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An Examination of the Special Care Service in Ireland: Balancing Welfare and Justice Issues in the Provision of Care

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Abstract

Attempting to investigate the balance of justice and welfare in the Irish special care service this research raised two interrelated questions. It examined challenges presented by the criminal profile of young people, in the service, and to the designated roles of the multi-disciplinary professionals who practise within it. Secondly, it explored the capacity of the system to respond appropriately to the needs of residents with criminal profiles. Research, indicated ample, literature which supported the presence of criminal behaviour in the service, but a dearth of research, on an in-depth examination of the topic (Brierley, 2010). The findings highlighted a number of things, the complexities of balancing justice and welfare issues in the service provision, the absence of a collective formal response to criminal behaviours, and a lack of preventative and intervention programmes which address the criminal behaviour of young people. It also identified a of lack inter-agency and multi-disciplinary approaches to offending behaviour.

Keywords: Special Care, Welfare, Justice, and Young People

Introduction

This study selected an area where the author proposes that the criminal behaviour of young people converges with their care within the Irish welfare system. This research involves an

examination of the criminal behaviour presented by young people; it refers specifically to those young people who are incarcerated in Special Care Units in Ireland. These units are operated by the Irish Health Service Executive. The special care service and its purpose are defined as the following:

The purpose of the Special Care unit is described as the detention of the young for their own care and protection through the provision of a controlled and safe environment. Emphasis is placed on the custody in terms of care, safekeeping and supervision, rather than punishment and containment. The overall aim of the Special Care Unit is to provide focused care and therapy to young people so that their behaviour is stabilised and they are enabled to return to non-secure care within a short duration (Hanlon and Riley, 2004, p. 17).

Young people conceptualised as ‘very troubled and troublesome children’ have in recent years become a growing focus of the media, and of political attention (Fulcher, 2001; O’Neill, 2001). Furthermore, academics worldwide have extensively discussed how best to tackle youth crime (Muncie and Goldson, 2006; Kilkelly, 2005; Weijers, 2002; Haines and Drakeford, 1998). Consequently, juvenile justice systems are both traditionally and contemporaneously characterised and often overwhelmed by ambivalence, paradox and inconsistency (Muncie and Goldson, 2009). The greatest challenge is, perhaps, managing the delicate balance between the need to gain knowledge and insight into the circumstances under which young people come into contact with crime, and the need to preserve law and order in society. The idea that children should be exposed to, or engage with, the full capacity of the adult criminal justice system is regarded as excessive, unsuitable and has an adverse impact on young people (Quinn and Jackson, 2007; Walsh, 2005). It has also been maintained that young people who come in contact with the justice system at an early age, may be susceptible to a way of life where involvement in adult crime becomes routine (Krisberg, 2006).

The preceding points coupled with a growing recognition, in Ireland and internationally, that an alternative residential intervention for troubled young people was required supports the development and use of Special Care Units in Ireland (Fulcher, 2001). Special care is imposed on a young person where there is a grave concern for the safety and welfare of that young person. Literature indicates that many of the young people admitted to special care

have engaged in criminal behaviour or are at real and substantial risk or engaging in such behaviour (Brierley, 2010; Hanlon and Riley, 2004). Therefore, it is plausible to argue that issues of welfare and justice converge in the context of the special care system. What is interesting is that despite indications that welfare and justice issues overlap in this context, literature advises that young people appear to be located in one system or the other (Brierley, 2010; Hanlon and Riley, 2004). This suggests that young people with serious welfare issues may be located in the juvenile justice system and, equally those, with considerable criminal problems may be found in the welfare system. This situation, the author posits, may raise challenges for those working in the special care setting. What supports the assertion that young people are situated in either the welfare or the justice system is that, from a service operational perspective, young people in Ireland are positioned in the juvenile justice system or the care of the Health Executive Service (HSE). Young people who are detained in Special Care Units come under the care and remit of the HSE.

There is a broad spectrum of multi-disciplinary professionals that operate within the Special Care Service for example, child care leaders, social care workers, juvenile liaison officers, guardian ad litem, social workers, medical professionals and teachers. The roles of these professionals vary in the context of the special care service. For instance, child care leaders and social care workers provide the young people with day to day care. Guardian ad litem work closely with children in the service giving a voice to children's wishes, feeling and interests. Social workers for the HSE make the application to the High court for the young person, under their care, to be admitted to the service. After the young people, the multi-disciplinary professionals operating within the system directly experience the service. Therefore, the views of these professionals offer a valuable insight into the practice, policies, quality of the care and matters relating to criminal behaviour of young people in special care units.

The Development of Special Care Units

From the mid nineties onwards there was an increasing understanding that specialised services were required for troubled young people both in Ireland and internationally (Hanlon and Riley, 2004; Fulcher, 2001). There was significant evidence to indicate that there was an escalating growth in issues such as substance abuse, violence, extreme challenging behaviour and emotional difficulties in young people, this behaviour was also often characterised by

aggression and anti-social conduct disorder (Hanlon and Riley, 2004). Consequentially, many of the young people described were entering the criminal justice system (Hanlon and Riley, 2004). What developed as a direct result of this was, key stakeholders believed that these young people were being inappropriately treated, and a more suitable service which met their specific needs, was required (Barnardos, 2000; Laxton, 1998; Focus Ireland, 1996).

The Child Care Act 1991 in its original provisions did not allow children to access secure accommodation for the purpose for treatment; therefore children were placed in secure facilities. Several cases were heard in the High Court in the mid nineties which illustrated that the needs of young people were not being met within the existing provision. (Durcan, 2011; Carr, 2007). Effectively, what was occurring was that young people with the acute welfare difficulties were being sentenced to periods in detention centres which were intended for young people convicted of criminal charges. For example the case of *D.T (a minor) v. The Eastern Health Boards and Others*. In this case a twelve year old girl presented to the court with considerable difficulties, there was compelling evidence to suggest that the young girl might attempt to commit suicide. In this case Mr Justice Geoghegan made a declaration that the young person be detained in Oberstown House (a detention school for young offenders).

What followed was that it was alleged by representatives for the young people and their families, in such cases noted above, that the High Court and the State was failing in its constitutional duty to make available suitable facilities in which such young people could be detained for treatment (Durcan, 2011). For instance, in the case of *D.G. v. The Eastern Health Board and Other* the order was challenged on the footing that the power to hold a child under the inherent jurisdiction did not extend to incarceration in a penal institution (Durcan 2011). Owing to these pressures, the courts became increasingly reluctant to hold young people in detention centres without a criminal conviction; this decision was also greatly influenced by the Convention of the Rights of the Child (Hanlon and Riley, 2004). As the United Nations Convention on the Rights of the Child (UNRC) advocates that young people in care have the right to privacy, dignity, respect and to have their civil and legal rights safe guarded. The entitlement that is most applicable to this research is that young people have the right to freedom, unless they have been convicted of a criminal offence. Therefore, depriving young people of their liberty in the absence of criminal conviction is

believed, not only by the UNRC but also by academics, to be an extreme measure of last resort (Millham *et al.* 1978).

While the 1991 Children Act did give certain powers to Health Boards with respect to service provision in child protection, it was the Children Act 2001 which brought about the most important developments for juvenile justice and care legislation for children in difficulty in Ireland. Amendments were made to Section 23 of the Children Act which pertains specifically to children in need of special care or protection. The 2001 Children Act made direct provisions for the setting up of special care units, these units were established for the purpose of detaining young people for their own care and protection. Plans for the building of Special Care Units commenced and today there are currently three special care units in operation today.

Literature Review

There is a dearth of research pertaining to the views of professionals regarding the criminal behaviour of young people who have been placed in special care centres as well as which explores the impact of criminal behaviour on the construction and delivery of the Irish special care service.

Furthermore, the way in which young people are detained in a special care unit is characterised and symbolised by ‘the barrier to social intercourse with the outside and to departure that is often built right into the physical plant, such as locked doors, high walls and fenced in areas’ (Goffman, 1961, p.15). These features could certainly describe the prison structure, however, they are also common elements found in special care units. There is also evidence which reveals that there are further areas where the two systems traverse. While young people are being detained in a special care unit they may be subject to criminal charges. If a young person assaults a member of staff, the staff member may bring charges against that individual. This further reinforces the delicate line that appears to separate young people from a position in the welfare or justice system. This lies at the heart of the challenges posed for the multi-disciplinary professionals working with young people in the special care setting.

Given the paradox and parallel of punitive and therapeutic measures evident in special care service, the ostensible interaction of welfare and justice and the points mentioned above, an important aspect of this research is to explore the following question: What, if any, are the challenges presented by the criminal profile of young people to the operation of special care and the multi-disciplinary professionals who practise within it.

Additionally, what has been identified in literature is that even a moderate reduction in youth crime can present potentially significant advantages (Arthur, 2007). A reduction in youth crime results in fewer victims experiencing injury or personal loss, diminishing levels of crime, reduced public expenditure on youth justice and it also decreases overcrowding in youth justice institutes (Arthur, 2007). Moreover, what is considered one of the most long term benefits of preventing young people from being involved in youth crime is that they are diverted from leading adult lives which may either be damaged by or entrenched in criminal activity, and in the criminal justice system (Arthur, 2007). In the wider context, the early prevention of youth crime can have valuable benefits from a human, social and economic perspective (Arthur, 2007). The evidence suggests that many of the young people entering the special care system are at high and significant risk of becoming involved in criminal behaviours (Brierley, 2010). Therefore, the research inquired into what preventative measures are in place in the special care setting to divert young people from criminal behaviour, their possible entry into the juvenile justice system and, conceivably, a life of adult crime.

A number of significant points emerged from existing literature. Noted in the discussion earlier with reference to the development of special care units it was found that there was conflict between the best interest of the child and restricting the young person rights to liberty. This reconciling of opposing viewpoints presents challenges for both practitioners and policy makers and it is this very point that may have resulted in the emergence of the special care service in Ireland.

There are a number criticism of the welfare and justice system with reference to the understanding and treatment of young people who come in contact with the services. In terms of the classification of young people in the welfare and justice system a number of difficulties were identified. Carr (2007) draws attention to one essential difficulty with reference to cases which are not clear cut, posing the question: ‘How does one delineate between which children go where – whether a child is more appropriately placed in a secure ‘welfare’ facility

or a secure ‘justice’ facility?’ (Carr, 2007, p. 49). This question elicits an additional point; Carr’s (2007) enquiry identifies the potential ambiguity surrounding the most appropriate facility for a young person. Earlier evidence affirms that criminal behaviours can be found in the profile of young people being placed in the special care service. Therefore, how risk is conceptualised is centrally associated with a resolution of this dilemma. Risk of harm to the child is juxtaposed to the risk of others presented with the behaviours of that same child – undoubtedly not an easy question to answer. Nevertheless, the question arises: Do the rights of the child supersede the rights of others in this situation?

When discussing the Finish model of special care, Pitts and Kuula (2005) raise a very interesting point. They ask if the special care service is a type of hidden justice system in which young people who are breaking social norms can be detained and ultimately have their liberty removed, camouflaged as child protection practices and services (Pitts and Kuula, 2005). Barnardos (2000) also raised a similar concern as they criticised the development of special care units because of the possibility that places in special care facilities would be filled regardless of need and therefore, jeopardise the rights of young people. This is supported by the work of O’Neill (2001) who found in her study of children in special care units that young people were detained in special care because of inadequate community services; therefore this suggests that there is the propensity for the misuse of the special care service.

A second study carried out by Carr (2007) examined two operational special care units and found that at the time of the study six young people had been charged with criminal offences, which were committed during their placement in a special care facility. Moreover, it found that out of the total number of young people who were detained in the largest special care unit in Ireland, almost one third of these young people, subsequently, spent a period of time in a secure facility in the criminal justice system. Carr (2007) asserts that this was largely due to the following reasons: “the commission of offences in special care, the commission of offences subsequent to their time in special care, offences which had been on file prior to the special care placement and had not been processed and finally orders of the High Court placing [a young person] in a Children Detention School for their own protection” (Carr, 2004, p. 49). This raises questions about the experiences and outcomes for young people in the special care service. The first question raised is: What preventive measures are made

available to young people in the special care service in a bid to divert young people away from criminal behaviour? This is a valuable question as research has established that there are various programs which have been identified as successfully reducing juvenile criminal behaviour (Hay *et al*, 2012). There is also clear evidence to suggest that successful interventions are proven to be cost-effective particularly when measured up to the cost of incarceration, this applies to a special care facility or a juvenile detention facility (Hay *et al*, 2012).

The second question arising is: Is special care redirecting young people into the criminal justice system due to the commission of offences during their placement in the service? While it would appear that the special care service is located legislatively, philosophically and operationally within a welfare framework, it would seem the juvenile justice system and child welfare system intersect in many ways, yet they may not always coordinate their efforts to affect a better outcome for the young person it serves. It is reasonable to suggest that, “when a service itself is disjointed, it is very difficult to see how it can promote partnership and participation among those whom it is intended to serve” (Buckley and O’ Sullivan, 2007, p. 65). The argument can be made that the therapeutic success of special care services may be limited in relation to addressing the criminal behaviour of young people.

Methodology

The research undertaken to investigate the questions arising above was a qualitative study which was viewed through the interpretative research paradigm. Using qualitative methods, the author examined the position of a sample population of multi-disciplinary professionals operating in the area of special care. The research methods used were in-depth individual interviews and an open coding approach which allowed for the analysis of the data gleaned. When considering the sampling strategy, the researcher selected individuals based on their ability to purposefully inform the research questions and central phenomenon of the study (Creswell, 2007). The research was limited to six respondents as ‘qualitative research is highly intensive in terms of the research resources it requires’ (Richie and Lewis, 2003, pg. 84). The research was essentially searching for themes which might evolve during the interviews as it was thought that emerging themes may represent challenges experienced by the professionals practicing in the special care setting, when presented with or encountering the criminal behaviour of young people detained in special care.

Findings

Through the analysis of the research findings the study reached a number of key conclusions. It established the presence of criminal behaviour and a dominant culture of violence in a population of young people in the service. The research identified emerging themes of stress, frustration and feeling of fear for personal safety as a consequence of the level of violence experienced by professionals. It was also noted that more comprehensive and regular training in response to criminal and violent behaviour was required in the service.

A key finding of this research was that a significant challenge for professional was the lack of a cohesive understanding of the purpose and function of the service. There appears to be a clear definition of the special care service in rhetoric but the participant's perspectives demonstrated a prevailing uncertainty in practice. Participants asserted that the service was endeavouring to function as a facility which meets educational needs, provides crisis intervention, applies preventative strategies and provides day to day care and protection for young people. Furthermore, the expectation was that this would be achieved in a time period of three to six months.

Attention was drawn, by participants, to the tensions that exist between differing professionals operating within the service. It was noted that this was born out of external agencies not fully recognizing the way the service should be utilized. For example, in the case of the social work service it was believed that the service was used by social workers as a way of holding high risk young people and taking them off the radar of their service for six months. Goldson (2002) discusses and advises that in such a high risk area of practice, social workers are frequently prone to selecting a locked placement for young people. Goldson (2002) posits that this is as a result of fear of accountability or culpability associated with the idea that a young person placed in a less secure placement may cause serious harm to themselves or others. It also emerged that a lack of a universal purpose and function of the service could result in the inappropriate placements of young people within the service. This is an important finding as the special care service should only detain young person as a very last resort. This finding suggests that young people may be deprived of their liberty when it is not appropriate to do so, and this is a direct breach of the UN Convention on the Rights of the Child.

A further significant finding was that the special care service appears to be disconnected, and lacks support and partnership, from outside agencies which may be of benefit when addressing the criminal behaviour of young people in the service. Given that the literature has greatly emphasised the importance of an inter-agency co-operation and a multi-disciplinary approach to young people exhibiting both welfare and justice issues, this is a significant finding. Closely correlated to this point is that the research found an absence in the service of any intervention or preventative measures that directly address issues relating to crime or offending behaviour of young people in the service. The research established that there was no single or collective system response to criminal acts committed by young people while being detained in a special care centre. It found that in relation to assaults, it was at the discretion of the individual assaulted to press charges. It also found that the concept of a community multi-disciplinary approach was seen by participants as a fundamental requirement for diverting young people away from the criminal justice system. However, this research established that the current special care service does not incorporate this approach. In conclusion the author posits that the greatest challenge to multi-disciplinary professionals and the young people in the service, in relation to criminal behaviour, is not the behaviour as such, but the response or perhaps lack of response to it by the special care service.

In reference to the young person's understanding of a placement in a special care centre this research found based on participants observations that young people did experience their detention as punitive. However, respondents also suggested that young people could identify benefits from their placement in the service. The research conducted by Poso et al (2010) strongly supported the notion that young people viewed their time in the service as punishment and experienced it as restrictive and isolating. Hanlon and Riley (2004) found in their study of the special care service, that young people believed that a placement a special care unit had a positive impact on their physical health and well-being, and produced feelings of safety. Nonetheless, Hanlon and Riley (2004) drew an overall similar conclusion to Poso et al (2010), when they recommended that in general young people did appear to perceive the placement as punishment for bad behaviour, and while young people did feel 'cared for they were simultaneously distrustful and hostile to aspects of their care and of being detained' (Hanlon and Riley, 2004, pg. 76). A population of young people in the Hanlon and Riley 2004 study held the view that there was an immense injustice committed against them as they

had not actually committed any crime. The findings of this study support this point as participants suggested that many young people, due to the structures and regimes of the facilities, experienced their placement as ‘doing time’. This rises the question what impact does this have on a young person who enters the system on a purely welfare basis.

In this research, when questioned about the potential the special care service has to divert young people away from the criminal justice system, participants once more drew attention to the concept of a community multi-disciplinary approach to young people and their behaviour. Participants suggested that the special care service in isolation was limited in its ability to divert young people away from the criminal justice system. Murphy (2010) and Steinberg (2008) support this as they advocate for more incorporation of juvenile justice response programs into agencies that deal with young people. Steinberg (2008) posits that there is a greater need for enhanced integration especially with those agencies that provide child protection service for young people. This is owing to the fact that youth offending is frequently connected with other difficulties which the juvenile justice system is incapable of addressing, for example in cases of mental illness, sexual abuse, child maltreatment (Steinberg, 2008; Murphy, 2010). Murphy (2010) concisely make the point which may aptly reflect the responses of the respondents in this research when he argues, that “the failure of governments to address these problems due to poor multiagency coordination is one reason why many young people enter and re-enter the justice system” (Murphy, 2010, pg. 70).

The findings of this research suggest that there was a belief that the standalone intervention of special care could not be sufficient in diverting young people away from the criminal justice system. This perhaps raises more questions than it provides answers and suggests that there is a critical need to examine what the special care service is achieving with young people who present with criminal behaviour, or is the service simply to be a waiting room for the criminal justice system. This final point may hold more weight than is even being acknowledged in this study, perhaps the evidence for this is in one participants account when they suggested that six special care ex-residents had become incarcerated in prison facilities, only a relatively short period after discharge from special care service.

Conclusion

The study set out to investigate the balance of ‘justice’ and ‘welfare’ concerns in the Irish special care service. The research focused on examining two significant issues. Firstly, the

challenges presented by the criminal profile of young people to the operation of a special care unit, secondly, the capacity of the special care system, to respond appropriately to the needs of residents with a criminal profile. While the findings have established that there are a number of key issues and concerns in terms of the challenges experienced by professionals with regard to criminal behaviour in the service. Areas such as fear for personal safety, stress, the need for more comprehensive training and a lack of a clear understanding of the purpose and function of the service have emerged as challenges within the service. However, what is perhaps the most significant finding is evidence which suggests that the current system of special care in Ireland maybe failing young people in term of addressing their criminal and offending behaviour. There appears to be a definite lack of a multi-disciplinary approach to this behaviour and a dearth of programs and interventions which may support and divert young people away from the justice system and a possible life of adult crime.

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