

Community Justice Scotland
Ceartas Coimhearsnachd Alba

Community Payback Orders 2017-18:
Analytical review of unsuccessful outcomes

Contents

1. Background and introduction	2
2. Extent and nature of CPOs imposed	2
3. CPO terminations.....	3
4. CPO completion and non-completion	4
Outcomes by gender and age	5
Outcomes by employment status	7
Outcomes by requirement type and number of requirements imposed.....	7
5. CPO failure and breaches	8
Breach applications by demographic characteristics	8
Breach applications by number of applications made	9
Breach applications by length of supervision order	11
Deaths during CPOs	11
6. Gaps in the data.....	12
Breach application process	12
Variation and revocation	12
“Other” outcomes	13
7. Key findings	15
8. Areas for further review	15

Community Payback Orders: Analytical review of unsuccessful outcomes

1. Background and introduction

Criminal Justice Social Work statistics for 2017-18 reported that 30% of Community Payback Orders (CPOs) in Scotland were not successfully completed¹. This report aims to explore this in further detail, including the reasons behind the unsuccessful completion of CPOs, whether there are any observable patterns amongst those people who did not complete them, and the types of order they have been given.

The CPO was introduced in February 2011, replacing community service orders, supervised attendance orders and probation orders². The legislation governing these disposals, the Criminal Procedure (Scotland) Act 1995, was amended by the Criminal Justice and Licensing (Scotland) Act 2010.

There are nine requirements that may be imposed as part of a CPO:

- Compensation requirement
- Offender supervision requirement
- Unpaid work or other activity requirement
- Programme requirement
- Residence requirement
- Mental health treatment requirement
- Drug treatment requirement
- Alcohol treatment requirement
- Conduct requirement

Since their introduction, the use of CPOs has increased from 10,228 in 2011-12, peaking at 19,451 in 2015-16 and reducing slightly to 17,834 in 2017-18³.

2. Extent and nature of CPOs imposed

The majority of people on a CPO receive either one requirement (60%) or two requirements (31%). Less than one in ten receive three or more requirements (Chart 1)⁴.

Among those with just one CPO requirement, unpaid work or other activity is the most common type, applying to almost three quarters (72%) of this group. The remainder (28%) received an offender supervision requirement.

¹ Scottish Government (2019), Criminal Justice Social Work Statistics 2017-18.

² Scottish Government (January 2019), CPO Practice Guidance.

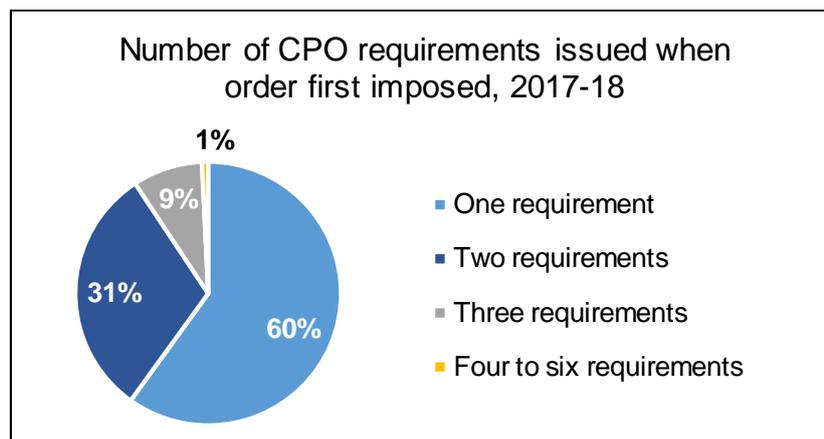
³ Scottish Government (2019), Community Payback Orders 2017-18.

⁴ Scottish Government (2019), Criminal Justice Social Work Statistics 2017-18.

Among those who received two requirements as part of their CPO, unpaid work and offender supervision was the most common combination of disposals (74%). Offender supervision combined with a conduct order (12%) or programme order (8%) were the next most common combinations.

This pattern is replicated among people receiving three requirements, with the most common combinations involving unpaid work and offender supervision with either compensation (31%), conduct (31%) or programme orders (24%). See section 5 for information on the relationships between the number of requirements imposed and relatively success of a CPO.

Chart 1



3. CPO terminations

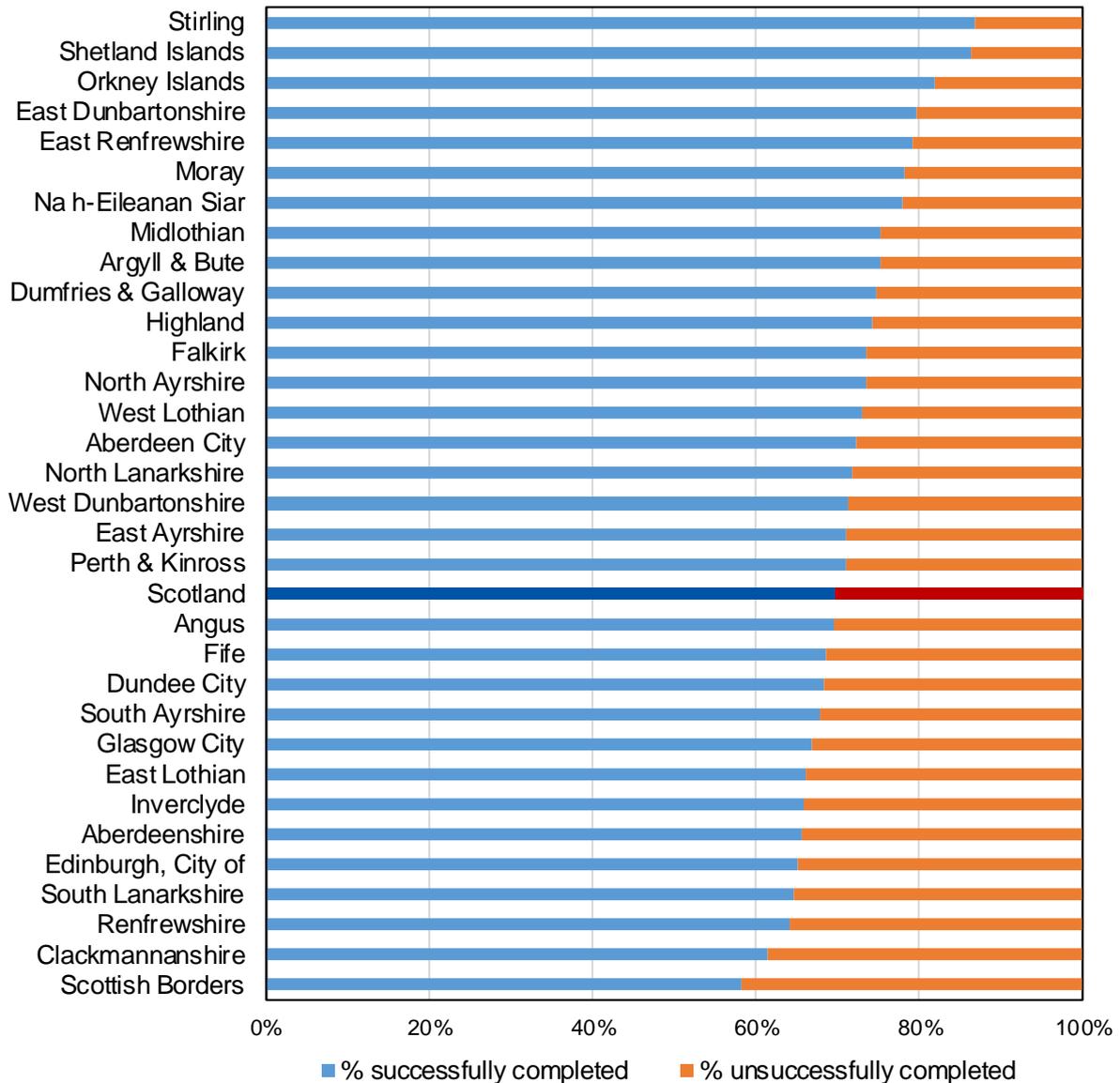
The final outcome of a CPO is recorded against one of eight categories. The first two are categorised in statistics publications as a 'successful' completion, while the remainder are counted as unsuccessful outcomes (excluding transfer and outcome unknown).

1. Order successfully completed
2. Early discharge
3. Revoked due to review
4. Revoked due to breach
5. Transfer out of area
6. Death
7. Other
8. Not known

Each year, a significant proportion of orders is not successfully completed. In 2017-18 this applied to almost a third (30%) of cases, a figure which has remained relatively consistent since the introduction of CPOs in 2011. However, success rates vary across Scotland, varying from 58% up to 87%.

Chart 2

Proportion of successful to unsuccessful CPOs terminated, 2017-18



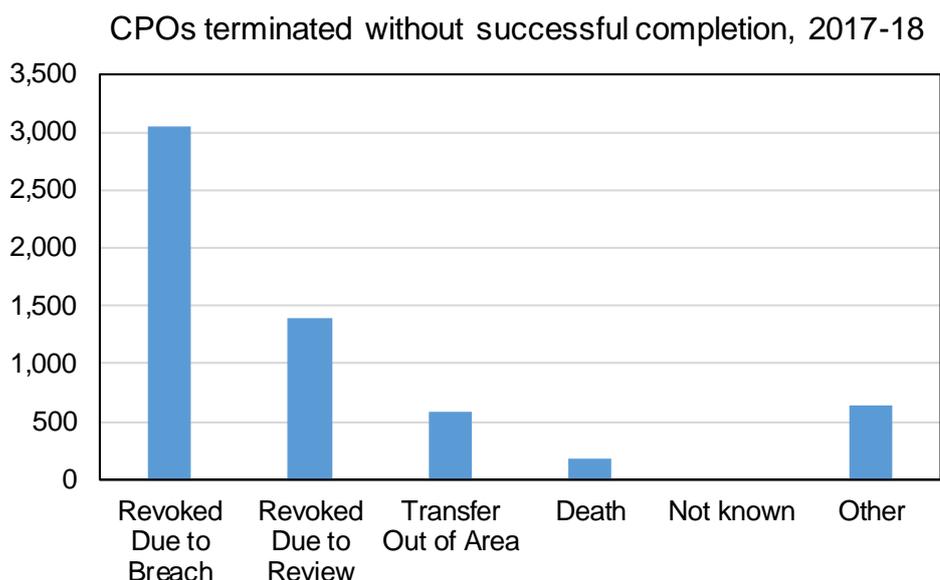
This report aims to explore the range of factors which contribute to these varying success rates.

4. CPO completion and non-completion

Criminal justice social work are required to report on a range of specified data to the Scottish Government every year. Chart 3 shows the reasons reported for non-completion of CPOs in 2017-18⁵.

⁵ Scottish Government (2019), Community Payback Orders 2017-18.

Chart 3



Excluding cases recorded as having transferred out of the area or where the reason for termination was not known, the recorded outcomes of CPOs break down proportionally as follows:

Table 4

Reason for termination	% of CPOs terminated	% of CPOs not successfully completed
Successfully completed/early discharge	70%	-
Revoked due to breach	18%	58%
Revoked due to review	8%	26%
Death	1%	3%
Other	4%	12%

The most common reason for CPO failure is **breach** (18%), followed by **revocation due to review** (8%), unspecified '**Other**' reasons (4%) and **death** (1%).

Outcomes by gender and age

Of all CPOs terminated, 84% were male and 16% were female. Overall, women are more likely to complete their CPO successfully or be discharged early, than men (71% vs 67%). Among the reasons for CPO failure there are no great differences in outcomes between men and women.

We can, however, learn a lot from the age distribution across CPO outcomes from 2017-18 (Table 5).

Table 5

CPO Outcome	Age											
	Total	%	Under 25	%	25-29	%	30-34	%	35-39	%	40+	%
Total	17,965	-	5,292	-	3,172	-	2,832	-	2,295	-	4,374	-
Successfully completed	11,566	64%	3,163	60%	1,941	61%	1,762	62%	1,498	65%	3,202	73%
Early discharge	546	3%	156	3%	90	3%	74	3%	56	2%	170	4%
Revoked due to review	1,393	8%	405	8%	244	8%	242	9%	182	8%	320	7%
Revoked due to breach	3,049	17%	1,127	21%	639	20%	509	18%	372	16%	402	9%
Transfer out of area	589	3%	217	4%	117	4%	98	3%	71	3%	86	2%
Death	180	1%	19	0%	23	1%	25	1%	30	1%	83	2%
Other	642	4%	205	4%	118	4%	122	4%	86	4%	111	3%

The likelihood of having a successful outcome increases significantly as age increases. For example, fewer than two thirds (63%) of those aged 25 and under achieved a successful CPO outcome, compared with over three quarters (77%) of those aged 40 and over.

Younger people are also much more likely to have their CPO revoked due to breach. This applied to only 9% of people over 40, a figure which is over double (21%) for those aged under 25.

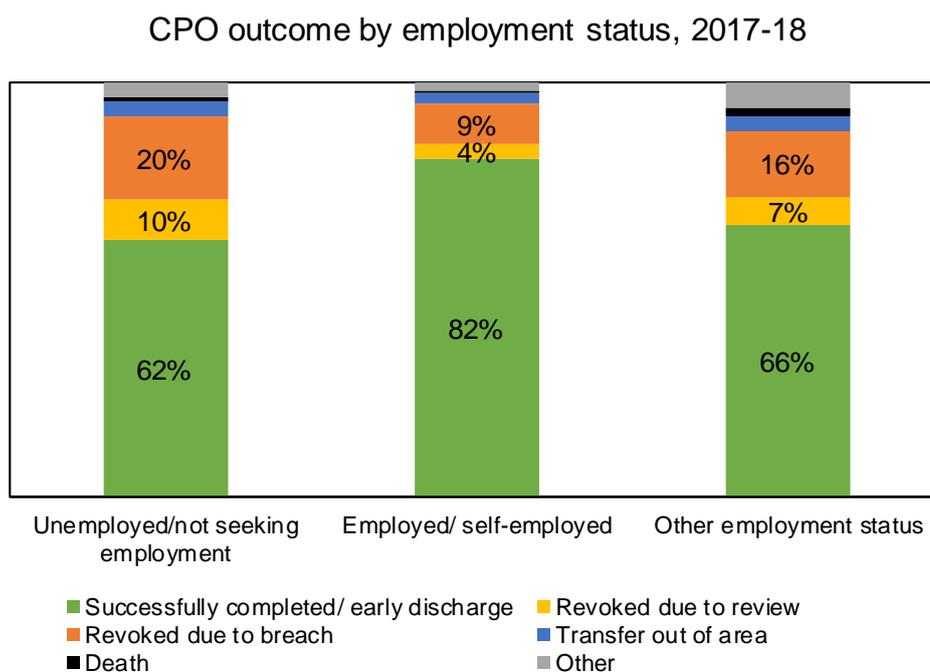
It appears that the younger a person is, the worse chance they have of achieving a successful outcome in their CPO.

Outcomes by employment status⁶

Almost two thirds (63%) of people on a CPO are classed as unemployed or not seeking employment, and one quarter (25%) are employed. (As a point of comparison, over half (53%) of people on Fiscal Work Orders are employed and only one quarter (26%) are unemployed.)

Yet, among this smaller cohort of employed individuals, the likelihood of a successful CPO outcome is significantly higher (81%) than those who are unemployed (62%), and the likelihood of breach is significantly lower (9% vs 20%)⁷.

Chart 6



Outcomes by requirement type and number of requirements imposed

Success rates remain fairly consistent regardless of the number of CPO requirements imposed on an individual⁸. Of those with just one requirement, 68% end successfully or are discharged early, and for those with two or more requirements the figure is 66%.

Success rates are also relatively consistent across the most common requirements: unpaid work (67%), offender supervision (68%) and compensation orders (71%). They are lowest for drug treatment orders (46%) and residence requirements (44%), although it is important to note the small numbers concerned in these cases.

⁶ Employment status categories of 'full-time education', 'on Government training scheme', 'economically inactive', 'other' and 'not known' have been merged together due to small base sizes.

⁷ Scottish Government (2019), Criminal Justice Social Work Statistics 2017-18.

⁸ As above.

The following sections examine the reasons for unsuccessful terminations in further detail.

5. CPO failure and breaches

When an individual is considered to have breached the requirements of their CPO, a breach report is submitted to court for consideration. This could happen in a range of scenarios, for example an individual not meeting a serious aspect of their requirement (eg. attempting to contact a victim), a sustained period of minor 'failures' in CPO compliance, or the reasons provided by the individual for non-compliance being considered unacceptable⁹.

In 2017-18, 5,755 breach applications for CPOs were made. Against guidelines, one sixth (16%) of these were not lodged with court within five working days of the decision to breach.

In total, 3,049 CPOs were subsequently revoked due to breach, which amounts to just over half (53%) of breach applications made. (It is to be assumed that only in exceptional cases would a CPO be revoked due to breach without the submission of a breach report.)

Breach applications by demographic characteristics

Gender

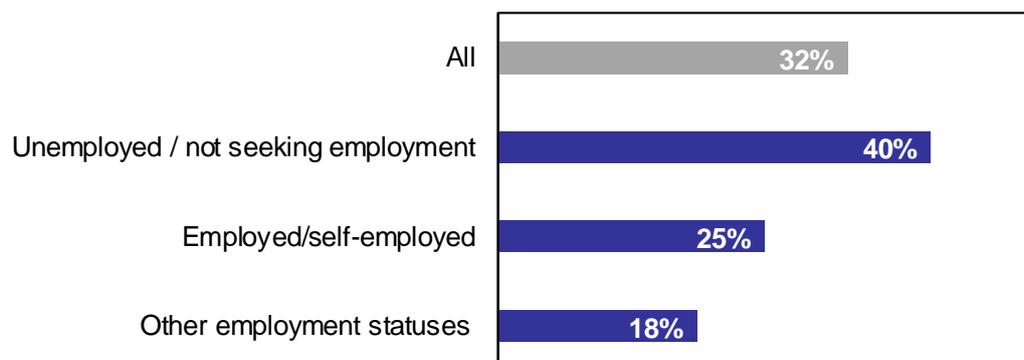
On average, men (33%) are more likely than women (27%) on a CPO to be the subject of a breach application.

Employment status

We know that overall CPO outcomes are better for those in employment (Table 6). The data also shows that people who are unemployed are significantly more likely to receive a breach applications compared to others (Table 7).

Chart 7

% CPOs commenced subject to breach application by employment status, 2017-18



⁹ Scottish Government (2019), CPO Practice Guidance.

Breach applications by number of applications made

More than one breach application can be made before the decision to revoke is taken by the court. Chart 8 illustrates the breakdown of CPOs terminated by the number of breach applications submitted.

Chart 8

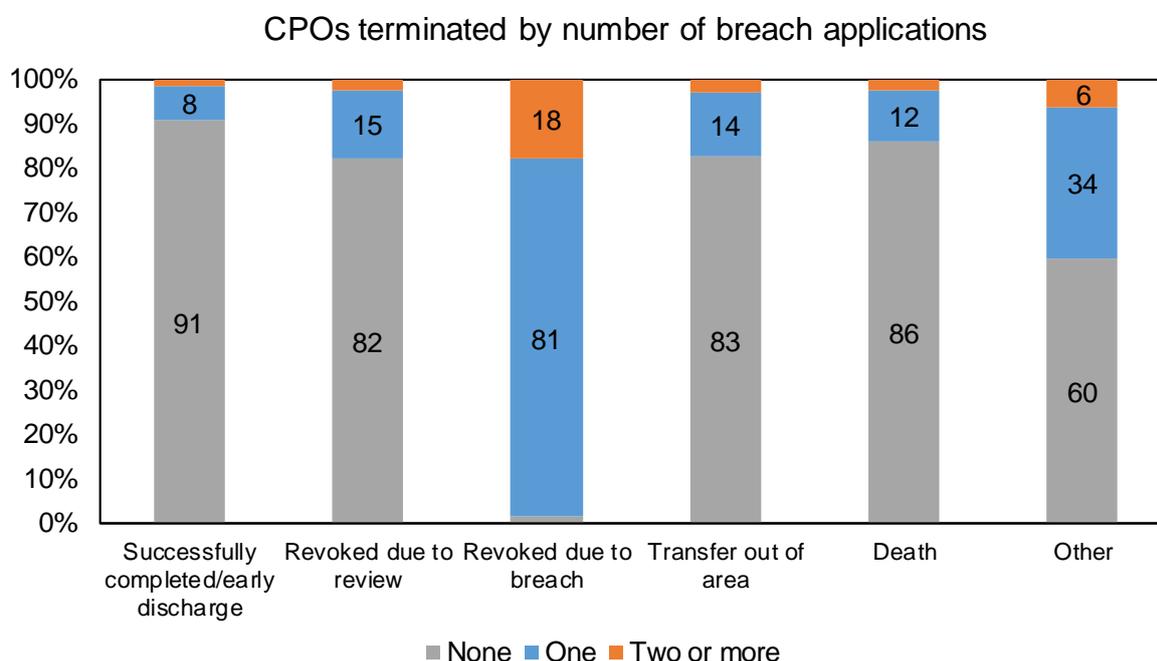


Chart 8 shows:

- Across all terminated CPOs, in the majority of cases a breach application is not made. This applies to three quarters (74%) of cases.
- However, among CPOs that were successfully completed, one tenth (10%) were subject to one or more breach application. It is notable that in spite of this, the CPOs were still completed successfully.
- Unsurprisingly, the highest level of breach applications can be seen in those cases which were revoked due to a breach of order requirements (99% of cases). Most were terminated at the point of the first breach report (81%), and nearly one fifth (18%) were subject to two breach applications. However, this leaves 1% (or 35 cases) which have been reported as being revoked due to breach without the submission of a breach application.
- There is a high level of ambiguity around the use of breach applications in cases which ended with an outcome of 'other'. More than a third (40%) of cases in this category were subject to one or more breach applications. Further investigation is needed to understand the nature and use of breach applications in cases with no recorded outcome, and whether there is any relationship between CPO outcome and grounds for breach. This information is currently unavailable.

Prior to breach application, up to two warnings are delivered to the individual at risk of breach. Any warnings issued on any requirements count towards a total figure for

overall compliance¹⁰. Therefore, an individual could receive one warning on each of two separate requirements and be subject to a breach application.

Table 9 shows that individuals with more requirements attached to their CPO are more likely to have a breach application. There is a level of disconnect in the sense that people with the greatest number of requirements may be likely to have the greater number of – or complexity of – needs, and therefore may find it the most difficult to adhere to the requirements of their order.

The below figures are reported on by CPO, and cross-tabulated against the number of order requirements imposed on each CPO.

Table 9

	No. requirements imposed on order		
	1	2	3+
Total number of orders	10,687	5,493	1,654
Breach applications made	3,364	1,775	616
% requirements with breach application	31%	32%	37%

The data does not suggest there are any significant differences in the prevalence of breach applications by the type of requirements imposed, applying to roughly one third of cases. However, breach applications are a little less common among offender supervision requirements, and more common among drug treatment requirements (Table 10).

The figures below are reported on by CPO *requirements* imposed, so individual CPOs are counted more than once in the table.

Table 10

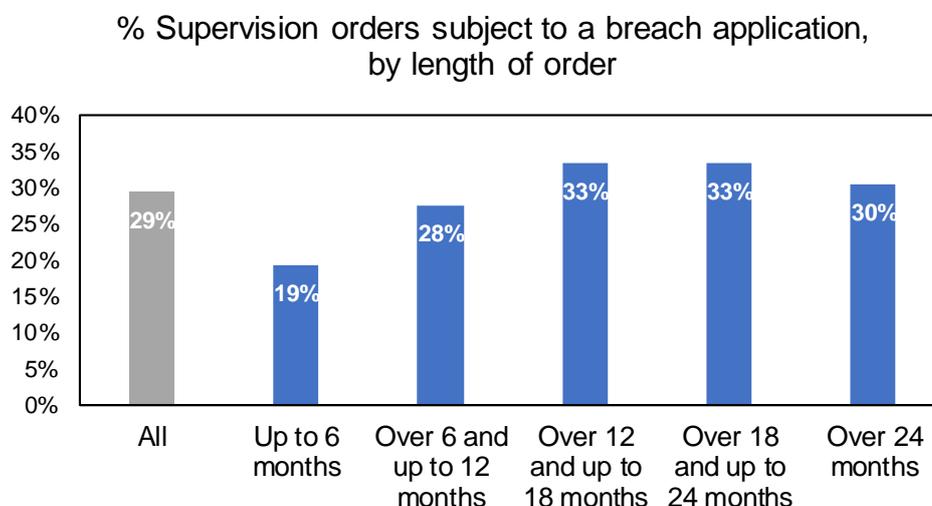
	Unpaid work or other activity	Offender supervision	Conduct	Programme	Compensation	Alcohol treatment	Drug treatment
Total requirements imposed	13,598	10,026	1,250	885	602	234	155
Breach applications made	4,732	3,012	428	290	211	73	69
% requirements with breach application	35%	30%	34%	33%	35%	31%	45%

¹⁰ Scottish Government (2019), CPO Practice Guidance.

Breach applications by length of supervision order

The length of supervision order imposed has a small effect on the likelihood of a breach application being made. It is least likely for the shortest of orders, and the incidence increases as the length of order increases, although this pattern trails off for the longest of orders over 24 months (Chart 11).

Chart 11



Deaths during CPOs

The mortality rate among people on CPOs is not insignificant: in 2017-18, 180 cases ended due to death. However, it is important to note this does not necessarily constitute 180 unique deaths as this figure is reported on by CPO requirement (therefore, multiple deaths can be recorded against an individual). The number of deaths recorded while on CPO is still included in the calculation of successful versus unsuccessful CPO outcomes.

The average number of CPO requirements per individual is 1.5¹¹. On this basis, a rudimentary estimate might suggest 120 unique deaths occurred. A figure of 120 equates to 0.67% of all CPOs terminated ending due to death. This does not, however, account for the varying likelihood of death based on CPO requirement type (for example, mental health treatment requirement, or drug treatment requirement). Death rates are slightly higher among older recipients of CPOs (Table 5).

By comparison, in 2018, 32 people died in prison (0.43% of average daily prison population for the year)^{12,13}. We do not know details of the length of prison sentence, but it does include individuals on remand.

We know that people on CPOs are likely to face a wide and complex range of support needs – including physical and mental health problems and substance

¹¹ Criminal Justice Social Work Statistical Bulletin, 2017-18.

¹² Scottish Prison Service, Prisoner Deaths.

¹³ Scottish Prison Service, Prison Population.

misuse issues¹⁴. Cause of death among people on CPOs is not reported on, but would be a useful indicator if available. Any discernible patterns could help us to identify if, and where, greater support or intervention may be required for people on CPOs with certain health risks.

6. Gaps in the data

Breach application process

The Scottish Government has published a recommended breach application template to encourage standardisation across the process. It recommends the following information is collected¹⁵:

- Number of appointments missed;
- Date(s) of absence;
- Reasons for absence provided;
- Outcome of decision recorded;
- Health issues identified which have contributed to the individual failing to comply with the CPO, and whether this has been certificated by a GP;
- Grounds of breach;
- Individual's overall attitude to the CPO and requirements imposed;
- Case manager's assessment of the individual's capacity and/or likelihood to complete a further period of UPW or other activity.

Breach application forms are likely to be one of the most useful sources available in helping us to understand the reasons behind high breach rates. However, the details listed above are not currently reported on by local areas and therefore cannot be the subject of any analysis.

There is likely to be variation in the process and consistency of use of these forms in different areas. There are some questions to consider:

- What happens to these forms once they have been considered by the court? Is the information subsequently held/recorded/passed anywhere?
- To what extent is the template guidance set by the Scottish Government followed? This may indicate the reliability, extent and nature of information used in the breach application process, and the most common grounds on which breaches applications are instigated.

Variation and revocation

Over a quarter (26%) of CPOs not successfully completed in 2017-18 were reviewed and subsequently revoked.

This comprises a significant proportion of all CPO outcomes, yet there are no specified circumstances contained in the 1995 Act which constitute

¹⁴ Community Justice Scotland (2019), Sentenced to Smart Justice: A report on the proposed extension of the Presumption Against Short Sentences.

¹⁵ Scottish Government (2019), CPO Practice Guidance.

grounds for this. However, the most commonly reported reasons are¹⁶:

- Sustained illness preventing the individual from performing the CPO;
- “Insufficient progress” towards completion of the CPO (even where absences have been for acceptable reasons);
- Conviction(s) for further offences resulting in a significant period of custody;
- Ongoing employment commitments which make it difficult for the individual to fulfil the requirement.

“Other” outcomes

Currently, there is no further information available on the significant proportion (12%) of unsuccessfully completed CPOs recorded as such for ‘Other’ reasons. It is most likely these are cases where local authorities do not know the outcome. The incidence of this is strongly skewed towards some local authorities over others (Chart 12)¹⁷.

It should be a priority that:

- It is established whether high levels of ‘Other’ outcomes represent a gap in the recording of information, processing of information or simply reporting of that information;
- If the former, this information starts to be recorded;
- The reasons for failure within this category, when available, are reviewed.

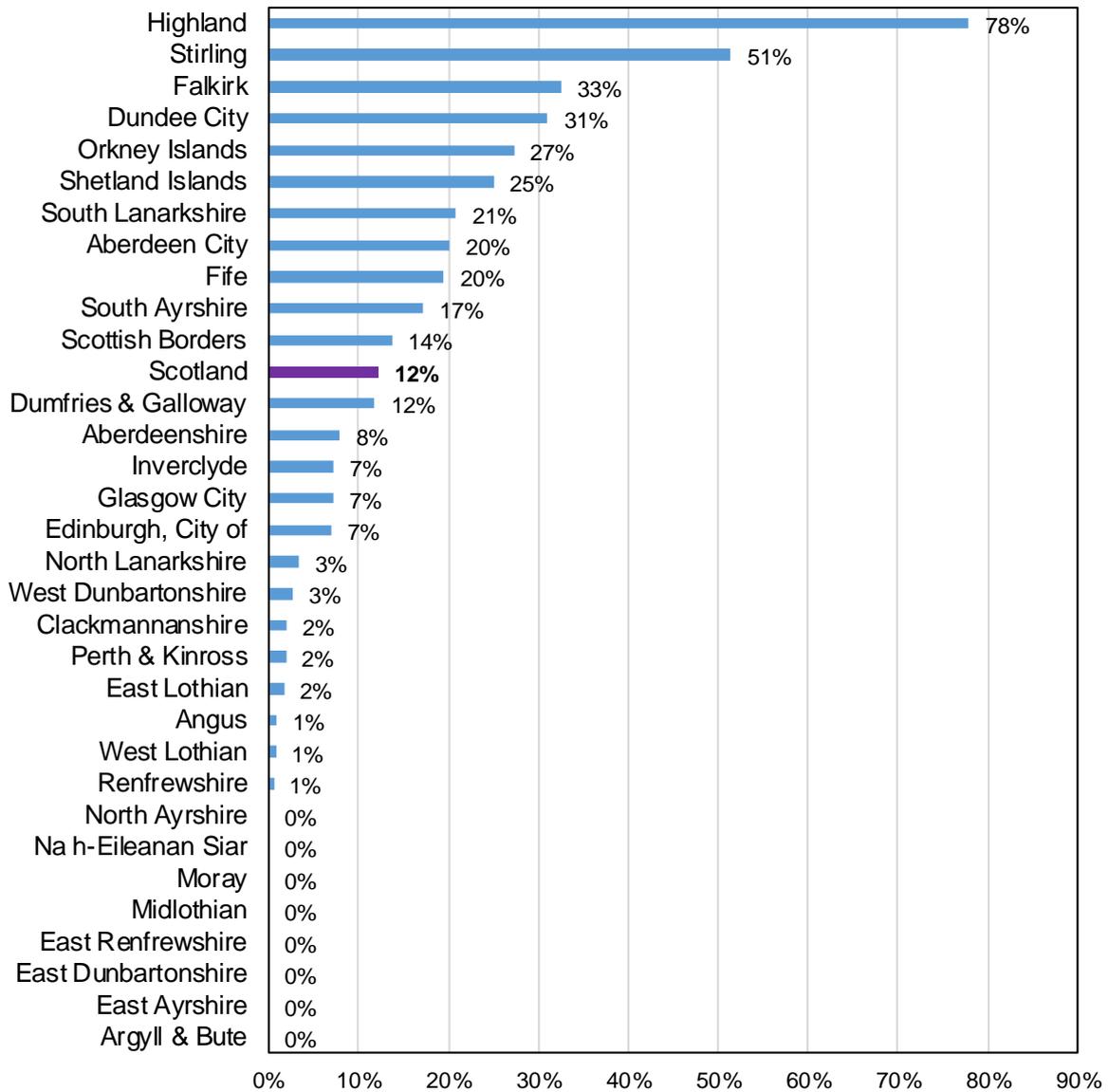
This information would best be gathered from the local authorities themselves, and at least initially from those areas presenting the highest proportion of ‘Other’ recorded outcomes.

¹⁶ Scottish Government (2019), CPO Practice Guidance.

¹⁷ Scottish Government (2019), Community Payback Orders 2017-18.

Chart 12

Proportion of unsuccessful CPOs with outcome of 'Other' by Local Authority



7. Key findings

- Unpaid work and supervision requirements are the most commonly imposed, and are used in combination with compensation, conduct and programme requirements the most in CPOs with multiple requirements.
- Successful completion rates of CPOs vary regionally across Scotland, ranging from only just over half successfully completed (58%) to 87% in some local authorities.
- Certain demographic factors appear to play a role in the likelihood of an individual successfully completing a CPO. This points towards the need for adequate, tailored and appropriate support based on individual need.
 - Women are slightly more likely to complete a CPO successfully than men, and men are more commonly the subject of breach applications than women.
 - Young people are significantly less likely to complete a CPO than older people.
 - People who are employed are much more likely to complete a CPO successfully than people who are not employed.
- CPOs fail for a range of reasons, but the most common reason is on grounds of breach (18% of all CPOs, 58% of all failed CPOs).
- The number or type of requirements imposed on an individual do not significantly impact the likelihood of a successful outcome, although they do affect breach rates:
 - The more requirements, the more likely you are to have a breach application made. This points towards a relationship between complexity of needs, and the support required to assist people in achieving positive outcomes.
 - Those on an offender supervision requirement are the least likely to receive a breach application.
 - The longer a supervision requirement, generally the more likely it is that a breach application will be made.
- The majority of people on a CPO are not employed. However, if you *are* employed, your chances of successfully completing are much higher and you are much less likely to breach. This raises the question of whether there is a disconnect in judicial decision-making – is there a perception that CPOs are not appropriate for those who are employed, on the premise that employment may not be compatible with undertaking a CPO?

8. Areas for further review

As highlighted in Section 6, there are some important areas where we are missing sufficient evidence to report conclusively on the key factors affecting CPO success and failure rates. Much of this lies in the reporting of information by local areas. For example, the following are currently not reported on:

- **Reasons that CPOs have a final outcome of 'Other'**
Is this because areas do not know the outcome? These contribute to the overall failure rate of CPOs, but we do not know the reasons behind them and

whether they constitute 'failure' as it is generally accepted, or whether there is a more complex array of factors at play.

- **Reasons that CPOs are revoked due to a review**

The legislation does not support the consistent or accurate imposition of, or reporting on, CPO revocation and there is no way of reliably knowing how or why CPOs receive this outcome.

- **Reasons for non-compliance and the compilation of breach applications**

This includes if, and to what extent, Scottish Government guidance is followed. This would be one of the best indicators for whether the process is consistent across Scotland, and would enable analysis of the common characteristics of breach applications, including types of information collected and common reasons cited for breach.

- **Detailed picture of the mortality rate of those on CPOs**

This contributes to the overall failure rates. We do not know the cause of death as this information is not available, but it would be useful to know: any trends could point towards specific areas where greater support/intervention may be required for those on CPOs.