

# **Community Justice Scotland**

**Sentenced to Smart Justice:  
A report on proposed extension of the  
Presumption Against Short Sentences**

**May 2019**

## Presumption Against Short Sentences (PASS)

A Presumption Against Short Sentences (PASS) was implemented in Scotland in February 2011. This stated that “a court must not pass a sentence of imprisonment for a term of 3 months or less on a person unless the court considers that no other method of dealing with the person is appropriate”.

In the Programme for Government 2017, the Scottish Government announced that a proposal to extend PASS from 3 to 12 months would be laid before Scottish Parliament. As with the initial implementation of PASS in 2011, the proposal entails a presumption against short sentences and not a ban.

## Sentencing: Recent Trends

Since 2011, the number of community sentences has increased, largely driven by the introduction and subsequent uptake of the Community Payback Order (CPO). This trend has declined in recent years. Since 2015-16 the number of community sentences has reduced, and a decrease of 10% was observed between 2016-17 and 2017-18. This mirrors an overall drop in total convictions and compares with a 6% decrease in custodial sentences.

The number of custodial sentences under 12 months has decreased significantly, from 13,119 in 2011-12 to 9,486 in 2017-18. This is particularly the case for sentences of 6 months or less.



Sentences in Scotland, 2017-18

## Sentencing: Potential Future Trends

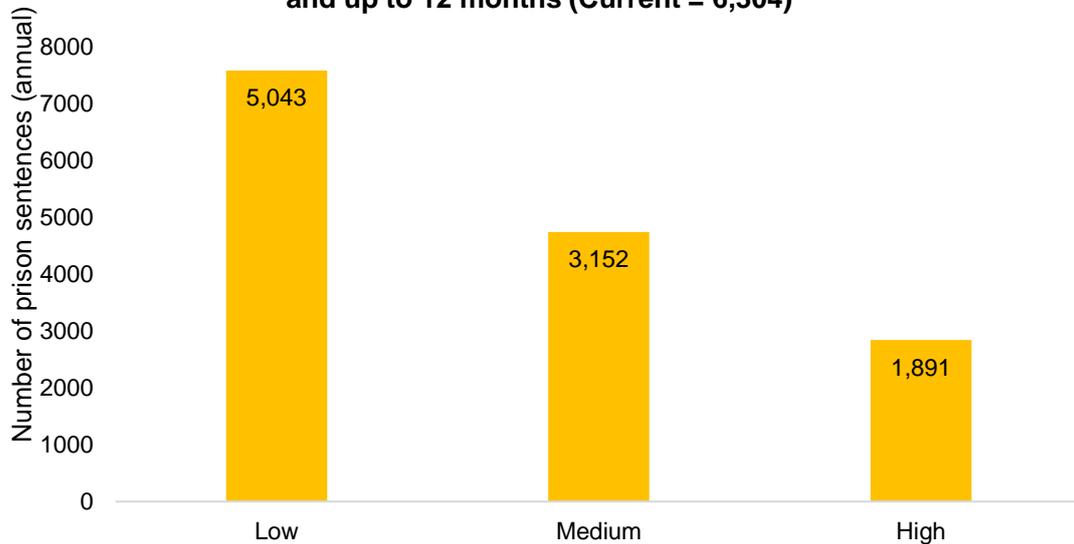
The effects, in terms of increase in numbers of community sentences, of extending PASS to 12 months are difficult to predict. The intention behind the extension of PASS is for people who may previously have been given a short prison sentence to instead receive an appropriate community-based disposal. If this aim is successful, people who previously might have been in prison will instead serve their sentence in the community.

To explore what a shift from custodial to community sentences might look like following an extension to PASS we can use current data to project possible scenarios:

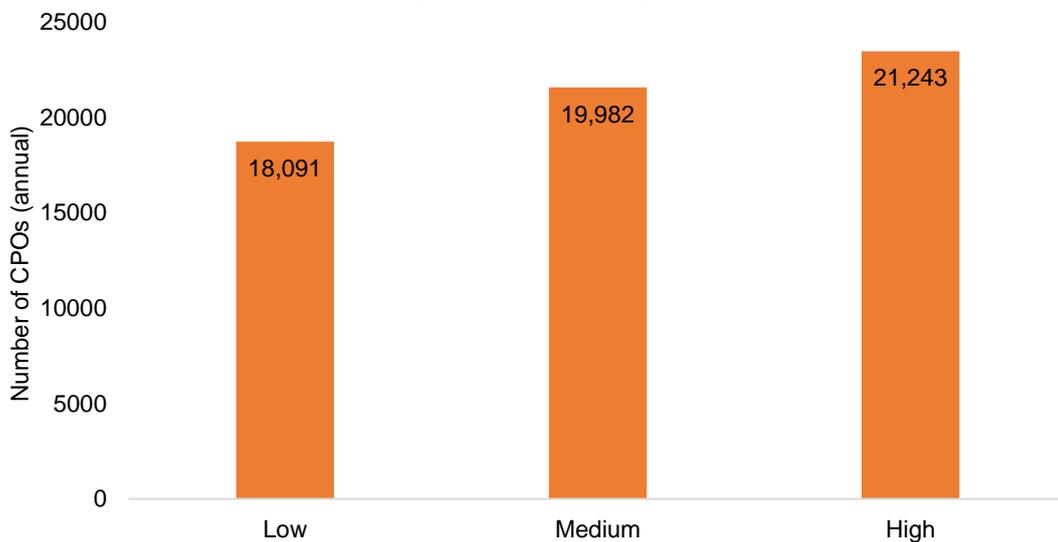
- **LOW** impact of PASS: **20%** of custodial sentences of 3-12 months become community sentences;
- **MEDIUM** impact of PASS: **50%** of custodial sentences of 3-12 months become community sentences;
- **HIGH** impact of PASS: **70%** of custodial sentences of 3-12 months become community sentences.

The following two figures show the projected resulting number of prison sentences of 3-12 months (Table 1) and increase in community sentences (Table 2) in line with the three scenarios listed above<sup>1</sup>.

**Table 1. Resulting numbers of custodial sentences over 3 months and up to 12 months (Current = 6,304)**



**Table 2. Projected Number of Community Payback Orders (Current = 16,830)**



At a national level even a low conversion rate of prison to community-based sentences would result in a noticeable increase in the number of people completing CPOs (7.5% increase, or 1,261 additional community sentences).

<sup>1</sup> These projections do not account for the rate of change over time following any legislative amendment, as there is no available measure for this. However, they are indicative of what the picture of prison and community sentencing could look like in absolute terms.

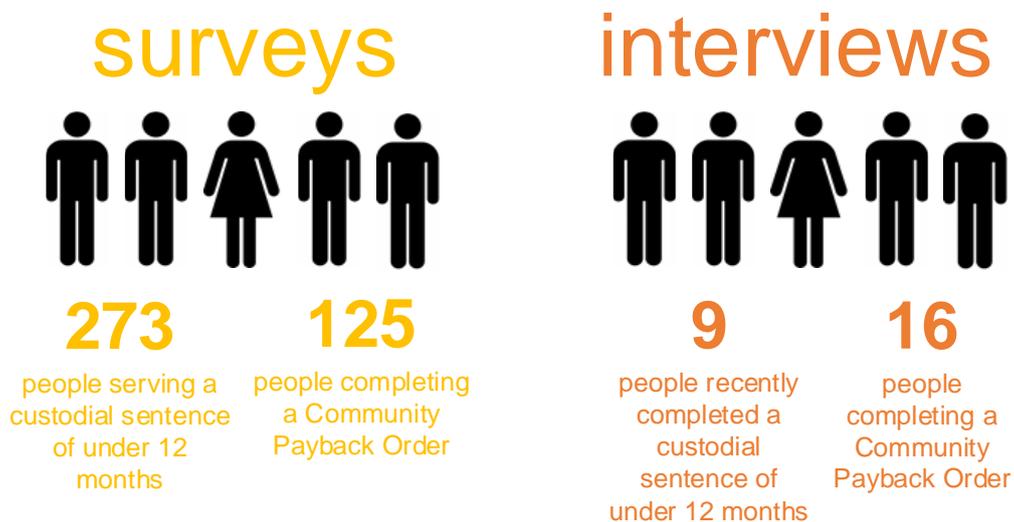
In order to plan for an increase in the number of people completing community sentences, we need to understand the daily and longer-term needs of those people. People serving short prison sentences face a range of issues that might require support, including housing, health, addiction, finance and benefits<sup>2</sup>. Usually these issues are complex and closely linked, with individuals rarely experiencing them in isolation.

In 2018, Community Justice Scotland (CJS) conducted research into the needs of people completing custodial sentences under 12 months and people completing community sentences, in order to understand the potential increase in support and service that might be required in local areas following an extension to PASS.

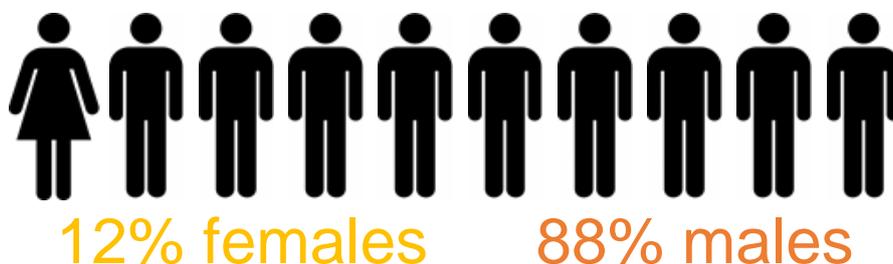
## Community Sentence Research

### Methodology

Research was carried out for CJS by Progressive Partnerships, an independent research organisation. A mixed-methods approach including surveys and in-depth interviews were carried out across the Scottish Prison Service estate and Local Authority Areas.



### Sample

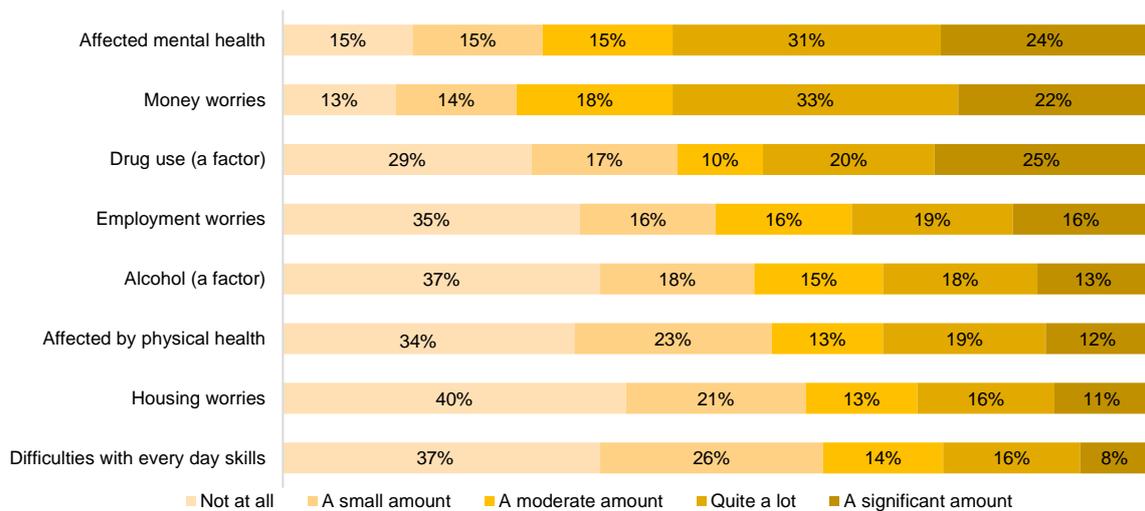


<sup>2</sup> Reid-Howie Associates, Evaluation of the SPS Throughcare Support Service, May 2017.

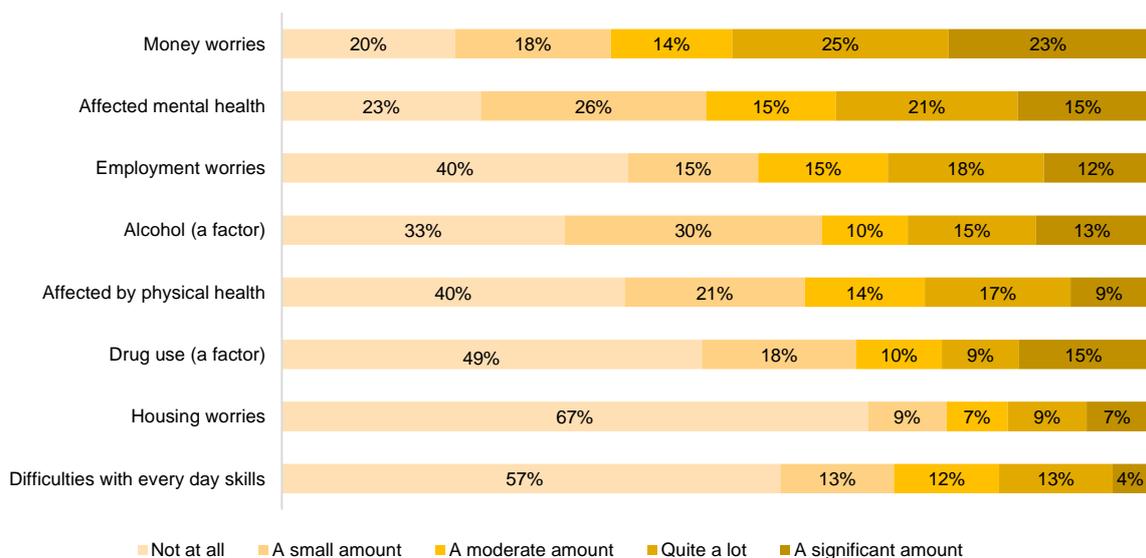
The majority of the sample were male across both prison and CPO groups<sup>3</sup>. The majority of the sample were aged between 25 and 44 years old and there was no real difference in age between those people completing a custodial sentence and those completing a CPO.

## Overview

Overall, people sentenced to a prison sentence of 12 months or under reported being affected by mental health issues, money worries and drug use prior to sentencing, ranked by positive response:



Overall, people sentenced to a CPO reported being affected by money worries and mental health issues prior to sentencing:



## Mental Health

<sup>3</sup> Gender breakdown: Prison: male 86%, female 14%; CPO: male 92%, female 8%

## **A statistically higher proportion of people in prison stated that they were affected by mental health problems compared to those completing a CPO<sup>4</sup>.**

Those completing a CPO were more likely to state that they were not affected, or were only affected a small amount, by mental health problems compared to those in prison<sup>5</sup>.

Around two thirds of those affected by mental health problems were receiving some form of help or treatment before being sentenced. The level of help received tended to be a small or moderate amount.

### **Money Worries**

Money appeared to be one of the biggest worries that people had prior to sentencing, with 85% of the total sample stating that their day-to-day life was affected by money worries.

Around half of both those in prison and those completing a CPO<sup>6</sup> stated that money worries impacted on their day a lot or a significant amount.

### **Drug Use**

Overall, 65% of people said that drug use was a factor in their life prior to sentencing<sup>7</sup>.

Significantly fewer people completing a CPO said that drug use played a part in their life 'quite a lot' or a 'significant amount' compared to those in prison<sup>8</sup>.

Over half<sup>9</sup> of the total sample stated that drug use was a contributing factor in their offending to some extent:

## **A statistically higher proportion of people in prison said that drug use contributed to their offence compared to those completing a CPO<sup>10</sup>.**

### **Alcohol Use**

A very similar proportion of people said that alcohol was a factor in their life to some extent<sup>11</sup>.

60% of both groups said that alcohol contributed to their offence to some extent. 26% of both groups said that alcohol contributed to their offence a 'significant amount'.

### **Employment**

<sup>4</sup> People affected by mental health problems 'quite a lot' or a 'significant amount': Prison 55%; CPO 36%

<sup>5</sup> People not affected, or only affected a small amount, by mental health problems: Prison 15%, 15%; CPO 23%, 26%

<sup>6</sup> People who stated that money worries impacted on their day to day life 'quite a lot' or a 'significant amount': Prison 55%; CPO 48%

<sup>7</sup> People who said drug use was a factor in their life: Prison 71%; CPO 51%

<sup>8</sup> People who said drug use played a part in their life 'quite a lot' or a 'significant amount': Prison 20%, 25%; CPO 9%, 15%

<sup>9</sup> 52%

<sup>10</sup> People who said that drug use contributed to their offence a 'significant amount': Prison 31%; CPO 17%

<sup>11</sup> People who said that alcohol was a factor in their life to some extent: Prison 63%; CPO 67%

A significantly higher proportion of people in prison were unemployed prior to sentencing compared to people completing a CPO<sup>12</sup>. Those completing a CPO were significantly more likely to have been working full-time prior to sentencing.

## Physical Health

Overall, around two-thirds<sup>13</sup> of people said that their life was affected by physical health problems to some extent.

Three quarters of those who were affected by physical health problems were getting help or treatment to some degree. Those completing a CPO were more likely to state that they received 'quite a lot' or a 'significant amount' of help compared to those in prison<sup>14</sup>.

## Accommodation

People completing a CPO were more likely to have accommodation at the point of sentencing compared to those in prison<sup>15</sup>.

## Everyday Life

People completing a prison sentence were more likely to say that their life was affected by difficulties with everyday skills (e.g. reading, writing, cooking, bills) prior to sentencing than those completing a CPO<sup>16</sup>.

**A statistically higher proportion of people in prison said it was difficult to attend appointments on time compared to people completing a CPO<sup>17</sup>.**

The majority of people were registered with a GP<sup>18</sup>. Of those registered, over two-fifths had been to the GP more than 3 times in the 12 months prior to sentencing. This was particularly the case for those in prison<sup>19</sup>.

Overall, over a quarter of the total sample said it was difficult to complete everyday tasks. People in prison were less likely to state that this was easy compared to those completing a CPO<sup>20</sup>.

Overall, 18% of the total sample said they found it difficult to look after themselves; half of the total sample said it was easy.

## Relationships

<sup>12</sup> People who said they were employed prior to sentencing: Prison 58%; CPO 45%

<sup>13</sup> 64%

<sup>14</sup> People who said they were getting 'quite a lot' or a 'significant amount' of treatment: Prison 16%; CPO 29%

<sup>15</sup> People who said they had accommodation prior to sentencing: Prison 84%; CPO 96%

<sup>16</sup> People who said their life was affected by difficulties with everyday skills: Prison 63%; CPO 43%

<sup>17</sup> People who said it was difficult to attend appointments on time: Prison 41%; CPO 24%

<sup>18</sup> People registered with a GP: Total sample 90%; Prison 87%; CPO 95%

<sup>19</sup> People registered with a GP and attending 3 times in 12 months: Prison 48%; CPO 32%

<sup>20</sup> People who said that it was easy to complete everyday tasks: Prison 34%; CPO 46%

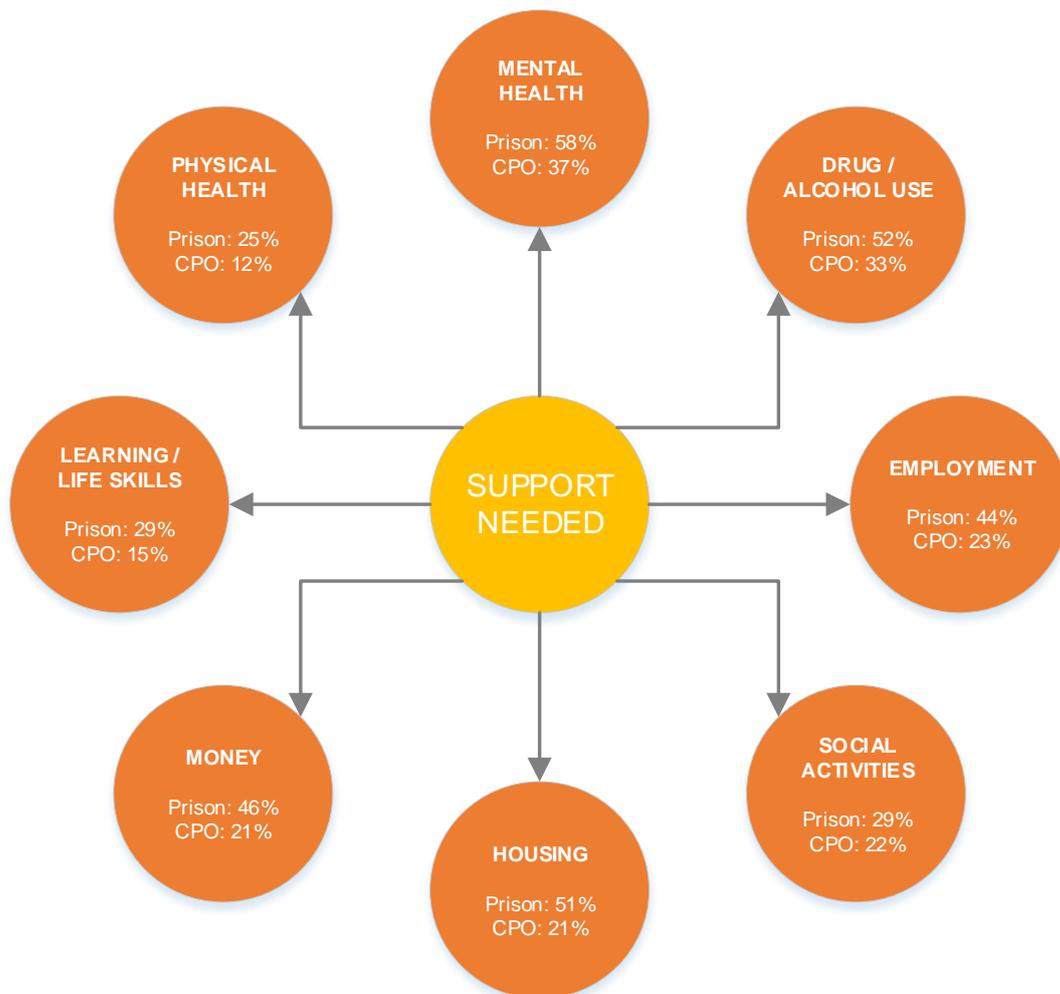
Half of the total sample said that their relationships with family and friends was good or excellent<sup>21</sup>.

**A statistically higher proportion of people completing a CPO said that their relationship with professionals was good or excellent compared to people in prison<sup>22</sup>.**

People in prison were more likely to say that it is difficult to keep good relationships with people compared to people completing a CPO<sup>23</sup>.

**End of Sentence**

**When asked what would help them to stop re-offending in the future, a statistically higher proportion of people in prison said they needed support in each of these areas:**



<sup>21</sup> People who said that their relationship with family was good or excellent: Prison 47%; CPO 58%

People who said that their relationship with friends was good or excellent: Prison 40%; CPO 53%

<sup>22</sup> People who said that their relationship with professionals (social workers, health workers etc.) was good or excellent: Prison 24%; CPO 60%

<sup>23</sup> People who said it was difficult to keep good relationships: Prison 33%; CPO 21%

## Summary of Findings and Conclusion

### Extension of PASS

Community Justice Scotland supports the extension of PASS. Evidence shows that short-term prison sentences are not effective in meeting a person's needs and reducing their likelihood of reoffending, and in fact often do more harm than good.<sup>24</sup>

We need to understand the potential implications of the extension of PASS in order to ensure that people are supported to complete a CPO, and to address the issues which led them to offend. For a cohort of people who have often experienced trauma and lead chaotic lives, we must recognise the range and extent of issues experienced and support required in order to both complete a CPO but also to live successful, happy lives in their communities.

### More people will be serving community sentences

Since the announcement in the Programme for Government 2017, we have known that following the extension to PASS there may be an increase in the number of people who are serving community sentences rather than short prison sentences.

Of the forecasts provided by Justice Analytical Services, even a 'LOW'<sup>25</sup> uptake would result in approximately 1,300 additional people across Scotland receiving community sentences. If the policy has greater impact, then numbers could further increase. It is likely some of this number will require additional support to complete their sentence successfully. Local Authority areas and service providers need to be able to meet this demand for support.

### People may have more complex needs

Not only will an increase in numbers of people serving community sentences be apparent following the extension of PASS, but this research suggests that a proportion of these people may have more complex needs that will require more support than the current 'average' person completing a CPO.

A significantly higher number of people serving a sentence of 12 months or under reported that prior to being sentenced they had issues with their mental health and with drug use. Local Authority areas and service providers, especially working on these issues, need to be prepared to support the increased demand for such services.

A significantly higher number of people serving a sentence of 12 months or under also reported wanting support in a wide range of areas in their lives in order to stop future reoffending. If we want to reduce re-offending across Scotland, we need to address these areas and provide people with the support that they need.

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<sup>24</sup> Scottish Government <https://www.gov.scot/publications/works-reduce-reoffending-summary-evidence/>

<sup>25</sup> LOW = 20% of custodial sentences become community sentences

## Implications for sentencing

Sentencing someone to custody should be primarily based on the offence a person has committed and their risk to the public. Our research has shown that people serving community sentences are more likely to have had stable employment and housing at the point of sentencing. Of all potentially criminogenic needs, these two are arguably the least likely to be addressed in a prison environment. It is impossible to say if these factors had a direct influence on the decision making underlying their being sentenced to a CPO rather than custody, but it raises a question for sentencers to consider with community justice partners – are homeless and unemployed people more likely to receive a custodial sentence because their circumstances inflate their potential risk? Could these primary needs be better addressed in the community, alongside rehabilitative work to address the causes of their offending?

## Wider implications for PASS

Increased numbers of people on CPOs, and potentially an increase in complexity of need, have to be supported by a range of service providers across Scotland. It should be noted that the needs identified in this research are not those that can be met solely by services provided by Criminal Justice Social Work. Many relate to needs which are more usually addressed through routine public services. A range of partners, including third sector and Community Justice statutory partners, require strategic coordination to meet the needs of people in communities.

For some of the cohort considered in this research, a CPO without appropriate support would carry a danger of setting them up to fail. Without support to attend appointments, how can we expect a person not to breach a CPO? Without support with everyday tasks, how can we expect people to live successful lives? If a person does not have a home, or has mental health issues or substance misuse issues, should we expect them to comply with the requirements of a community sentence? The need for appropriate support is critical.

Perhaps wider, holistic reform is required in order to support people to complete a community sentence, ensure that they pay back to their community for the offence committed, and also address their needs and support them to address the issues they face.

## Smart justice

Community Justice Scotland is the lead body for community justice in Scotland. We advocate the use of high quality, evidence-based interventions for people involved in offending, delivered in partnerships involving statutory and non-statutory bodies, including the third sector and communities and involving people with lived experience, because that is the best route to reducing offending and making Scotland a safer, healthier nation.

Community Justice Scotland supports the extension of PASS. This evidence suggests the challenge arising from the extension of PASS may be complex, and require innovative and coordinated planning on the part of community justice partnerships, and it will come with a learning curve. It may also require additional resource, but it is impossible to ascertain to what degree. We have faith that community sentences, based on best practice, evidence-based interventions delivered in partnership by a range of statutory and third sector providers, are for many people with convictions the best way to reduce and prevent future offending.

## Limitations and Further Research

This research considered two groups as comparable – those who have received sentences of up to 12 months and those who have received community payback orders. However, both groups are diverse and wide-ranging in their individual characteristics and caution must be used when treating them as comparable. Sentencing decisions are complex, taking into account a wide range of individual and environmental factors specific to the offence committed, the person convicted, and the impact of the offence on the victim. It should be noted, however, that the law underlying PASS makes no such distinction. In effect it means that anyone who is under consideration for a custodial sentence of less than twelve months should be considered as potentially viable for a community-based sentence in the first instance.

Whilst efforts were made to contact the whole population of those people serving a prison sentence of 12 months or less, the response rate (22%) means that a relatively small sample was obtained. A 34% response rate was achieved from those people completing a CPO. These limited numbers mean that caution should be used when generalising results to wider populations.

Access to the Scottish Prison Service estate in order to distribute questionnaires and provide support to those people completing them was not available during this research. This may have contributed to the low numbers of people completing the questionnaire as it was not accessible for those people with literacy issues, for example. These results may, therefore, not be an accurate reflection of the level of needs of those people serving short term prison sentences. This is a limitation of the research findings and the methodological design should be considered to mitigate this should the research be repeated.

It has been suggested that any extension to PASS will only impact on those at the margins of the population who serve prison sentences of under 12 months i.e. those who might have received a prison sentence of 3-6 months may be more likely to receive a CPO instead compared to those who would receive a prison sentence of 9-12 months. This might mean that the needs of people receiving a CPO instead of a short-term prison sentence are not dissimilar to those people already serving a CPO. In this case, any increase in demand for services could be solely based on an increase in numbers and not necessarily an increase in complex needs. This is based on specific scenario planning, however, and an extension to PASS should mean that anyone who would have been given a custodial sentence of under 12 months should be considered for a community sentence instead.

Should this research be repeated, it would be important to consider the offence type and specific sentence length so that closer comparison between the two groups could be made; this is a limitation within the current research.

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