

# Community sentencing stakeholder event

Hosted by the Scottish Sentencing Council on 31 March 2022

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## Chair's foreword



I am delighted to introduce this report on the Scottish Sentencing Council's community sentencing stakeholder event.

In October 2021, the Council published '[Judicial perspectives of community-based disposals](#)', an issues paper which summarised the results of a consultative exercise with members of the judiciary. The purpose of the exercise was to

identify any gaps or barriers to provision of community-based disposals, and to ascertain what might improve judicial confidence in community-based interventions.

In the conclusion to that paper, the Council noted that it had identified a number of issues relating to the use of, and confidence in, community-based disposals which it hoped would be of assistance to policy and delivery bodies in their further efforts to develop and maintain a robust and effective system of community justice for Scotland. However, much of the activity to address the issues identified would fall to government or other bodies involved in the delivery of community justice services to undertake.

In consequence the Council, bearing in mind its statutory duties to assist the development of policy in relation to sentencing, and to promote greater awareness and understanding of sentencing policy and practice, indicated that it would highlight its findings to policymakers and those responsible for the delivery and design of community justice services, and seek to work with others as appropriate to address issues which are within its remit.

As part of that, the Council hosted a stakeholder event on 31 March 2022. This took place online and involved a variety of participants from across the criminal justice system: judiciary, practitioners, social workers, police, academics, third sector workers, and other experts. It is the Council's hope that this report will help to

stimulate further discussion about community-based sentencing, and will play its part in informing policy development in this most important area.

On behalf of the Council, I am most grateful to all of the participants.

**Rt Hon Lady Dorrian  
Lord Justice Clerk and Chair of the Scottish Sentencing Council**

## Introduction

1. The Scottish Sentencing Council's community stakeholder event had three purposes:
  - to explore further the issues raised in the Council's paper '[Judicial perspectives of community sentencing](#)'
  - to inform the development of the Scottish Government's revised [National Community Justice Strategy](#)
  - to inform the further development of policy in respect of community justice<sup>1</sup>.
2. The event was chaired by Lady Dorrian, the Lord Justice Clerk and chair of the Council.
3. Four themes were explored during the event, and discussion took the form of breakout sessions for each theme, followed by a plenary feedback session. To facilitate open discussion the event followed the [Chatham House Rule](#).
4. In addition members of the Council's secretariat engaged on separate occasions with sentencers and social workers whose experience was drawn from working in more rural areas, to ensure that these views were fully captured.
5. The views expressed in this report are those of the individual participants – they are not necessarily shared by the Council, or by other participants or speakers.

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<sup>1</sup> The term 'community justice' was used in order to capture potential discussion topics that might go beyond community sentencing in a strict sense, such as post-conviction issues.

## Session 1: Gaps in provision

6. The first session focused on the theme of gaps in provision, and was intended to discuss offences, and/or types of offender, where services are perceived as inadequate or unavailable. It was also designed to cover issues of consistency in provision, such as, for example, differences between provision and requirements in urban and rural areas.

### Discussion

7. Considering, first, the provision of services for particular classes of offenders, some sentencers felt that there was a gap in the provision of community-based sentences for less-serious offending. It was thought that there would be considerable merit in a form of sentence which represented an early rehabilitative and preventative intervention for summary-level offending before behaviour had a chance to escalate, particularly for sexual offences and domestic abuse offences.
8. With a view, again, to reducing the likelihood of further offending, it was suggested that there is a long-standing gap in the provision of programmes for those unwilling to accept their offending behaviour. With particular reference to sexual offences committed by men, the view was expressed that this is sometimes because the offender knows he is guilty but, because of the nature of the offence and the stigma attached to it, is unwilling to say so. Despite that, these are offenders who would benefit from intervention and education, which would improve the likelihood of reducing reoffending.
9. Mental health provision was also noted as one area where there was often a clear focus for intervention, but a lack of appropriate supervision and treatment options; a community payback order (CPO) without these options would often be setting the offender up to fail.
10. Moving on to look at consistency in provision throughout the country, most participants were aware of variations or gaps in service provision connected to community sentencing in different areas. It was generally agreed that *variation* in provision was not necessarily to be deprecated: sometimes it reflected local needs and, indeed, local capacity for supervision. This could extend to the support provided in connection with that sentence – for example, addressing housing issues. On the other hand, among some participants there was a sense that innovative and potentially beneficial sentencing options were available in one

part of the country but not another.

11. To that end, there was general agreement that one potential benefit of variation was the possibility of piloting sentences and community interventions in different parts of the country. It was important, though, that such programmes were properly evaluated and then rolled out more widely if there was evidence of success. One example of such a sentence is the structured deferred sentence (SDS): there was some support for it, but with the caveat that variation in the nature of the SDS in different parts of the country had the potential to lead to unfairness.
12. Judicial awareness of the options available to them when sentencing was regarded as important. In that regard Community Justice Scotland (CJS), in a welcome initiative, has produced an [online resource](#)<sup>2</sup> providing information about the community sentencing options available in different parts of the country. However, it was felt by some that this was still a work in progress. More services, particularly from the voluntary and third sectors, could be included, but gathering information about these may be challenging. There was seen to be some – but, perhaps, not enough – awareness of this resource.
13. This was noted as a particular issue for some members of the judiciary. It might reasonably be expected that a sentencer would build up familiarity with the resources available in their home court. However, for those members of the judiciary who sit in, or sentence people who live in, different areas – the latter will apply to judges in the High Court – it is not always straightforward to know what options are available. There would, in that situation, be a heavy reliance on the criminal justice social work report (CJSWR) prepared by a social worker before sentence in directing courts towards what was realistic and available. In that regard, the quality of CJSWRs was generally commended: “considered, well referenced and well researched”, as one sentencer described them.
14. There was discussion of the role that voluntary and third sector services can play in addressing gaps in provision. They can be set up relatively quickly to address specific, or changing, local needs. This allows for a degree of flexibility that could be lost through a more centralised or uniform approach. However, the question of sustained funding for such services, and the extent to which they are able to engage with justice social work teams, can affect their participation in community

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<sup>2</sup> [https://communityjustice.scot/community\\_support\\_services/](https://communityjustice.scot/community_support_services/)

justice. They may not be included in planning by local authorities and information about their nature and availability may not be available to courts.

15. Unique challenges were faced in the Northern and Western Isles, where national organisations may not have a local presence and nationally accredited programmes may be unavailable. Participation in the latter presented particular difficulties due to the level of resources required or the fact that training – sometimes lasting for a number of weeks – may only be available on the mainland. The travelling time meant staff would have to stay away from home during such training. This was not always possible for those with care commitments. Additionally, local voluntary and third sector organisations may have more of a focus on social care than criminal justice, potentially restricting support from those organisations. Set against this, it was possible to provide individually-tailored, one-to-one supervision which could aim to cover the same ground as national accredited programmes, but this might not offer the same level of consistency as accredited programmes, or the same ability to measure success. There was also seen to be a risk that if the offender was the subject of programmes which had not been nationally accredited, this could form the basis of challenge in the event of the offender breaching the order or committing further offences.
16. It was also noted that finding suitable unpaid work placements for those convicted of sexual offences could be challenging in more rural areas. There are fewer placements available in any event and that, combined with greater awareness of the identity of those convicted of such offences, with a commensurately high level of stigmatisation, could lead to tensions between those offenders and others on the same placement. This, in turn, led to a higher risk that the person convicted of sexual offences would be reluctant to comply with the unpaid work element of the order. In urban areas, with a greater variety of placements available, and lower levels of awareness of those convicted of such offences, this was thought to be less of an issue.
17. Ultimately, though, it was expected that there would always be a tension between local and national needs and the resources available to meet those needs. While consistency was to be applauded, areas with different characteristics – most obviously urban and rural areas – would have different problems, different needs, and indeed different local authorities with competing funding priorities. This would inevitably lead to variation in provision.



## Session 2: Monitoring and management

18. The second session focussed on the theme of the monitoring and management of community sentences.

### Discussion

19. Much of the discussion revolved around monitoring and management in the judicial context. In-court reviews were discussed in some detail. One view, expressed by some sentencers, was that offenders who reacted well to reviews were going to react well to the order in any event. For those who were otherwise stable and motivated, there may therefore be little point in deploying limited resources for this purpose; and, by the same token, reviews for those who were thought to be unlikely to complete the order simply added another layer of complexity, making breach more likely, rather than less. Either way, there would be resource consequences; or where an offender was judged to be in need of frequent review hearings this could be somewhat resource-intensive.

20. But other sentencers were more supportive of review hearings. It was suggested that the fixing of a reasonably early review hearing sent out the post-sentencing message that the offender was not being forgotten about by the court, and reinforced the court's role in ensuring successful completion. It could also act to identify those who were not going to engage with supervision: if there is going to be a breach of the order, it is better that it comes early in the order's lifetime.

21. They could also be of specific use for young people who had offended and who had little or no experience of the court, or the criminal justice system generally, before that case: they helped to reinforce the necessity of compliance, and could give the young person an extra degree of motivation.

22. Some discussion took place about the ongoing role of the sentencer. The view was expressed that a positive and consistent relationship between the offender and the sheriff could assist in compliance, and that it was important for the offender to know that the sheriff was being told about positive engagement even in the absence of a review hearing.

23. Discussions also examined the role of breaches of orders. It was noted that compliance with community sentencing could take a variety of forms: people on community-based orders were often vulnerable and disorganised, or could be emotionally dysregulated as a result of trauma, and lead chaotic lives. Expecting

rigorous compliance from day one of an order was not always realistic. While these are court orders which should be complied with, there also had to be a recognition that it was not always easy for the offender, and support should be offered where appropriate. In this context, it was noted that relapse is part of recovery.

24. Even recognising that, though, there was an acceptance that breaches would happen and had to be dealt with. While social workers, in general, viewed a decision to seek to initiate breach proceedings as a last resort, it was nonetheless felt to be subjective, with differing approaches being taken. There could be variations in practice regarding whether the order would continue or not during breach proceedings. While there was consensus that breaches should be processed quickly, there was a variety of views on whether that was achieved, and this largely depended on the professional status of the participant. From the point of view of social workers, apparent breaches were reported reasonably quickly – 82% within 5 days. However, at the court end, the process to get a reported breach to the stage of calling in court and being proved was regarded as unnecessarily and unhelpfully laborious. It was not uncommon for it to take two or three months. There was also a sense that by the time these cases were in court they were not a priority for anyone and tended to drift.
25. This was regarded as being of considerable importance for a number of reasons. Dealing properly with breaches is important: compliance with court orders is closely tied in with public, judicial, and police confidence in any system of community justice. Any move towards greater flexibility for social workers had to bear that reality in mind, while also taking into account the policy direction of avoiding custodial sentences where possible. And all the while there is an offender perhaps either in need of support or simply declining to comply with a court order. Either way swiftness was regarded as essential.
26. It was felt that a more proactive, front-loaded system would lead to better outcomes. Early disclosure of breach details to the defence would allow expert reports, or vouching of compliance failures, to be obtained in advance of any hearing. It was suggested that where the breach is denied, consideration of whether the breach was proved could be dealt with initially in chambers, as can happen with bail review applications. This might facilitate early resolution, or better readiness for a full proof hearing, if one was necessary. The majority of breach proofs tended to resolve without evidence being required, indicating the

scope for resolution at a much earlier stage in the proceedings.

27. The view was expressed that perhaps more work needs to be done on identifying why people breach orders, and providing the appropriate support so that orders will succeed. This can be a complex issue, often with no single cause. However, if people are offending even in part because of their surroundings – their environment, their peer group, and so on – it is likely that these conditions will still be present when they are trying to complete a community-based sentence, increasing the likelihood of breach.
28. This makes broad-based support even more important, but the level of support is not necessarily constant – while there will be social work support in place during the week, it might not be there at weekends, typically a time where the risk of offending might be higher. The informal support offered by the voluntary sector could therefore have an important role to play in supplementing other services and alleviating resource constraints. It could also create different kinds of relationships, helping to address issues without the threat of sanction.
29. Some sheriffs, though, were of the view that they did not get enough information about compliance or otherwise, and that without that consistent relationship there could come a point where the offender would simply roll through successive CPOs, still offending, and listening less and less to the court, to the point where custody became inevitable.

### **Session 3: promoting awareness and understanding**

30. The third session focussed on the issue of promoting awareness and understanding of community-based sentencing.

#### **Discussion**

31. There was general agreement that community sentencing is not the “soft touch” option it is sometimes caricatured as, and that this message needed to be conveyed and reiterated. Discussion revolved around how this could best be achieved.

32. It was agreed that the success of these sentences is key. Firstly, however, there was some consideration of what success actually looked like. While completion of an order, without breach, was undoubtedly one component of success, it was only part of it. For many victims, the sentence itself is beside the point. For them, the most important thing may be knowing that it has worked in the sense that it prevents further offending and ensures that no-one else becomes a victim.

33. It was suggested that detailed research into victims’ views of community justice could be beneficial. There can be a perception of victims as a homogenous group who share broadly the same negative view of community sentences. The reality is more complex and nuanced. Research highlighting this might help to improve public understanding. It might also increase the reporting of certain crimes if it showed evidence of support by victims for community sentences that have been successful in addressing offending.

34. So success – in the form not just of completed orders, but in the form of safer communities – should be publicised. However, prominence should be placed on the “personal story” of an offender’s journey to rehabilitation and positive contribution to the community, not only the statistics: this could help in capturing the engagement of the public, and thus empathy. It was noted that, as disclosed in the Council’s survey<sup>3</sup>, there had been a generally positive reaction to the idea of rehabilitative sentencing, which suggested that people understand more about the way in which the environment of the offender relates to offending than is sometimes thought to be the case. Many members of the public appreciate that community sentences can offer more to the community than imprisonment, and

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<sup>3</sup> <https://www.scottishsentencingcouncil.org.uk/media/1996/20190902-public-perceptions-of-sentencing-report.pdf>

provide structure to the lives of people who have committed offences, with the possible long-term benefit of reducing the likelihood of reoffending.

35. It was agreed that the unpaid work aspect of community-based sentencing was generally well understood by the public, and that there has accordingly been some success in promoting that. However, there is more to community sentences than that, which perhaps needs to be considered as well when thought is being given to public or media awareness and understanding.
36. It was noted that there appeared, sometimes, to be a lack of understanding of the topic on the part of the media and politicians; although some participants wondered whether it was possible that some members of the media and politicians had their own motivations for appearing not to understand. Those who apparently had a lack of understanding of community sentences appear to have a limited appetite for learning more about the topic.
37. In relation to the media, the generally negative coverage of sentencing matters was regretted. There was frustration at the tendency of the media to report that offenders “walk free” from court when a community sentence is imposed, even where this might be a restriction of liberty order or high level community payback order. This could undermine public confidence in such disposals. While there was a growing body of academic literature on the effectiveness of community sentences in reducing reoffending that could be highlighted to the media, something more easily communicable was required. It might be worthwhile engaging with institutions delivering journalism courses and students studying journalism to try to address this.
38. The issue was wider than news reporting, however. It was pointed out that there are many hard-hitting dramas on television about life in prison, but community sentences are often only the focus of comedies or comedy-dramas. These can perpetuate stereotypes about community sentencing, failing to portray the serious nature of the programmes aimed at addressing offending behaviour that such disposals can involve.
39. While the Council was encouraged to continue to engage with the media, in fulfilment of its statutory role to enhance public knowledge of policy and practice, the level of confidence that this would improve the position was not high. However, more than one sheriff spoke positively about local efforts to publicise the work being done as part of an unpaid work requirement. For example, one

sheriff reported that they had, on being appointed to sit at a particular court, arranged to find out what was being done as unpaid work as a consequence of orders imposed at that court: this initiative was reported positively in the local media.

40. It was accepted that the Scottish Government does a lot to promote the worth of community sentences, but more needs to be done to educate politicians and the public as to what community disposals involve. The role of the judiciary was considered, although it was conceded that any explanation provided in court for a particular sentencing decision, perhaps explaining in detail the reason for and nature of a community sentence, was not always reported in full; or, indeed, at all. The extent to which such initiatives could influence public education was therefore limited.
41. Finally, some participants wondered whether restorative justice might have a role to play here as part of a community-based sentence, and one which people would understand and sympathise with. Caution was suggested, however, as negative reporting of restorative justice (suggesting, for instance, that it would be compulsory for victims to participate) had the potential to undermine confidence in it.

## Session 4: future developments in community justice

42. The fourth session focussed on the issue of future developments in community justice.

### Discussion

43. This discussion widened to take in the more general topic of sentencing options which might be made available to Scottish courts, with discussion initially focussing on suspended sentences, which are not presently competent in Scotland. Some support was expressed for their use in Scotland, with participants wondering why they were not available to Scottish courts as they would give sentencers another option besides the apparent binary choice between jail and “not jail”, and perhaps increase the incentive for offenders to comply with supervision were that to be made a condition of a suspended sentence.
44. On the other hand, it was observed that deferred sentences were competent in Scotland and could perhaps achieve most of the same outcomes without the need to create a new form of sentence – the structured deferred sentence was raised again in this regard.
45. It was suggested that removing the restriction of 300 hours in terms of unpaid work, or allowing restriction of liberty orders to go beyond the current limit of one year, could give sentencers greater flexibility without the need to introduce new types of sentence.
46. Hybrid sentences were also discussed – these are essentially prison sentences with a subsequent community sentence to be performed on release. These were viewed particularly favourably by some sentencers: it was noted that specialist support is not always available in prison, and that being able to offer something by way of support after release – for example, for those convicted of serious domestic abuse or sexual offences – would satisfy a number of the purposes of sentencing, including retribution, public protection, and rehabilitation. One of the challenges with such sentences would be in ensuring that the offender had a suitable and stable place to stay upon release from custody. Without this basic element, the community sentence part of the overall sentence would be unlikely to succeed.

47. On balance there was support among participants for the introduction of suspended sentences at least, and for the further exploration of hybrid sentences. But there were two caveats. Firstly, that over-complication should be avoided if possible: if anything, there was a case for the sentencing system being made easier to understand and more transparent. Secondly, it was noted that if new sentencing options were created they would inevitably be used, which created the obvious risks of inadvertently increasing the severity of sentences and of net-widening (bringing into the criminal justice system people who might presently be diverted or dealt with in another way). The consequence could be an increase in sentencing options, but no corresponding increase in the consistency of provision, or resourcing, of existing community sentences.
48. Particular concern was expressed about offenders with mental health problems – prison is unsuitable for some of them, and it may not always adequately address any underlying issues. The programmes available via community sentences may also be relatively transient for such offenders, and fail to provide the long-term support necessary to help them move away from offending. Alternative options would be welcome in this area. In its current business plan, which covers the period 2021-24, the Council notes that a high proportion of offenders have experienced difficulties with mental health or mental illness. While the Council presently has no plans to prepare a guideline on this specific topic, considering it imperative to devote its attention to offence guidelines, it does plan to carry out research and engagement which it hopes will support awareness-raising and other activity in relation to the sentencing of those with mental health and welfare issues and to assist with further consideration of the possibility of developing a guideline in this area.
49. It was noted that, for some offenders for whom a CPO with unpaid work might otherwise be an appropriate sentence, there may not be suitable and available work. (This may, for example, be as a result of the offender's health issues.) This leads to consideration of whether there is scope to be more creative with what work or activity people are asked to engage in. However, given that existing community-based disposals are criticised by some as a "soft option", the danger of this being seen as an even softer option could not be overlooked: perhaps that may depend on greater public and judicial confidence in community sentencing in the first place.
50. On a general level, the Scottish Government confirmed that it is presently revising the guidance given to social workers in preparation of court reports. The



Council expressed a willingness to contribute to that work if asked.

51. Going back to earlier discussions about consistency of provision, there was general agreement among participants that any new sentencing options should apply nationwide, and that it followed that there was a need to be sure that resources are in place on a nationwide basis.
52. Finally, there was some discussion about expanding the scope for early intervention and diversion from prosecution. It was felt more intensive work early on – both in terms of the options available to the Crown in diverting people away from prosecution, or in the Justice of the Peace courts, where some young people could have their first contact with the criminal justice system – might achieve better outcomes than creating new types of sentence at the end of the process, where opportunities for change may be more limited. (This is outwith the remit of the Council.)

## Conclusion

53. In order to achieve the Scottish Government's stated aims of using custody only where there is no alternative, and providing access to a range of consistent, effective community interventions, a robust system of alternatives to custody is required. 'Robust' in this context implies adequate resourcing, and a suite of appropriate sentencing options which is capable of maintaining the confidence of the public and the judiciary.
54. Participants identified a number of barriers to the greater use of community sentences. These included gaps in provision. Sometimes these were geographical, but more often there was a perception that provision for particular cohorts of offenders was insufficient. This included those unwilling to accept their offending behaviour; those convicted of less serious offences; those convicted of offences which might merit a custodial sentence; and those with significant mental health issues. As some members of the judiciary had raised the issue of awareness of what options were available to them when sentencing, the initiative by Community Justice Scotland to provide information about available interventions in specific local authority areas was welcomed.
55. It was generally agreed that confidence in community sentencing is enhanced by robust and proportionate monitoring of the completion of orders. However, this could be at least as much about the provision of appropriate support to offenders to complete an order, as about the swift processing of alleged breaches. Those who are given community sentences are, axiomatically, often those in need of the most support to complete an order successfully, and there is little point in setting people up to fail by imposing an onerous order without the necessary levels of support.
56. There is, in addition, a real need to define accurately what 'success' and 'effectiveness' looks like in this context: it cannot be limited simply to the completion of an order, but must be linked to making communities safer by reducing reoffending. While there is some evidence for the efficacy of community sentencing in this area, most participants agreed that there was a need to convey that evidence in a way which improves and maintains public confidence.
57. The Council, for its part, and acknowledging its statutory objective to 'promote greater awareness and understanding of sentencing policy and practice'<sup>4</sup>, is

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<sup>4</sup> Criminal Justice and Licensing (Scotland) Act 2010 s2

constantly considering how it might contribute to raising awareness of community sentencing, in particular its use and its level of effectiveness.

58. Finally, while participants rejected the caricature of community sentencing as a 'soft-touch' option, it was agreed that there was nonetheless room to consider whether more sentencing options should be made available to sentencers. This might include, for example, an increase in the possible number of hours of unpaid work (beyond the present 300) which can be imposed as part of a community payback order, or allowing restriction of liberty orders to run beyond the present limit of one year. There was also some support for the exploration of suspended sentences or so-called hybrid sentences.
59. At the same time, though, it was noted that public confidence in sentencing can be damaged by a sentencing system which appears unduly complex; and that, with any new sentencing option, care needs to be taken to ensure that the consequence is not an unintended widening of the custodial net, by bringing in those who would previously have been considered for a disposal which did not involve the use of custody in any form.
60. The Council offers no view on these proposed reforms beyond reiterating that, in its view, the question of public and judicial confidence in community sentencing goes hand-in-hand with the provision of an adequate level of resourcing.