create unrealistic expectations among community members. However, for a community court to be truly innovative in its response to crime, there must be enough political support to allow for bureaucratic barriers to be removed. If a community court becomes too associated with a particular politician or political party, it could be at risk when that party is not in government. To minimise this risk, it is necessary to build relationships and to create champions at every stage of the justice system, within third-sector organisations, and in the community. To create strong champions of a community court, people at each of these levels must feel included in the centre and its processes. The community court staff should be people with good interpersonal skills who are willing to form relationships and collaborate with people from different backgrounds.

7.7 The Judge

A key aspect of community courts, and problem-solving courts in general, is the single, dedicated judge and "enhanced judicial oversight" (Butts, 2001: 121). The NJC Act, under Section 16E(3) stated that any magistrate assigned to the NJC must have knowledge of, or experience in, applying therapeutic jurisprudence and restorative justice. Fanning, with his background as a lawyer and social worker, was a keen advocate of both principles. It is the practice at the NJC to defer sentencing to allow clients to access pre-sentencing support, therefore increasing the client's chance of successfully completing a court order. After sentencing, the practice at the NJC is to hold Judicial Monitoring Hearings with clients if they require it, to monitor their progress more closely and to provide additional support when needed. Magistrate Fanning was the NJC's dedicated judge from its inception until he announced his retirement in 2021 and Magistrate Noreen Toohey took up his role. The interviews took place before Magistrate Fanning's retirement and therefore it is not known at this time what impact the new judge has had on the NJC. Interviewees did express concern about Magistrate Fanning's retirement due to how closely associated the judge is with the centre and how much he

contributed to the atmosphere and ethos of the NJC. It is interesting that interviewees describe Fanning as someone who is reserved and rigid in some respects, but also as someone who has the necessary 'soft skills' to interact with clients. This could suggest that if the centre is more community-focused than court-focused, there is less of a need to have a judge with a strong personality, especially if they are committed to the underlying principles and have the requisite people skills.

Judge David Fletcher was the dedicated judge to the NLCJC from when it opened until 2012. Judge Fletcher was extremely well-liked by community members, and court clients viewed him as fair (Mair and Millings, 2011). According to interviewees, Judge Fletcher was seen as the figure head of the NLCJC and was its main advocate, getting involved in community meetings and activities. He was credited with shaping the centre and upholding its ethos. Interviewees were particularly complimentary of his people skills and interactions with clients. There were many innovative aspects to the role of the judge at the NLCJC, such as his ability to sit as a Magistrates' Court and Crown Court Judge, and to hear youth and civil cases. Judge Fletcher did not wear robes and spoke directly to clients. Community service clients could be returned to court by the judge every six to eight weeks to review their progress under Section 178 of the Criminal Justice Act 2003. However, Judge Fletcher still had to operate within the confines of sentencing guidelines and lamented his inability to mandate residential drug treatment through the NLCJC (Centre for Social Justice, 2009). As the court was the main focus of the NLCJC, Judge Fletcher was the most important actor within the centre, and by all accounts, he did an excellent job within the confines of wider bureaucratic and legislative barriers.

Interview participants in Ireland suggested that judges may be opposed to the idea of a community court as a judge with a certain temperament would be required and it is difficult to get judges to change how they think and operate in a court setting. It would be necessary to find a judge with the requisite skills who is confident and willing to try a new approach to justice. This is not an impossible task as judges have been involved in, and supportive of, the rise in restorative justice initiatives in Ireland in recent years.

7.7.1 Recommendations

It has been recommended already that the community court ought to be more community-focused than court-focused. This is an important recommendation for the reasons outlined above, but also to limit the danger of a community court becoming so closely associated

with a judge that it fundamentally changes if that judge steps down. The dedicated judge remains one of the most integral elements of a community court and should continue to be. The community should be involved in selecting a judge for the centre, as was the case for both the NJC and the NLCJC. The chosen judge should be committed to the underlying principles of community courts, especially therapeutic jurisprudence and restorative justice, and should be willing to work collaboratively and innovatively. A community court is more likely to be successful if there is judicial buy-in. Therefore, a community court judge has the additional role of trying to legitimise the model among his or her colleagues. Allowing a community court judge to sit as both a District Court and Circuit Court judge, in line with the procedure of the NLCJC, is an operational issue that would have to be given further consideration if a community court is introduced in Ireland.

The judge should have the necessary interpersonal skills or 'soft skills' and be willing to interact with clients directly. The judge should attend community meetings and interact with the community outside of the courtroom as part of their role. Sentencing should be deferred for supports to be put in place, judicial monitoring hearings should take place with clients who would benefit from them, and post-sentencing supports should be provided to all clients. Most importantly, any judge hired to work at a community court should acknowledge that although the court is a very important aspect of the model, it cannot be the main focus of it.

7.8 Collaboration and Co-Location of Services

The NJC has nineteen agencies and organisations co-located on-site that work collaboratively with each other to provide support to clients through their Embedded Specialist Services Model. The services provided by the NJC are laid out in Section 4.2.2(a). The NJC also has a Leadership Team consisting of the head of each team at the NJC who work together to ensure that staff at the centre are working in cohesion and to address any arising issues. A strong emphasis was placed on collaborating with local service providers, rather than competing with them (Victorian Auditor-General, 2011). This initial collaborative effort was facilitated through the funding of dual staff members, as was discussed earlier in this chapter. Interview findings show that in order for multiple agencies, including traditional justice agencies such as police and community services, to collaborate effectively, they must be transparent with each other. It also became

apparent that everyone must be confident enough in their own role and have respect for those in their own specific roles. Interviewees acknowledged that the level of collaborative working and the transparency involved is uncomfortable at times, as every action can be openly scrutinised. Interviewees mentioned the need to hire staff who have good inter-personal skills, and who are willing to form relationships and collaborate to best serve the client and community. The culture of collaboration is something that needs to be reinforced often as people can withdraw back into their silos. Almost all interviewees acknowledged that having the agencies and organisations located on-site facilitated collaboration and information-sharing.

Staff at the NLCJC found that the most beneficial element of the centre was the co-location of relevant criminal justice agencies (Mair and Millings, 2011). Key criminal justice agencies such as police, prosecution, probation, and the Youth Offending Team, were based on-site at the NLCJC and facilitated a multi-agency approach (Mair and Millings, 2011). However, staff were not given guidance on how to work collaboratively at the NLCJC and were left to figure this aspect out for themselves (Mair and Millings, 2011). The NLCJC did not operate the 'dual staff' approach and did experience resentment from local agencies (Mair and Millings, 2011). Collaboration at the NLCJC mainly occurred between the centre and justice agencies which underscores that the NLCJC was a court-focused initiative. However, this on-site collaboration of justice agencies created feelings of mutual respect between the different teams, and this was important to ensure adequate information-sharing. Courts were being closed across England and Wales to save money, and therefore an environment was created where different organisations within the justice sphere had to fight for survival. This situation was worsened by precarious funding streams to all justice agencies, which created a very hostile environment for the NLCJC to operate in, and external factors such as these were bound to have an impact on the operations of the centre.

The NCC (2007: 33) state that "co-location of services may not be economically viable in Ireland", but that those support services should be available to the court as priority based on the agreements made with the relevant services. However, without the co-located services available on-site, a community court has an even higher risk of being seen as a regular courthouse. Interviewees were widely in favour of the co-location of justice agencies and support services in one building, and this is an element of community courts that resonated with Tallaght residents, with 72% agreeing that their locality would

benefit from it. The importance of inter-agency approaches in criminal justice is well-recognised (Bourke, 2021). Ireland is already demonstrating its commitment to such approaches through programmes such as JARC, which creates a partnership between An Garda Síochána, the Probation Service, the Irish Prison Service and the Department of Justice to target prolific offenders in certain areas. Bourke (2021) contends that the core strength of the programme is the formal system of information-sharing and open communication. The addition of support services to this collaborative effort, all in one location, would be of benefit to clients and the community.

7.8.1 Recommendations

In a community court, the main justice agencies and support-services (tailored to the needs of the community) should be co-located on site to facilitate active collaboration, information-sharing, and to form mutual respect among all staff. It is strongly recommended that as many of the chosen support services as possible have a dual staff member located between the centre and the external organisation. Having the majority of the necessary justice agencies and services available on-site will facilitate the speedy delivery of pre-court assessments to the court. It would allow for the services to wrap around clients who may live chaotic lifestyles and struggle to access services themselves or show up to external appointments. The co-location of agencies also ensures that a more holistic, problem-solving approach is taken for the benefit of the client and the community as a whole. The on-site collaboration of justice agencies and support services is a vital element of successfully-functioning community courts. While recognising that there are arguments against models that could reinforce the idea that social issues should be dealt with by the criminal justice system, rather than by the public health system (Collins, 2021), the evidence from this research shows that a well-considered community court does not contribute to this issue. Instead, this model can work to address the underlying causes of offending and maintain social order in a way that empowers stigmatised and marginalised members of the community. It achieves these aims not by bringing social issues into the criminal justice sphere, but rather by making the holistic support of those who offend the norm and creating a community-orientated understanding of justice. This approach is feasible in an Irish context, and will work, if a community court model is designed and operates in line with the underlying principles of the model, like the NJC.

Court clients within the catchment area should have access to the support services located at the centre without any barriers or criteria, and a support plan should be put in place before the beginning of any community sentence. These services should also be available to those who reside within the catchment area, whether they are involved with the court or not. A leadership team should be set up with representatives from each on-site team at the centre. The leadership team should meet weekly to address problems arising and to ensure collaboration at a management level within the centre. Frequent training should take place to promote collaborative working and information-sharing among the agencies and services located within the community court. Furthermore, the culture of collaboration should not be allowed to dissipate.

7.9 Conclusion

The recommendations laid out above are intended to inform Irish policy-makers of the factors that must be considered if they are to return to the idea of community courts in Ireland. The study of a successful community court such as the NJC, and one that was closed like the NLCJC, has resulted in a series of important lessons that can assist any future community court planner. The core areas for consideration begin with the provision of adequate levels of funding, both initially and over time. Strong consideration should be given to the funding of dual staff members. Community courts should be set up with data tracking processes in place to ensure ease of evaluation and the expectations of policymakers should be managed from the outset. Where to place a community court should be of initial concern, along with the type of building, and design choices. A strong commitment to the underlying principles is of utmost importance to ensure that the model does not become court centric. While political support may be required initially, staff should utilise their interpersonal skills to build relationships with justice agencies, court actors, third sector organisations, and with residents, thereby creating advocates of the centre at every level. The single dedicated judge remains a crucial element of a community court and it is necessary that said judge has ‘soft skills’ and speaks directly to court clients in accordance with principles of therapeutic jurisprudence. The main justice agencies and support services should be located on-site to facilitate collaboration and provide a holistic service to all those who reside within the catchment area.

If these recommendations are taken collectively then a community court could have a positive and transformative impact on a high crime area in Ireland. However, if a

community court is to be established in Ireland without regard to the recommendations outlined above, it would risk becoming an inefficient waste of substantial resources. As mentioned in Section, 1.3.1, community court models have three overarching aims: to address the underlying causes of offending, maintain civil order in a more legitimate way than mainstream courts and, in doing so, to empower marginalised communities. The evidence from this research demonstrates that it is possible for the model to meet these three aims and, as a result, can create a paradigm shift towards a community-oriented understanding of justice where the holistic support of those who offend becomes the norm. To achieve these aims, careful consideration should be given to enabling those with limited power within neighbourhoods to be key stakeholders in the survival of the criminal justice system. However, a community court cannot become a mechanism through which individuals are excluded from the community. Care must also be taken to ensure that politicians do not use the model to place the responsibility for crime on the public or to utilise nostalgia to fracture community relationships. The model's potential to reduce marginalisation and stigmatisation of those who offend within the community, and to increase opportunities for social integration, should be emphasised.

The final chapter, Chapter Eight, will present the concluding arguments stemming from this thesis.

8. Conclusion

This chapter brings the thesis to a conclusion and considers whether the community court model is feasible in an Irish context. Consideration is given to the next steps to be taken in terms of the community court model in Ireland. Community court models aim to utilise innovative partnerships between criminal justice and non-criminal justice organisations, and local residents to respond to crime in such a way that addresses the underlying causes of offending and improves community-level outcomes (Wolf, 2007). To meet this ambitious aim, the model requires significant resourcing and therefore careful consideration is needed on how best to implement it. This thesis addressed the dearth of research on the community court model in an Irish context by examining a successful community court and one that was closed to make evidence-based recommendations. These recommendations form a framework for how to successfully implement a community court. This final chapter answers the remaining research question by presenting a summary of key findings of the research and concluding as to whether a community court is feasible in Ireland.

8.1 Research Aims

The primary aim of this study was to explore whether it would be feasible to introduce a community court in Ireland, based on a comparative analysis of the NJC in Australia and the NLCJC in England. To achieve this aim, a comparative case study research design was adopted to compare a community court that is operating successfully and one that was closed down after eight years of operation. This approach facilitated an understanding as to whether a community court should be introduced in Ireland, and determined the circumstances under which the model should be established. Further, a mixed methods approach utilising both qualitative and quantitative methods was considered the most appropriate to address the research questions. As community courts must be specifically tailored to the community that they are located in, a mixed methods approach was considered necessary due to the difficulty involved in comparing two models that cannot operate in the same way.

8.2 Research Questions

The first research question addressed through this study involved the definition of community courts. This question was answered in Chapter One and an overarching definition of a community court was established. This definition states that a community court is a form of problem-solving court that operates as a community hub in a high-crime area, and works in collaboration with local agencies and community members to provide a range of services to residents based on the issues that they identify as important. The important aspect of this definition is that the community court should operate as a community hub, rather than placing the court at the centre of the initiative. The core aims of the community court model are to address the underlying problems that offenders deal with, reduce re-offending and crime, to address the needs of the community, to improve perceptions and trust in the court and justice system, and to emphasise accountability for crime that is impacting the quality of life of the community (Karafin, 2008). Throughout the course of this research, it became clear that the core elements of community courts, which set them apart from mainstream courts are: a single judge, immediacy and meaningful accountability, monitoring and evaluation, location and design, collaboration and co-location of justice agencies and support services, client-focused approach, commitment to underlying principles, community engagement, and innovation.

The understanding of community courts was advanced in Chapter Two through a discussion of the core underlying principles of the model, which are community justice, therapeutic jurisprudence, and restorative justice. Community justice is both a principle and a movement (Clear, Hamilton and Cadora, 2011). The two ideas that are fundamental to community justice are that responses to crime and strategies to prevent crime should be tailored to fit the community, and that the criminal justice system is not the only mechanism to improve public safety. Community justice emphasises collaboration, partnerships, and relationships between justice agencies, but also non-justice agencies within the communities (Feinblatt and Berman, 1997). Therapeutic jurisprudence is the acknowledgement that the legal process and those who operate within it can contribute to therapeutic or anti-therapeutic consequences (Wexler and Winick, 1996). Therapeutic jurisprudence involves being conscious of the impact that the justice process can have on the emotional and physical wellbeing of defendants, their loved ones, and the communities they live in (Donoghue, 2014). Therapeutic jurisprudence may already be

occurring in Ireland informally through the work of the DDTC (Loughran et al., 2015; Gavin and Kawalek, 2020). Restorative justice is a process that aims "to repair the harm caused by criminal behaviour" (Young and Hole, 2003: 200). Restorative justice has steadily progressed in Ireland and it can now be said that restorative justice approaches have been embraced in Ireland, at least within policy. Gavin and Sabbagh (2019) argue that restorative justice should be developed, promoted, and effectively practiced in Ireland through a problem-solving court, particularly a community court and Marder (2019) notes that restorative justice approaches work well in Irish courts due to the discretionary power of judges. Through a community court, sentences could be adjourned to allow for supports to be put in place and for restorative justice processes to occur.

The second research question this study sought to answer was why community justice and problem-solving paradigms developed in Victoria and in England and Wales despite the development of more punitive responses to crime in these jurisdictions. The overviews of the penal landscape provided in Chapters Four and Five assisted in addressing this question. The roots of punitive responses to crime in Victoria and in England are visible within their colonial history (Martin, 2018). In Victoria, there is the added dimension of punitive responses competing with more innovative responses to crime throughout history, and this tension is still visible today. More recent punitive changes to penal policy in Victoria have been largely the result of political commitments to be 'tough on crime' in response to public and media anger following high-profile crimes. Neo-liberalism and the politicisation of crime is prominent in England and the criminal justice system has experienced many reforms in recent years due to the introduction of punitive penal policies and attempts to save money. Problem-solving courts were initially created due to the frustration of court staff who did not have the tools to provide the necessary support (Castellano, 2011) and because traditional sentencing options do not solve the underlying problems of those who offend (Berman and Feinblatt, 2005). It is suggested that problem-solving paradigms become politically popular when the social consequences of more punitive penal policies are felt in communities, and that this approach explains the emergence of problem-solving paradigms in Victoria and in England when more punitive responses to crime were popular in these jurisdictions.

The third research question asked what insight can be garnered from relevant practitioners about the implementation and operation of community courts, and the associated challenges. The results of the semi-structured interviews conducted with key

stakeholders in Australia, England, and in Ireland, the findings of which are detailed in Chapters Four, Five, and Six, addressed this question. The core themes that emerged from the Australian interviews were community justice, accountability, innovation, location and design, client-focused, evaluation and monitoring, and the judge. For the interviews conducted with key stakeholders in England, the following themes were identified: systemic barriers, court closure, re-establishment, community acceptance, collaboration, evaluation and monitoring, and the judge. Finally, the interviews conducted with relevant stakeholders in Ireland led to the following core themes: supporters, challenges, location, the Irish context, and advice. The insight provided by interviewees, and the challenges that they highlighted pertaining to the operation of community courts facilitated the development of best-practice recommendations for the implementation of a community court.

The fourth research question sought to determine how an Irish community would react to the concept of a community court. This question was addressed by the survey of Tallaght residents, and the findings of the survey are provided in Chapter Six. The findings emphasised the importance of consulting with a community before implementing justice initiatives in their area, so that they do not feel that innovations are being forced on them. The vast majority of respondents were supportive of the core aim of community courts, and were willing to attend meetings to learn more about the model. A high percentage of participants indicated that they would support the community court model if it were to be introduced in their community, which demonstrates the openness of Tallaght residents to trial innovative approaches to improve community safety. However, if the model were to be progressed in Tallaght, how the community is engaged with the process, and how they view the purpose of the model, is pivotal. These factors would be largely driven by the individuals who advocate for the model, and who are involved in its operation, according to the qualitative findings of this research. The acceptance of a community court in Tallaght would also be dependent on the role of the local or national government, the resources allocated to the initiative, and how the community court is positioned bureaucratically within the wider criminal justice system. In addition, while community buy-in is crucial to the success of the model, the importance of judicial and practitioner buy-in cannot be understated.

The fifth research question that this study addressed involved the best practice guidelines to introduce a community court based on the experience of previous models. This

research question was dealt with in detail in Chapter Seven. Recommendations were made under the headings of funding, monitoring and evaluation, location, building and design, commitment to underlying principles, community involvement, champions and political will, the judge, and collaboration and co-location of services. These recommendations were developed based on the findings of this study to inform policy-makers of the approach that should be taken if a community court is to be established in Ireland to give the model the best chance of success. Community courts require a large amount of resources, initially and continuously, and the benefit of funding 'dual staff' members was emphasised. Establishing mechanisms for monitoring traditional and non-traditional indicators of success from the beginning will assist with evaluating the model and ensuring continued funding. To prevent a community court from becoming like another mainstream courthouse, it is necessary to commit to the underlying principles of the model. It is important to hire staff who are willing to operate in accordance with the underlying principles also, and who have the interpersonal skills to form relationships with all relevant stakeholders. These traits should also be applicable to the dedicated judge, who should be particularly committed to the principle of therapeutic jurisprudence. Finally, it is considered necessary to have the main justice agencies and support services co-located on-site in the community court to ensure ease of collaboration, and to facilitate the provision of a holistic service to those who reside within the catchment area of the model. It is intended that the recommendations in Chapter Seven are considered in their entirety in order for a community court model to reach its potential, and to make the best use of the substantial resources that are required.

Finally, the sixth research question asked to what extent a community court is feasible in an Irish context. It is argued that, based on the findings of this study, it is feasible to introduce a community court in Ireland, but that the model should only be established if the recommendations provided in Chapter Seven are fully adhered to. If the government is unwilling to commit to the recommendations laid out in this thesis, it is advised that a community court should not be advanced in Ireland. To do so would be a waste of resources and could result in the chosen community losing confidence in the initiative, and in the ability of the government and criminal justice system to address the concerns of their community. The community court model does have the power to positively transform a high-crime community, but only under a specific set of circumstances. If an Irish community court is to be progressed then it should be developed in line with

community justice, therapeutic jurisprudence, and restorative justice. The core aims of the model should be to address the root causes of offending, maintain civil order in a more legitimate way than mainstream courts, and to empower marginalised and stigmatised communities. The model must work to create a community-orientated understanding of justice where the holistic support of those who offend is the norm.

The existing foundation of restorative justice in Ireland could be utilised as per Gavin and Sabbagh's (2019) recommendations. The need for inter-agency cooperation in criminal justice has been recognised (Bourke, 2021) and this led to the development of JARC, which is showing positive results (Department of Justice, 2018). The collaboration of justice and non-justice agencies to improve community safety outcomes has been promoted through the *Community Safety Policy Paper* 2022, and the establishment of a community court would help meet the commitments made within this paper. If a community court is to be established in Ireland, it would be imperative to collaborate closely with the Probation Service due to their role in community service provision, and also to gain access to their funded programmes and services. The aim of community court planners should be to collaborate with the Probation Service in a mutually beneficial arrangement, not to compete with them. Political will would also be necessary in Ireland in terms of the allocation of resources, and to remove the systemic barriers that the model would encounter. However, the success of a community court is largely reliant on individuals at every stage of the process. Therefore, creating advocates of the model in Ireland, especially in the chosen community, would be the required next step.

8.3 Concluding Remarks

There are several criticisms of the community court model, as detailed in Section 1.4. Many of these criticisms can be sufficiently addressed through careful consideration and planning (Berman and Feinblatt, 2001). To address the criticisms around due process and coercion, consideration should be given to providing the adequate level of legal advice and gaining informed consent. The current procedure employed at the DDTC should be studied to discover if a similar procedure would work well for a community court. The criticism of the community court model possibly contributing to net-widening could be addressed by establishing a mediation service to deal with issues outside of the courtroom. The court in a community court model should only hear cases that would have alternatively fallen within the remit of a mainstream court and an individual should only

appear before a community court judge if they were otherwise going to appear before a mainstream judge. Individuals should never be disadvantaged by choosing to appear before the community court.

A further criticism of community courts identified in this study is that they place too much responsibility for crime on the community itself. Undue responsibility for responding to crime should not be placed on community members or on victims of crime in the community. Crime should be dealt with by criminal justice agencies, support services, and the court. However, the community can assist in identifying the main issues that impact the quality of life in their locality, can partake in crime prevention activities, and can make use of the community court for its support services and communal areas. A particularly relevant criticism is to do with the business community being the driving force behind the establishment of a community court, as the business community initiated the initial proposal in Ireland. The business community should not be given a higher status than other community members when it comes to consultation in relation to a community court, and no community voices should be excluded. However, having the support of the business community in the chosen area would be beneficial to the model. The final criticism is the potential for this model to result in vigilantism and discrimination. This issue can be avoided by adhering to Karp and Clear's (2000: 339) approach whereby the "*restoration* of the community in response to the damaging consequences of crime and *social integration* of marginalized individuals, particularly offenders and victims" is emphasised.

As noted in Section 1.1, Berman and Feinblatt (2001: 135) argue that when assessing reforms, it is important to ask the question "compared to what?". There are arguments put forward that social issues should not be dealt with by a court (McCoy et al., 2015). However, these social issues are contributing to criminal behaviour and are therefore already being dealt with in a court context. It has been acknowledged that traditional court responses to crime are not efficient at preventing re-offending as they do not have the tools to address the individual's personal issues that lead to repeat offending (Berman and Feinblatt, 2005). By trying to address these issues and provide individuals with the support that they need to desist, problem-solving courts are already having a positive impact when compared to traditional court systems. Of course, how these problem-solving courts operate and the resources allocated to them, will determine just how positive that impact is. If traditional responses to crime through the mainstream court

system are not reducing re-offending, it is necessary to trial more innovative approaches to find a system that will. If a community court is well-considered, such as the NJC, the model will not contribute to the further criminalisation of marginalised justice-involved persons. Instead, the model will work to address the underlying causes of offending and maintain social order in a way that empowers stigmatised and marginalised members of the community. The NJC achieves this by creating the shift in perspective that academics, such as McNeill (2017) and Kiely and Swirak (2021), argue is necessary for true transformative desistance to occur. This paradigm shift does not involve bringing social issues into the criminal justice sphere, but rather makes the holistic support of those who offend the norm. This shift places criminal justice under the social justice umbrella and reduces the division between the person who has offended and the community, in line with what Maruna (2017) argued is the necessary next step for approaches that aim to support desistance.

Kaiser and Holtfreter (2016) argue that problem-solving courts have rehabilitative potential because they apply therapeutic jurisprudence and procedural justice. By treating those who interact with the criminal justice system with respect and limiting any harm to their well-being, while simultaneously adhering strictly to due process rights, problem-solving courts can apply the best elements of both therapeutic jurisprudence and procedural justice. The difference between community courts and other problem-solving courts is that community courts take a holistic approach to address the underlying problems that an individual is dealing with, and creates innovative programmes based on what the community itself identifies as a problem in their area (Gal and Dancig-Rosenburg, 2017). Also, the services available within community courts should not be limited to those charged with an offence, they should be made available to all residents within the catchment area. Community courts work well in areas that experience high crime rates, located near existing support services, and when they are accessible to the target community by public transport (Murray and May, 2018). Like the term ‘community’ itself, community courts can be framed in different ways in policy to suit different political ideologies, and can be framed as either ‘therapeutic’ or ‘punitive’ depending on the interests of those promoting the model (Zozula, 2018). However, the findings from this research have shown that placing punitive aims above therapeutic aims compromises the community court model and distances the model from its underlying principles, which then hinders its chance of success. The focus of the community court

model should always be to reduce social exclusion and marginalisation in the community, while allowing those who come before the court to have a voice in the process. By emphasising community restoration and the social integration of marginalised people in the community, particularly victims and those who offend (Karp and Clear, 2000), social bonds can be strengthened to increase civil order overall. Community courts achieve this in a more legitimate way than mainstream courts because they are not directed towards punitive outcomes, and they enable those with limited power to become key agents in the justice process, which maintains the legitimacy of the justice system overall.

This study concludes that a community court is feasible in an Irish context. Support services should be available to all within the community without the need for residents to be involved in the criminal justice system, and the existence of a community court should not be used to reinforce the idea that social issues should be dealt with by the criminal justice system, rather than the public health system. However, the community court model can apply both a public health approach for those who are not involved with the court and a therapeutic criminal justice approach for those who are. All community members can benefit from complete access to support services that collaborate to meet their needs within a community court. The court aspect of the model exists only for those who would have alternatively appeared before a mainstream court, but with the community court, they have immediate access to the relevant support required to address the underlying causes of their offending.

While a community court model is feasible in an Irish context, it will only work if the Irish government commit to an approach that aims to address the underlying causes of offending, maintain social order in a more legitimate way than mainstream courts, and empower marginalised communities. They must be willing to foster an approach that places criminal justice within the social justice realm and makes the holistic support of those who offend standard practice within a community. Whether a community court is successful in Ireland depends on the adherence of community court planners to the recommendations made within this thesis. If the concept of 'community' is to be utilised as a tool to reduce crime, then proper dedication is required to strengthen the communities that exist, in a way that is fully inclusionary of all voices within that community. A community court is an entirely new way of dispensing justice and therefore faces an uphill battle in a well-embedded justice system. That said, the current penal climate in Ireland – with community safety at the forefront of criminal justice policy – lends itself to the

introduction of a community court model, and implementation of the recommendations made within this thesis would serve as a safeguard against the community court simply becoming little more than an expensive and ineffective courtroom. This thesis has shown that by championing the needs of the community through a community court model, criminal justice responses have the potential not only to engender positive outcomes for the individual, but simultaneously to transform high-crime areas into safer communities.

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Appendices

Appendix 1: Interview Information Sheet

Project Title: A feasibility study on the introduction of a community court in Ireland

As part of the requirements for a doctoral degree, I am undertaking a research study under the supervision of Dr Louise Kennefick. I am inviting you to take part in *A feasibility study on the introduction of a community court in Ireland* research project.

1. What is this research about?

The purpose of the research is to examine whether it is feasible to introduce a community court in Ireland based on how community courts were implemented and how they are operating in other jurisdictions. I am particularly interested in speaking to participants who have direct experience with a functioning or previously functioning community court model. In total, I plan to interview around 20-30 people. You have been approached to participate in this study because you either are currently or have previously been involved with a functioning community court, or because you are a relevant stakeholder in Ireland.

2. What will happen if I decide to take part in this study?

If you agree to participate in the study, you will be asked a series of questions about your career, your experiences in relation to the community court, as well as your personal opinions of what works/does not work in community justice settings. The entire session will last around 60 minutes.

With your permission, the interview will be recorded. In order to allow you to be as honest as possible, everything you tell me will remain confidential. The only exceptions would be if you were to tell me that your welfare or the welfare of another person is at risk; if you tell us about a serious crime that you intend to commit or have committed; or if we are legally obliged to disclose the information (e.g. by courts in the event of litigation or in the course of investigation by lawful authority). None of the questions we ask are likely to raise any of these issues. Just keep them in mind when answering. Please note that if such circumstances arise the university will take all reasonable steps within law to ensure that confidentiality is maintained to the greatest possible extent.

3. What are the benefits of taking part in this study?

There will be no direct benefit to you in participating in the research. However, I hope that the findings from the study will help Irish policy makers to better understand whether or not a community court would be feasible and beneficial in an Irish setting and if so, how best to establish a community court. Very little research like this has been done in Ireland so your assistance with this project is particularly important – the more people who participate in the study, the more useful the findings will be.

4. What are the risks of taking part in this study?

There are no direct risks associated with participating in this study. However, if you feel upset afterwards, please contact one of the following organisations for support:

- **Samaritans (Ireland and UK)**: Freecall 116123 [open 24 hours a day, 365 days a year]
- **Samaritans (Australia):** Freecall 135247 [open 24 hours a day, 365 days a year]

6. How will the data be used?

I plan to use the findings in my PhD dissertation, as well as to publish them in academic journals. I also intend to give presentations at academic conferences. This will make sure that people hear about the results.

7. How will my privacy be protected?

All information, including audio recordings, will be stored on a password protected and encrypted computer and any physical documents will be locked within the office of the primary researcher in a secure cabinet. Aside from the identification of your profession or specific governmental departments or agencies or group of stakeholders to which you belong, no identifying information will be provided in the thesis or any publications arising. Any extracts quoted from the interview will also be anonymised. Any audio recordings made during the interview will be overwritten immediately after the data has been transcribed. Paper data will be immediately and securely destroyed once it has been analysed. All other data will be overwritten ten years after the date of publication in line with Maynooth University policy. If you are nominated by your employer to participate

in this interview, please note that all information including audio recordings will be strictly confidential and not shared with your employer.

8. Can I change my mind and withdraw from the study?

Your participation in this study is completely voluntary and there will be no penalty if you decide not to participate. You can also change your mind and withdraw from the study at any point up to publication of the thesis in September 2022. Again, there will be no penalty if you change your mind and you do not have to give any reason for your decision. You also have the right to refuse to answer any question.

10. Who can I contact for further information?

If you have any questions or concerns about this study, please contact the lead researcher:

Niamh Wade, Department of Law, Maynooth University, Maynooth, Co. Kildare.
Email: niamh.wade@mu.ie

Or my supervisor:

Dr Louise Kennefick, Department of Law, Maynooth University, Maynooth, Co. Kildare.
Email: louise.kennefick@mu.ie

If you agree to take part in the study, please complete and sign the consent form overleaf.

Thank you for taking the time to read this

Appendix 2: Interview Consent Form

This consent form is to check that you are happy with the information that you have received about the study, that you are aware of your rights as a participant and to confirm that you wish to take part in the study.

		Please tick as appropriate YES	NO
1.	Have you read the information sheet and had enough time to consider whether to take part in the study?	❑	❑
2.	Have you had the opportunity to discuss questions with the researcher?	❑	❑
3.	Do you understand that you may withdraw from the study at any time without disadvantage?	❑	❑
4.	Do you understand that your participation is voluntary (your choice)?	❑	❑
5.	Do you understand that all data will be treated as confidential within the limits outlined in the information sheet?	❑	❑
6.	Do you give your permission for the interview to be recorded?	❑	❑
7.	Do you agree that the data can be used in publications, conference presentations, etc?	❑	❑
8.	Do you agree to take part in the study?	❑	❑

If you agree to take part in this research, please sign the form below and keep one copy of this agreement for future reference.

Signature_____ Date_____

Name in block letters, please _____

Appendix 3: Interview Schedules

Interview Schedule for Australia

This is an interview with X on date. A consent form has been completed in advance of the interview.

Thank you for agreeing to participate in this project. The interviews will be anonymised.

I have some questions to give the interview some structure, but please speak freely if you feel something is particularly relevant.

Personal

First, I am going to ask some questions about your personal role and work with the NJC.

1. What is your current role? What does it entail – can you give a brief explanation of your working day?

2. Could you give an overview of your career to date? Have you any previous experience with community justice initiatives?

3. How long have you worked with the NJC? How did you first get involved with the justice centre? How much input did you have in the setting up of the justice centre?

4. What challenges do you face in your role?

5. How did you first hear about community courts?
   How did you first hear about the NJC?
   What was your first reaction when you heard that the Neighbourhood Justice Centre was being set up in Collingwood?

6. What is your day-to-day involvement with the justice centre?

Policy

I'm now going to ask about the establishment of the NJC and any challenges faced.

7. Do you know about the decision to implement the NJC – who was behind it?
   Do you know how and why the decision was made to establish the Neighbourhood Justice Centre?
   Were the any particular characters or organisations that were particular drivers?

8. Were you aware of any research or preparation about how best to implement the centre prior to it being established?

9. Would you recommend enacting specific legislation for a community justice centre?

10. Why was Collingwood chosen as the location? Catchment area – is it limiting? How important is finding the right location?

11. A lot of thought appears to have been put into the architectural design of the NJC – can you tell me about this? (Courtroom not the sole focus etc.)

12. What challenges had to be overcome to establish the NJC?

13. Are you aware of any objections to the justice centre?

14. What kind of values do you think underpin the justice centre? What are the guiding principles of the court?

15. What is the plan for evaluating the NJC? How often are the evaluations carried out? What challenges were there?

16. What kind of resources are allocated to the NJC? Do you think it would be able to operate with less or is this a necessary amount? Do you think the outcomes of the NJC are worth the resources put into it?

17. What challenges does the NJC face from your perspective? Do you see any future challenges?

The Court

Now I will ask some questions about the court itself.

18. What kind of building is the centre located in? How was it decided to use this building?

19. How is the court structured? (How does it relate to a traditional court, pre-sentence, post-sentence etc.) How does the NJC court differ from a traditional court?

20. What kind of crimes does the court deal with and how was this decided?
    Did the NJC tailor itself to specific problems in the community?
    Do the crimes covered reflect the quality-of-life crimes in the area?
    How does the court deal with more serious/less serious crimes?
    Does the NJC worry about net-widening or blurring the line between criminal and non-criminal behaviour?

21. What services are available on site? Which of the on-site/partnered services do you think is the most important/necessary for court clients?

22. How do all the various services/people work together? Who (if anyone) is the decision-maker in the case of a conflict? ('Thick' network response more likely to promote desistance).

23. Planners of the NJC wanted to 'collaborate not compete with local service providers' – how was this achieved?

24. Are the services available for the community to use even if they are not involved with the court? (e.g. childcare facilities, NGO offices, general community space etc.)

25. Could you describe a 'typical client' of the court? Do you see a disproportionate amount of Aboriginal and Torres Strait Islander clients?

26. What sanctions are most common? Is the sanction ever linked to the area where the offence occurred?

27. What happens if a client is found not suitable for a CCO? If not suitable for PSP or does not complete? Is this common?

28. The role of the judge was laid out in the legislation – how difficult was it to find the right judge for the role? Can you tell me a bit about solution focused judging and judicial monitoring?

29. You can tour the court before a hearing to make you more comfortable, what other measures are put in place to make people comfortable?

30. There is an innovation team, community correction officers, neighbourhood justice officer (problem-solving meetings), crime prevention and community justice team, along with the many services – how is open communication ensured?

Local Community

In this section I'm going to ask a bit about the involvement of the local community in the NJC.

31. Can you tell me about any resistance to the introduction of the NJC in the community? What form did this take? What was the response? Who responded and how?

32. Do you know what local opinion was when it was first announced that the justice centre was being set up?

33. Did the local community have any input in how the justice centre was set up? How do you get the community involved in planning?

34. Do community members have any day-to-day involvement with the justice centre? (e.g. restorative justice panels, volunteers etc.). How do you get the community involvement?

35. Do you think community involvement is a necessity? Why is community ownership so important? Is there a fear of putting too much responsibility on the community? How do you think a new CJC could foster community ownership?

36. How do you deal with community tensions/competing tensions, not only hearing the loudest voice etc?

37. Culturally appropriate – Koori Justice Workers – Aboriginal Hearing Days. Can you tell me a bit about ensuring the NJC is inclusive to all members of the community?

Success

I want to ask about the success of the NJC and the advice you would give to other countries who wish to set up a CJC.

38. How do you measure the success of the NJC?

39. Do you think the NJC meets its goals?
    (Preventing and reducing criminal and harmful behaviour in the community, increase confidence in and access to the justice system, strengthen the community justice model and facilitate the transfer of the practices)

40. In your opinion, why is the Neighbourhood Justice Centre considered so successful? What impact on crime and recidivism have you seen? Do you think the community is satisfied with the work of the NJC? Why do you think so?

41. What outcomes do you see the NJC achieve that cannot be measured? Why can they not be measured?

42. Why do you think there is only one community justice centre like the NJC in Australia when the NJC is so successful?

43. If you could change anything about how the court was implemented, what would you change?

44. If you could change anything about how the court is run currently, what would you change?

45. External factors can have a huge impact on the functioning and outcomes of the NJC – what external factors have impacted the work of the NJC?

46. Do you think more community justice centres will be established in Australia? What advice would you give to those setting up another centre in Australia?

47. What advice would you give to policymakers in Ireland if they were thinking about setting up a centre there? What pitfalls could they avoid? Are there necessary steps to take?

In Conclusion

Finally, I would like to ask…

48. What would you like to see happen in terms of community justice in your area in the future?

49. Is there anything you would like to add that we have not discussed?

Thank you so much for your time. If you have any questions or concerns, please do not hesitate to email me.

Interview Schedule for the UK

This is an interview with X on date. A consent form has been completed in advance of the interview.

Thank you for agreeing to participate in this project. The interviews will be anonymised.

I have some questions to give the interview some structure, but please speak freely if you feel something is particularly relevant.

Personal

1. Could you give an overview of your career to date? Have you any previous experience with community justice initiatives?

2. What is your current role?

3. What was your first reaction when you heard that a community court was being set up in [location]?

4. How did the community court come about? Who spearheaded it?

5. How did you first get involved with the community court?

6. How much input did you have in the setting up of the community court?

7. What was your day to day involvement with the community court?

Local Community

8. Do you know what local opinion was when it was first announced that the community court was being set up?

9. Did the local community have any input in how the community court was set up?

10. Did community members have any day to day involvement with the community court? (e.g. restorative justice panels, volunteers etc.)

Policy

11. What kind of values do you think underpinned the community court?

12. Do you know how and why the decision was made to establish a community court?

13. Were you aware of any research or preparation about how best to implement the court prior to the community court being established?

14. Are you aware of any objections to the community court?

15. What was the plan for evaluating the court? How often were evaluations carried out?

16. What kind of resources were allocated to the court?

The Court

17. What kind of building was the court located in?

18. How is the court structured? (How does it relate to a traditional court, pre-sentence, post-sentence etc.)

19. What kind of crimes did the court deal with and how was this decided?

20. Were any services available on site?

21. Were the services available for the community to use even if they were not involved with the court? (e.g. childcare facilities, NGO offices, general community space etc.)

22. Could you describe a 'typical client' of the court?

Court Closure

23. In your opinion, why was the community court closed?

24. If you could change anything about how the court was implemented, what would you change?

25. If you could change anything about how the court was run, what would you change?

26. Do you think a community court will ever be re-established here? Do you think re-establishing a community court would be a good idea?

In Conclusion

27. What would you like to see happen in terms of community justice in this area in the future?

28. Is there anything you would like to add that we have not discussed?

Interview Schedule for Ireland

This is an interview with X on date. A consent form has been completed in advance of the interview.

Thank you for agreeing to participate in this project. The interviews will be anonymised.

I have some questions to give the interview some structure, but please speak freely if you feel something is particularly relevant.

Personal

1. Could you give an overview of your career to date? Have you any previous experience with community justice initiatives?

2. What is your current role?

3. What was your first reaction when you heard about the community court proposal?

4. How did the community court proposal come about? Who spearheaded it?

Local Community

5. Do you know what local opinion was when the proposal was published?

6. Did the local community have any input in the proposal?

7. What processes would you suggest to ensure the inclusion of the local community in a community justice project?

Policy

8. Do you think a community court model (or community justice principles in general) would work well in an Irish context? Why/why not?

9. What challenges would a community court/community justice centre face in Ireland?

    Prompts:

    a. Challenges at a policy/implementation stage
    b. Operational challenges
    c. Finding a suitable judge and staff
    d. Collaboration of services
    e. Engagement with the community
    f. Evaluation/monitoring – indicators of success
    g. Client-centred

h. Finding a political champion of the model
i. Resources
j. Net-widening

10. Would you recommend specific legislation be enacted for a community court/community justice centre?

The Court

11. What is your impression of the community court model?

12. What outcomes could such a court model achieve in Ireland?

13. Do you think it would be worth piloting a community court in Ireland?

14. Would you have any concerns about such a court being introduced in Ireland?

15. Is there a version of the community court model that you do see working or are there principles you think could work in mainstream courts?

16. Would you change anything about the community court/community justice model? How would you tailor it to suit an Irish political and cultural context?

17. If a community court/community justice centre were to be introduced in Ireland, where do you think it should be located?

18. What services should an Irish community court/community justice centre provide?

19. What principles should underpin a community court/community justice centre?

20. How would you ensure that community voices are adequately heard – particularly vulnerable community members?

21. What advice would you give to anyone who was setting up a community court or any form of criminal justice initiative in Ireland?

Concluding Questions

22. What would you like to see happen in Ireland in terms of community justice/criminal justice initiatives/innovations in the future?

23. Is there anything you would like to add?

Appendix 4: Online Survey

Information Page

As part of the requirements for a doctoral degree, I am undertaking a research study under the supervision of Dr Louise Kennefick. I am inviting you to take part in this feasibility study on the introduction of a community court in Ireland research project.

1. What is this research about?

The purpose of the research is to examine whether it would be a good idea to introduce a community court in Ireland based on how community courts were set up and how they are operating in other countries.

2. What is a community court/community justice centre?

A community court is a type of problem-solving court that is tailored to suit the area in which it is set up. For example, if a community court was established in Tallaght, it would specifically address the low-level crimes that Tallaght residents found to be the most common in their area.

A community court usually has multiple services available on site such as drug/alcohol addiction services, housing services, educational and job seeker courses, and community service programmes. These services are available for everyone in the community to use, not just those involved with the court.

Low-level offenders who come before a community court are more likely to be linked with the necessary services and/or receives community service in the area that they committed the crime, rather than receive a prison sentence.

3. What will happen if I decide to take part in this study?

If you agree to participate in the study, you will be asked a series of questions about your local area and your personal opinions about crime and safety in your local area.

4. What are the benefits of taking part in this study?

There will be no direct benefit to you in participating in the research. However, I hope that the findings from the study will help Irish policy makers to better understand whether a community court would be feasible and beneficial in an Irish setting.

5. What are the risks of taking part in this study?

There are no direct risks associated with participating in this study. However, if you feel upset afterwards, please contact the following organisation for support:

- **Samaritans (Ireland and UK)**: Freecall 116123 [open 24 hours a day, 365 days a year]

6. How will the data be used?

I plan to use the findings in my PhD dissertation, as well as to publish them in academic journals. I also intend to give presentations at academic conferences. This will make sure that people hear about the results.

7. How will my privacy be protected?

No personally identifiable information will be collected and if given, will kept entirely confidential.

8. Can I change my mind and withdraw from the study?

Your participation in this study is completely voluntary (your choice) and there will be no penalty if you decide not to participate. However, once the survey has been completed, it will be impossible to withdraw from the study as no identifiable information will be collected.

9. Who can I contact for further information?

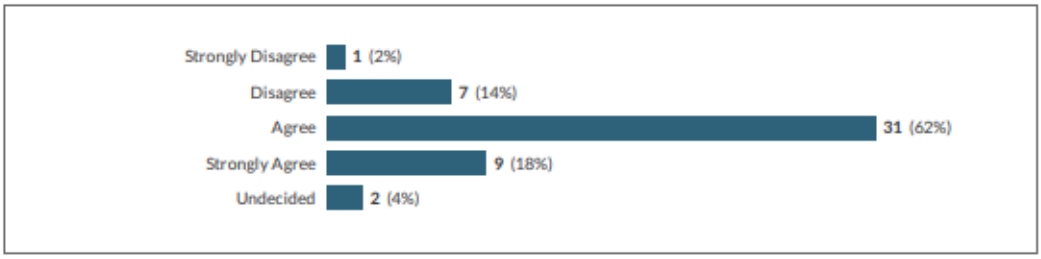
If you have any questions or concerns about this study, please contact the lead researcher:

Niamh Wade, Department of Law, Maynooth University, Maynooth, Co. Kildare.
Email: niamh.wade@mu.ie
Or the research supervisor:
Dr Louise Kennefick, Department of Law, Maynooth University, Maynooth, Co. Kildare.
Email: louise.kennefick@mu.ie

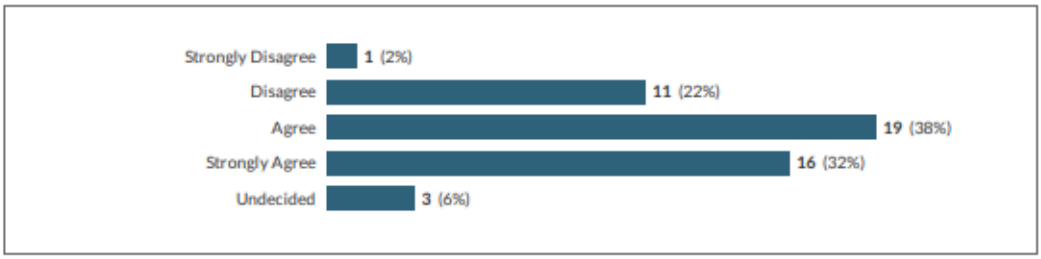
All survey data will be retained and hosted on a third party (Online Surveys) server and not on a Maynooth University server.

1 All survey data will be retained and hosted on a third party (Online Surveys) server and not on a Maynooth University server. By clicking "I agree" below you are indicating that you are at least 18 years old, have read this consent form and agree to participate in this research study. Please only complete this survey if you reside in Tallaght. You are free to skip any question that you choose.

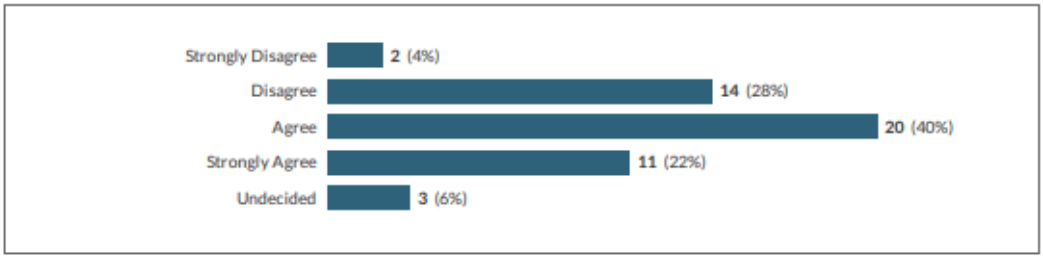
2 I feel safe in my neighbourhood



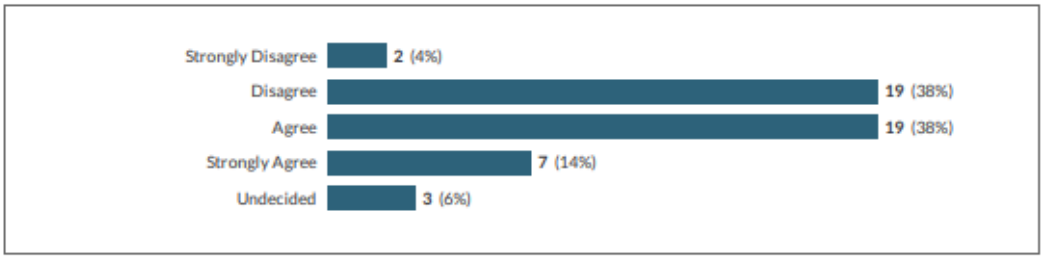
3 People in my neighbourhood help one another



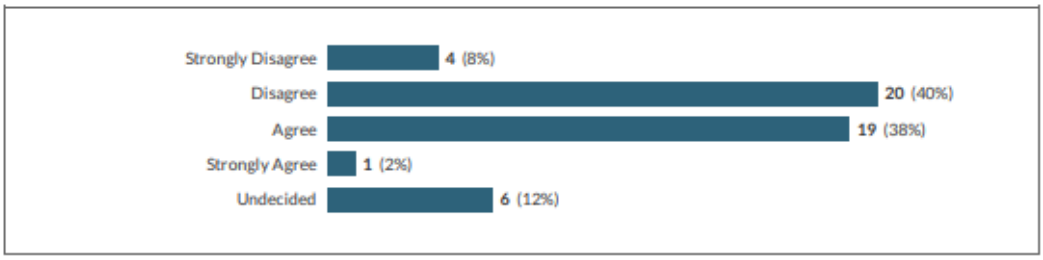
4 People in my neighbourhood are close/there is a sense of community



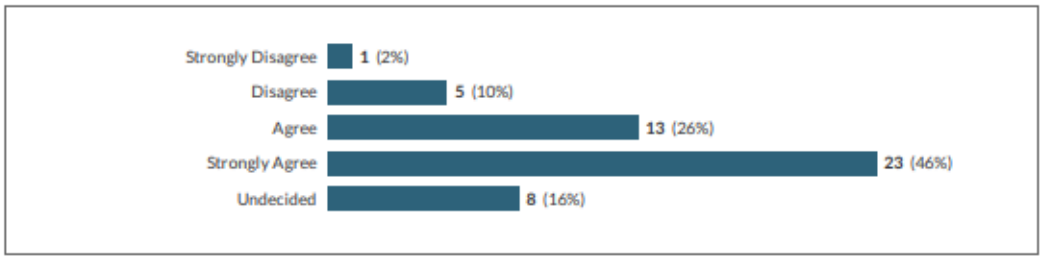
5 There are a range of services currently available in my community e.g. housing, substance abuse treatment, education/job training, financial counselling



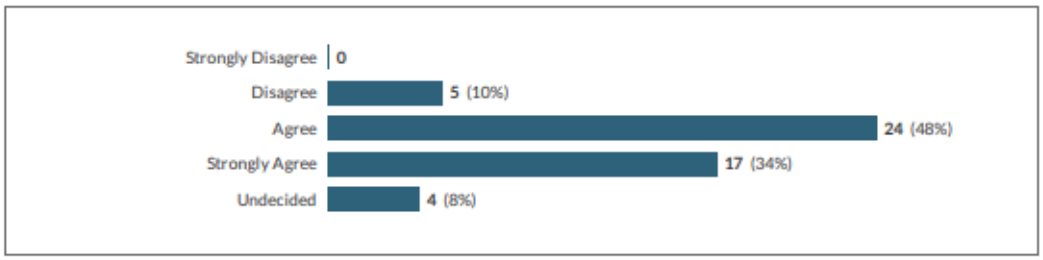
6 I feel that it is easy to access the services in my community



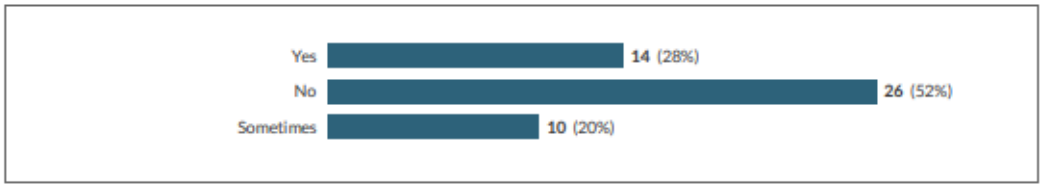
7 My neighbourhood would benefit from multiple services (e.g. housing, social welfare, addiction treatment, educational courses) working collaboratively under one roof i.e. working together, sharing information, problem-solving etc.



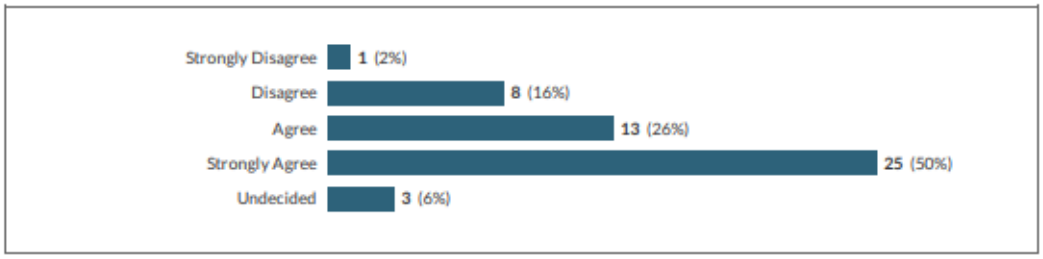
8 It is important to be actively involved in your local community



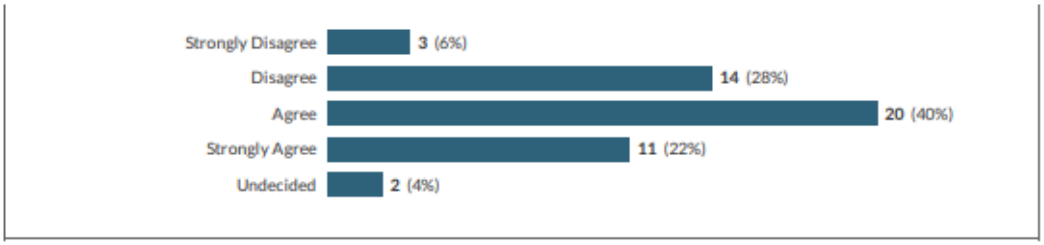
9 Are you involved in any community organisations?



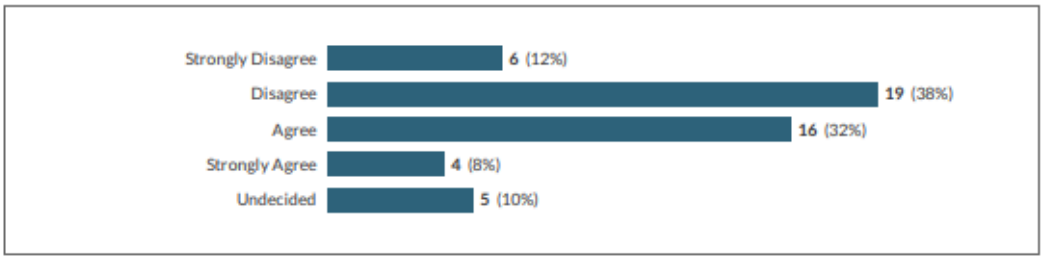
10 All laws should be strictly obeyed



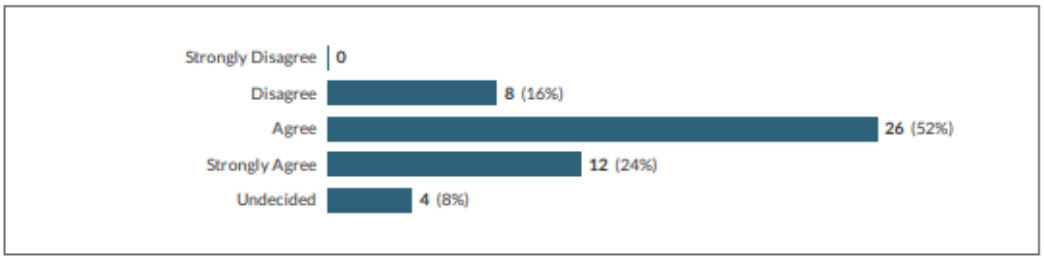
11 Crime is a problem in my neighbourhood



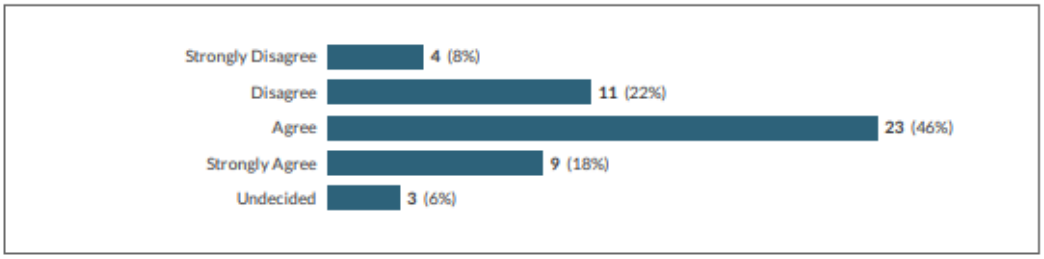
12 Crime in my neighbourhood negatively impacts my quality of life



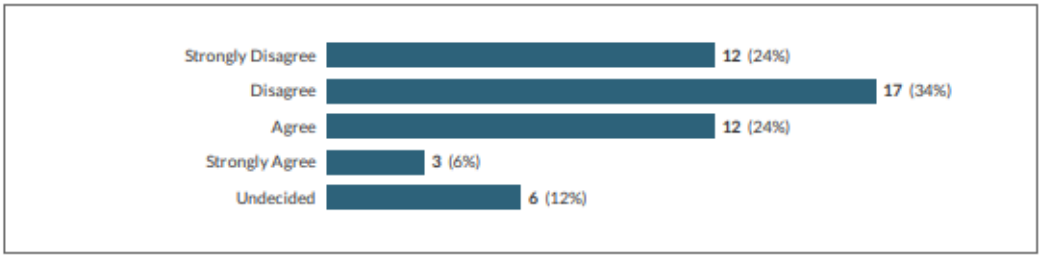
13 Low-level crime (petty theft, etc.) is more prevalent in my neighbourhood than serious crime (murder, etc.)



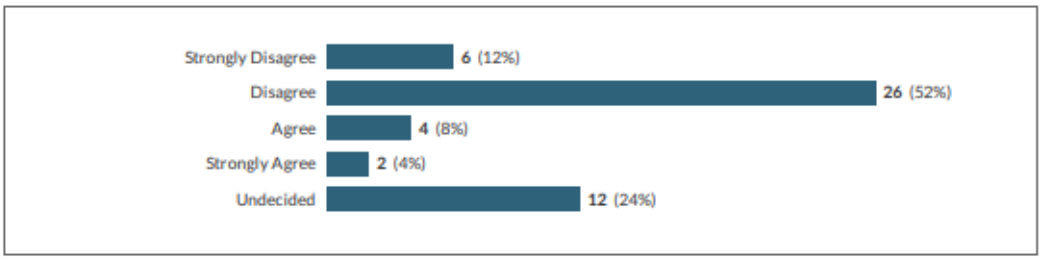
14 I feel able to report crime in my neighbourhood to the Gardaí (Irish police) without fear



15 I feel that my neighbourhood is well resourced to respond to crime that occurs here



16 The Irish court system delivers fair outcomes



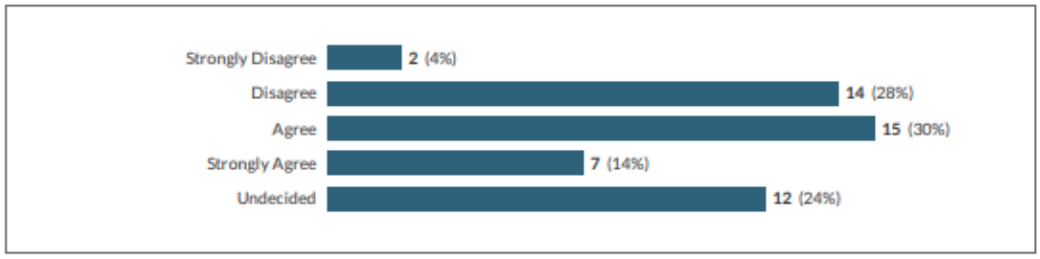
17 Can you expand on why you think the court system does/does not deliver fair outcomes?

Showing all 36 responses	
Depends on the crime but sometimes the punishment doesn't fit the crime and can unfortunately be racially or socioeconomically motivated towards lesser punishment for white upper classes	802565-802556-84599285
Weak sentences for repeat offenders who cause a disproportionate amount of trouble. No enforcement from gardai, the Belgard area is split between Tallaght and Clondalkin Station so both stations feel no ownership of the area.	802565-802556-84601801
I have no current experience	802565-802556-84611621
I am undecided, it's hard to make a decision as there are so many individual cases. Some outcomes are fair, others are not.	802565-802556-84614745
They are so laid back excuses can get you out of a crime	802565-802556-84615225
Absolute justice probably does not exist, what we get is the administration of the law, but within it's limits it works, individual backgrounds can be an influence and fairness can be difficult	802565-802556-84615638
Mixed reviews, Mose outcomes I feel people do not get enough of a sentence for the crimes they committed or some people get no sentence at	802565-802556-84612417

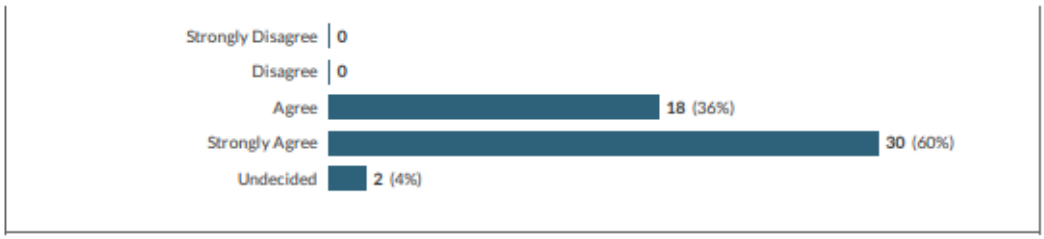
all. You hear of people with 100+ convictions and nothing has ever been done. Also a big thing in Tallaght that fathers do not get rights to their children in Ireland. It's crazy how hard they have to fight for custody or to have access to a child.	
No I cant say	802565-802556-84616569
Sentencing is inconsistent and the system is leaned more towards the perpetrators rather than the victims. The time does not match the crime	802565-802556-84618087
Seems to be many cases of people with over 50 convictions being let off. And less serious crimes more heavily punished.	802565-802556-84620745
It is not consistent with outcomes	802565-802556-84621146
Constant re-offenders, suspended sentence. A parent criminal gets treated differently than a childless criminal. Build a bigger jail and start putting criminals in instead of this new umbrella group court system you thinking. We have all the supports we need in Tallaght, courthouse there already, sentencing is the issue and not more supports	802565-802556-84622905
revolving door for repeat offenders (that's if they even show up for court)	802565-802556-84627013
Number of convictions vs prison time.	802565-802556-84633309
Too leanent on serious crimes	802565-802556-84633290
Pedo's get off to lightly in this country	802565-802556-84633243
Low sentence times. Many people have multiple convictions but are able to walk the streets	802565-802556-84634433
Crimes against children and abuse are repeatedly dismissed. Many abusers walk away and sentences given rarely represent the severity of the crime.	802565-802556-84634606
Needs to be dealt with quicker,	802565-802556-84634536
I believe in capital punishment for paedophiles and rapists.	802565-802556-84634829
There are many reasons why but the cases where child abuse is involved, the person should be locked up for life and not giving only 2 to 3 years	802565-802556-84634890
First and foremost there is most certainly a two tier system in Ireland 's judiciary. The "haves" well off people, , people with a lit of money fair much better in our courts. Punishment never fits their crime, excuse after excuse is made for their behaviours. Secondly , Joe soap depending on where he is living can be presumed guilty before his her case is even heard. And finally I have noticed, that various ethnic groups seem to get away with crime after crime. For example just say a serious fatal driving offense , how many times have you heard afterwards that the dependent had 15, 20, 25 previous driving offenses.? In my opinion if an individual is not honouring the 2nd 3rd ...chance they have been given, well its time to lock them up. Yet ,this is not the case with some ethic groups and I wonder if its out of fear of being seen to be racist, or discriminationing against.	802565-802556-84638145
Revolving door system, recidivism, no prison places, no after care or rehab for prisoners	802565-802556-84644586
Depending on your affordability and background you can easily be discriminated against	802565-802556-84647978

Life sentences aren't for life. Sex work should be legal. Decriminalise drugs instead of stigmatising.	802565-802556-84664057
I think in recent years a lot of people have not gotten a charge they deserve or have had a charge dropped for something serious.	802565-802556-84671926
a pedophile gets less time than a man who gets caught with some weed	802565-802556-84708878
The process is long winded and seems to very rarely deliver an outcome that fits the crime. It appears difficult to prosecute criminals and the judge seems to take too much into account i.e tough up bringing, first time offender, addiction etc	802565-802556-84714672
I think that the likes of the CCJ are overwhelmed and that petty crimes could probably be outsourced and dealt with on a smaller scale. And keep the courts clear to deal with bigger issues.	802565-802556-84793785
Look at the sentences handed out for crimes !!!!	802565-802556-87046618
I think the whole court system needs to be updated, I think case by case should be looked, but I do no people who are in that world of drugs and theft use prison to accommodate their addictions, people need to be helped with their addictions but also people in and out of prison if there given the opportunity to sort their issues out by following a plan set by the court services and if they don't fulfill that plan courts need to hand out tougher sentences to these people. Lower level crimes more programs through the likes of restorative justice needs to be introduced.	802565-802556-87257276
Look at the number of convictions some of these people have	802565-802556-87431552
Look at how man people are out on bail for serious crime or do little jail time	802565-802556-87442257
So many incidents of rapists getting suspended sentences	802565-802556-87442570
Sentences are to lenient	802565-802556-87462237
I find that the courts tend to be too kind on some "harder" crimes, and too harsh in regard to some "softer" crimes	802565-802556-87465045

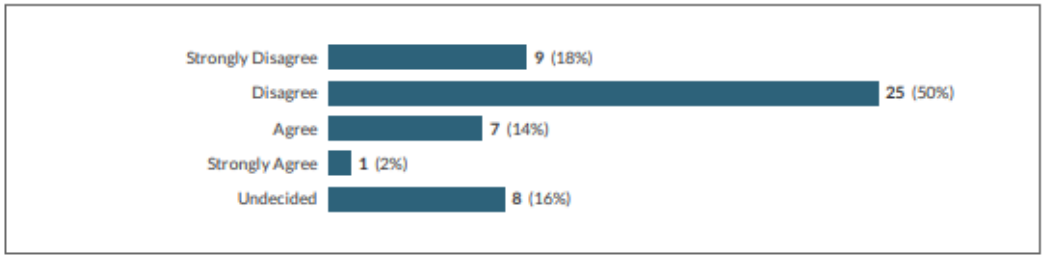
18 People should receive harsher sentences than they do currently for non-violent offences



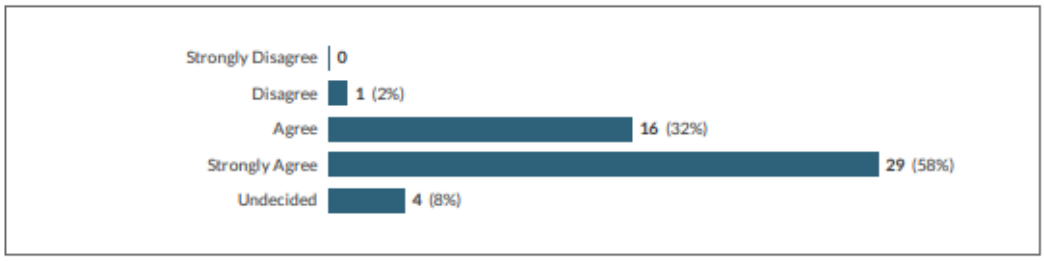
19 People should receive harsher sentences than they do currently for violent offences



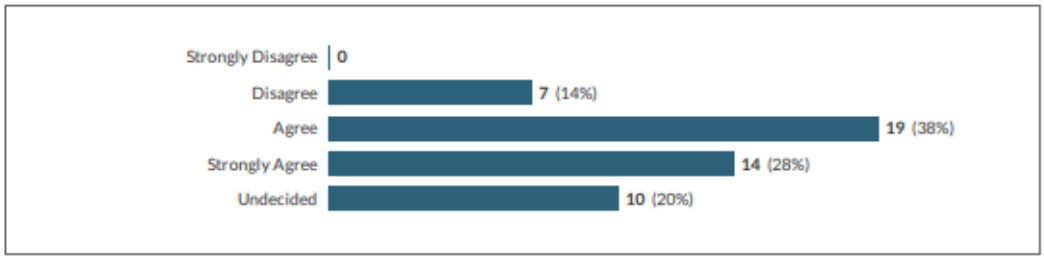
20 Prison is the most suitable response to low-level crimes



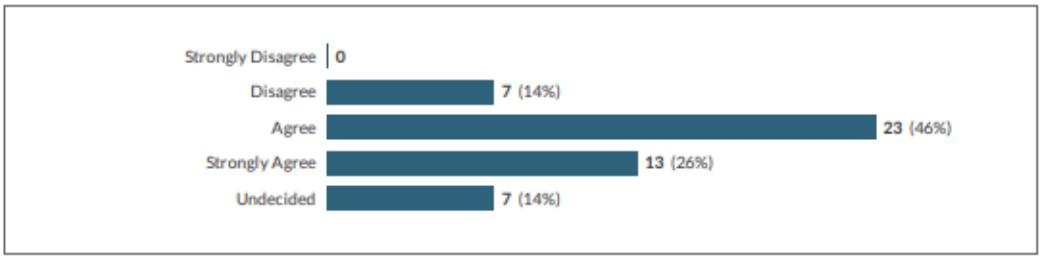
21 Prison is the most suitable response to serious crimes



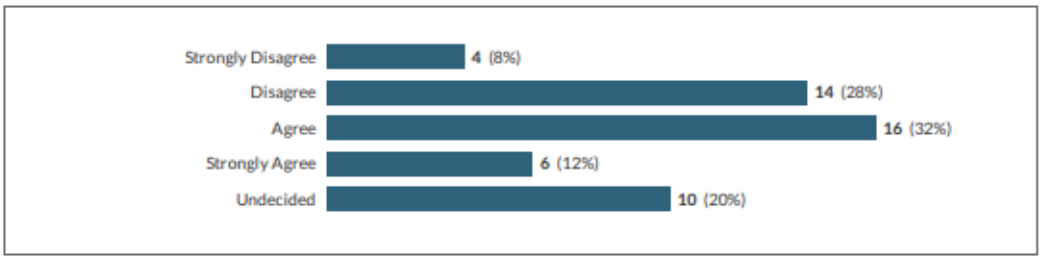
22 The courts should hand out more community sentences (e.g. community service, referral to support services, probation orders)



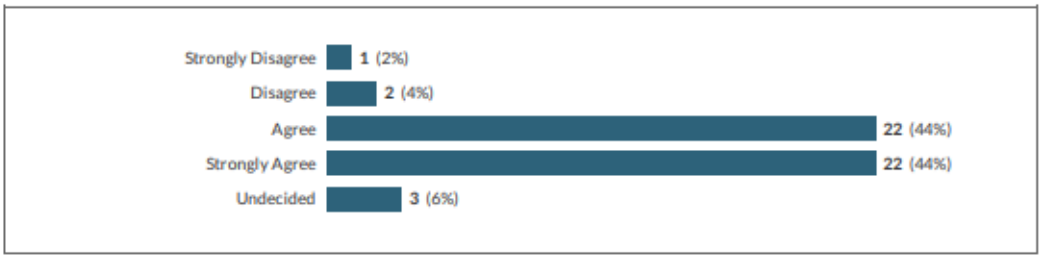
23 Community service (court-ordered unpaid work for the community) should take place in the neighbourhood where the crime was committed



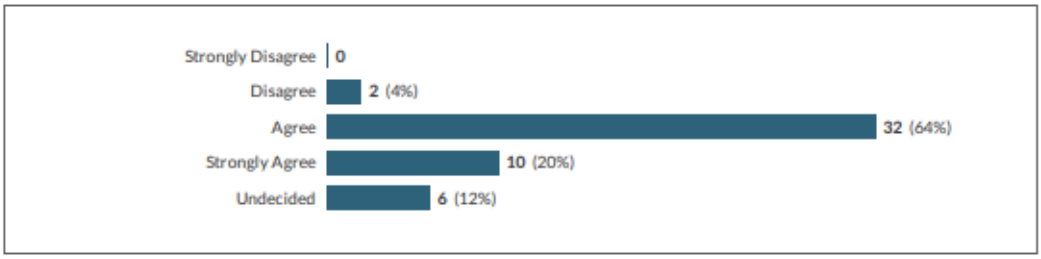
24 The local community should have a say in the justice process



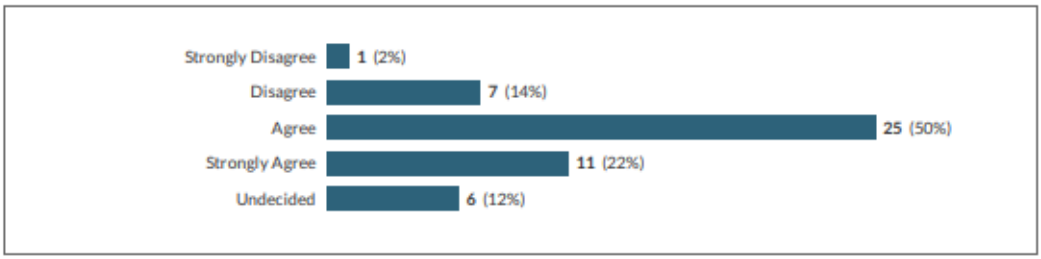
25 Offenders should receive support/treatment for any underlying (mental health/addiction or other) issues they may experience to address the causes of their offending



26 It is important to consult the local community before introducing justice reforms (e.g. a community court) in an area



27 I would attend a local meeting to learn more about community courts and how they work



28 I would support a community court if one was introduced in my local area