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# Community Sentences and Financial Penalties



## *Introduction to community sentences and community justice*

This learning resource gives an overview of a few forms of community-based punishment, which is sometimes referred to as being a core focus of ‘probation’ or ‘community justice.’ Community sentences are imposed by the criminal courts, with the majority handed down by Sheriff Courts in Scotland and Magistrates Courts in England and Wales. Community sentences usually involve restrictions (on liberty, on privacy) and obligations (things a person must do to meet the requirements of their sentence, like going to supervision appointments and doing community service through unpaid work).

Often, community sentences are discussed with reference to what they are not: custodial sentences of imprisonment. That is why they are sometimes referred to as ‘alternatives to custody’ or ‘alternatives to prison’. Prisons tend to dominate our thinking about punishment but, in fact, community sentences are much more frequently used than imprisonment – and some prisoners are also subject to supervision in the community after release. However, the most common form of penalty, which is used a lot more than both community sentences and custodial sentences of imprisonment, are financial penalties (fines and compensation orders).

## *Main types of community sentences: what do they involve?*

Community sentences can be imposed for a wide variety of crime types – and this sometimes comes as a surprise to members of the public. People might get a community sentence for theft, fraud, fire-setting/arson, or for violent crime or causing death by careless driving.

This is not a comprehensive full list, but some of the most common community sentences in Scotland include:

- **Community Payback Order (CPO):** A CPO is the Scottish equivalent of a probation order. A CPO will have one or more of the 10 available requirements which can be imposed by the court: unpaid work and other activity requirement; offender supervision requirement; compensation requirement; programme requirement; mental health treatment requirement; drug treatment requirement; alcohol treatment requirement; residence requirement; conduct requirement; or a restricted movement requirement (electronic monitoring tagging).
- **Restriction of Liberty Order (RLO):** this involves electronic monitoring tagging technology (usually worn around the ankle) and restrictions, like a home curfew between 7pm and 7am. It restricts people's liberty in the community, rather than a full deprivation of liberty that occurs when they are incarcerated in prison.
- **Drug Treatment and Testing Order (DTTO):** This involves accessing community-based treatment for drug problems and addressing underlying causes of their offending, such as when people steal to fund their drug habit (See [SCCJR 'Drugs'](#) resource for further information on drugs), and who might otherwise be likely to get a prison sentence.

Community sentences can commonly take 6 months, 12 months or up to three years to complete, depending on what the court has ordered in an individual case.

Community sentences such as a Community Payback Order may require a person to do a set amount of hours (between 20 to 300 hours) of unpaid work and other activity. This is a form of 'giving back' or 'community payback' which benefits others in the local community. The activities available to do as unpaid work are many and varied. In Scotland, they include, for example: environmental and gardening activities; activities which support people experiencing poverty and food insecurity; helping charities and activities that benefit particularly vulnerable members of the community; repairing parks and children's playgrounds; laundry services for community football strips/sportswear and as an emergency referral to help people in need; painting; and bike repair and safety workshops. In terms of public attitudes, Community Justice Scotland commissioned a YouGov survey of more than 1,000 Scottish adults in mid-2022, which found that more than three quarters hold the view that unpaid work improves communities and 63% think it is an opportunity for an individual to learn new skills.

## *What do we know about people on community sentences?*

A diverse range of people can be given a community sentence by a court, and the requirements of that sentence can be tailored to the individual, their circumstances, and the crime type. However,

available evidence shows that: many are younger adults aged in their 20s and 30s, the majority of them are men, and most are unemployed and experience inequality.

According to [Scottish Government Justice Social Work statistics \(2023\) for Community Payback Orders \(CPOs\)](#): Consistently, over five years, 96% of people on CPOs are White, 1.7% are Asian, and 0.8% are African, Caribbean, or Black. Approximately 84-86% are male and 13-15% are female. Depending on the year, between 39-47% are under the age of 30 years old. For Drug Treatment and Testing Orders (DTTOs), this rises to 98-100% White, an 80% male and 20% female gender split, and an age profile that is more in their 30s-40s than younger adults. For Restriction of Liberty Orders (RLOs, electronic monitoring tagging), the majority are aged over 30, the gender split is 87% male and 13% female, and racial diversity data is not published. These figures are relatively stable across years, there doesn't tend to be drastic changes.

Research by criminologists in Scotland and across Europe (McNeill, 2018, Durnescu, 2010, Hayes, 2015) shows that people often experience stigma and certain difficulties from serving a community sentence. This is more apparent in cases where the nature of their community sentence is more punitive, intense and onerous, or where there is more stigma and shaming for being an 'offender'. This does not happen in Scotland, but an example is where, in some countries, people are required to wear bright vests which identify they publicly as an offender doing community service. Even though a community sentence might try to support rehabilitation and help in some ways, there can be other ways where it has a negative impact because it is still a form of punishment. In lives that might already have experienced different inequalities and adverse experiences, adding punishment can exacerbate that and Justice decision-makers need to be aware of that.

### *Community Justice: Who supervises community sentences?*

Scotland does not have a single nationwide probation agency, like some other nations do. Justice Social Workers (the Scottish equivalent of probation officers) work in all 32 Local Authorities, and their work is complemented by other staff such as justice social work assistants and unpaid work case managers and supervisors. They supervise people on community sentences, meeting with them, supporting the process of rehabilitation, and reporting back to the court if the person is not doing what the court required them to do (if they are not complying). They also make referrals for people on community sentences to access services from others, for example, charities and the third sector are important in what they offer.

Key interventions and purposes of Justice Social Work (JSW) services are characterised as 'the four Rs':

- **Restriction** – punishing the person for their crime by restrictions on liberty, time, privacy and so on, especially in cases where it is needed to try to protect victims and other members of the public.
- **Reparation** – the person paying back to society, either financially or through activities such as unpaid work in the community.
- **Rehabilitation** – supporting rehabilitation process to help people leave crime behind, access supports and resources they need, and reduce their chances of re-offending.

- **Reintegration** – supporting the process of integration into local communities and society, including positive social relationships and networks and meeting basic human needs and rights.



Image source: [Community Justice Scotland image bank](#).

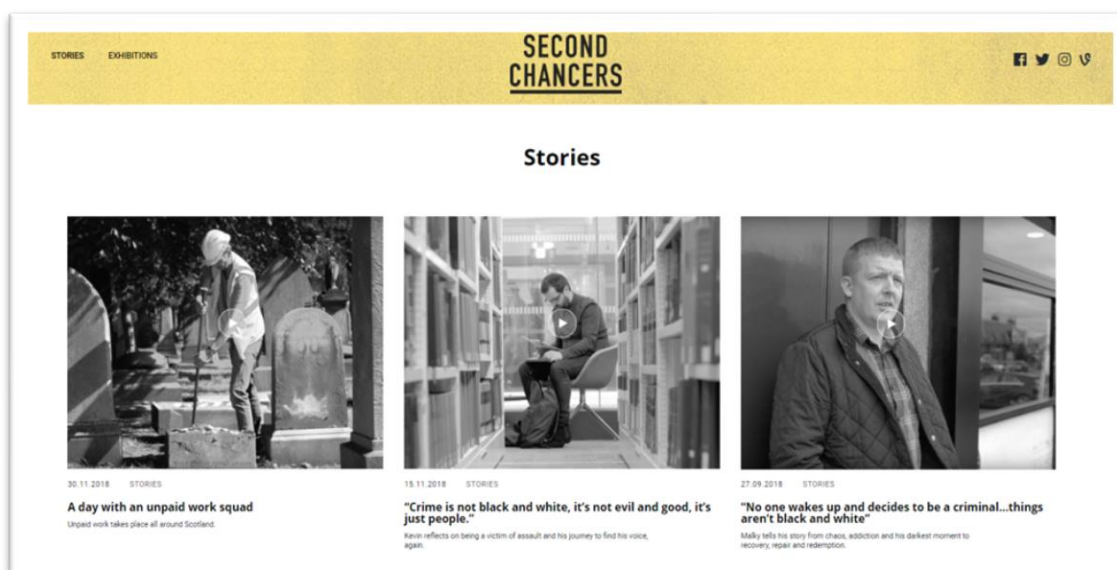
Community Justice Partnerships exist at local authority level (one in each Council area). In this partnership model, different agencies meet together to discuss what the needs are in the local area, to plan, and to collaborate. This could include Justice Social Work, the health board and NHS, housing providers, charities, or with the DWP and Social Security Scotland. These different agencies are involved because people on community sentences often have more than one issue or circumstance that they need to access support for to address, for example, they might have housing issues, be unemployed with no income, and be struggling with issues associated with alcohol. These things might make the person's circumstances more unstable and make the risk of them re-offending and of going to prison worse. Good coordination and collaboration across local communities can help people to leave crime behind.

Policy, laws and guidance on community sentences and community justice is mostly set nationally by the Scottish Government and through the Scottish Parliament. National public bodies such as [Community Justice Scotland](#) offer information, training, research, and public awareness raising across the nation. There is also the Scottish Sentencing Council, which is an independent advisory body that sets guidelines for the judiciary when sentencing people.

Funding is different across the Scottish criminal justice system – some parts get a lot more public funding than others. Despite thousands more people being supervised in community justice, each year it gets much less funding compared to funding for prisons. In the [Scottish Budget 2022-2023](#), community justice received 1.5% (£47.2 million) and Justice Social Work received 2.7% (£86.5 million) of the total Justice and Veterans budget (£3,143.3 million). By comparison, prisons received 15.1% (£476.4 million).

## Case Study

Community Justice Scotland launched a campaign 'Second Chancers' in 2018 that encouraged a new way of thinking as Scotland tried to adopt a 'smarter justice system'. The [Second Chancers](#) website has a series of case studies from people affected by crime and their experiences of community justice. The films and stories are very interesting.



In early 2023, Community Justice Scotland launched a TikTok campaign #LifeChangingSentence and displayed near 300 billboards across Edinburgh, Glasgow, Dundee and Perth. Here is one of the images that was displayed.



Image source: [Community Justice Scotland image bank](#).

## Drug Courts and Community Justice

Drug Courts were introduced in 2001 in Glasgow and in 2002 in Fife as a pilot scheme, which was subsequently reviewed and extended. The Drug Court is a special court that deals exclusively with people who have committed crime because of their addiction to drugs. It has the same powers as any sheriff court and can impose the full range of sentences as well as a special 'Drug

Court Order' (which include DTTOs and other conditions of drug treatment). The most common order handed down to offenders across both courts has been the DTTO. When placed on a Drug Court Order, offenders must be willing to undergo treatment for problem drug use, undergo regular and random drug testing, attend court regularly so that the sheriff can review their case, and be supervised by the supervision and treatment team. As mentioned above, the aim is that individuals' health can improve (e.g. with reduced or more 'stable' drug use), and that these individuals stop offending.

A distinctive feature of Drug Courts is the use of pre-review meetings prior to an individual's Court Order being reviewed in court. This is a meeting that takes place between the Drugs Court sheriffs, Criminal Justice Social Work (CJSW) and addiction workers. A 2010 [report by the Scottish Government that reviewed the Glasgow and Fife Drug Courts found](#) that the pre-review meetings were popular with the professionals who were questioned, who felt that they helped to guide their approach to the actual review hearing. The report analysed data over a four-year period from the point each court was introduced in order to determine reconviction rates. Across the two Drug Courts, 70% of offenders had been reconvicted within 12 months and 82% within 24 months.

In order to assess the effectiveness of orders imposed by Drug Courts used in Fife and Glasgow compared to orders handed down by Sheriff Courts in the rest of the Scotland, the report included an analysis of reconviction rates for those individuals who had been given DTTOs. Over the four-year period, 70% of those who had received a DTTO in the Drug Courts had reoffended, compared to 71% of those who had received a DTTO in other Sheriff Courts in the rest of the country. In other words, it appears that DTTOs imposed by a Drug Court have had no impact on reoffending rates when compared to those imposed by Sheriff Courts in other parts of the country.

**However**, there are limitations to this research, such as the difficulties of comparing conviction rates with other courts, and the relatively low case number when compared with other courts.

This [blog post](#) gives a brief summary of some of the strengths of drug courts, but also highlights some of the challenges – for example, where people may not be ready or have the support to address their substance use challenges – see the [SCCJR Drugs](#) learning resource for more information about the intersecting challenges people who use illicit drugs often experiences.

## Fines

All criminal courts in Scotland have the power to issue financial penalties.

A [recent academic discussion paper on fines and financial punishment](#) in the context of Scotland, England and Wales emphasises that there are often inequalities in who is fined (Cullen, 2022). When people and communities experiencing poverty and austerity are over-represented among those who are fined, and they have less capacity to pay, this raises questions about how severe a punishment a fine might be.

Figures from the Scottish Government's (2022) statistical bulletin – [Criminal Proceedings in Scotland, 2020-21](#) – show that 39% of all sentences in 2020-2021 were financial penalties. In the same year, only 17% of sentences were custodial (prison) sentences. The Crown Office and Procurator Fiscal Service (COPFS) also has the power to issue Fiscal Fines as a way of disposing of cases before they reach court. The police, too, can issue a fine as a direct measure, rather than referring the case to the COPFS.

### So, are fines an effective sentence?

Academic Lucia Zedner (2004), in her book *Criminal Justice* (Chapter 6: Financial and Community Penalties), has made the following points, which still have relevance now:

- The fine is mainly a 'punitive device' that is designed to inflict pain of financial deprivation upon a person in return for wrongdoing. The financial pain it inflicts is designed to deter the individual from further offending, while, if properly publicised, it is assumed that it may also deter others.
- Fines do not repair damage done by the original crime, and do not offer the person who has offended an opportunity to be rehabilitated.
- The fine is quite different from other penalties in that:
  - o It is the only penal sanction for which the person can (and routinely does) get someone else to bear the burden. There is nothing in place to prohibit others, for instance family or friends, from paying a fine on behalf of the fined person. In the case of young people, it is assumed by courts that it is parents who will pay the amount due.
  - o The fine relies on the co-operation of the person to a greater extent than other penalties. The setting of the term of the fine routinely involves negotiations about payment, and people can refuse to pay the fine. If they do however, they risk being imprisoned.
- The fine is "*commonly hailed as a success: flexible, ready calibrated to reflect the gravity of the offence, minimally intrusive, it is followed by fewer reconvictions than other penalties*".
- However, the fine is not unproblematic. The same sum of money does not have the same impact on all those who are fined. For example, 10 individuals fined the same amount could be affected in very different ways, depending on their wealth and ability to pay. It is also important to consider the existing financial disadvantage experienced by a number of offenders (See [SCCJR 'Who's in prison? Snapshot of Scotland's prison population'](#) for further information on this). It could be argued that because the amount of a fine is based

primarily on the seriousness of a crime, and not on the person's ability to pay, it is an unfair penalty.

### ***Are community sentences more effective than prison?***

There are different ideas and arguments of what makes a sentence 'effective' because it depends on the purposes for which the sentence was imposed and how 'success' is measured. However, one of the ways that this is thought about in Scotland is whether people return to crime in the future, or whether they desist from crime.

Reconviction rates vary by crime type and by individual characteristics, as well as by the type of sentence imposed. According to [Scottish Government reconviction rates statistics \(2021\)](#), pre-pandemic reconviction rates within a one year period vary significantly by crime type:

- People convicted of crimes of dishonesty: reconviction rate of 45.6%.
- People convicted of criminal damage: reconviction rate of 30.0%.
- People convicted of violent crimes: reconviction rate of 21.8%.
- People convicted of sexual crimes: reconviction rate of 10.4%.

Reconviction rates by sentence type show community sentences are more effective: the reconviction rate for Community Payback Orders is 29.2%, whereas the rate for being discharged from prison custody is 43.8% in Scotland in 2018-2019 (i.e., pre-pandemic) (Scottish Government, 2021).

### ***But, we must be careful about the conclusions we draw from these figures!***

As noted in an Audit Scotland (2012) report [Reducing Reoffending in Scotland](#), we cannot directly compare those who have served a prison sentence with those who have been given a non-custodial sentence, without thinking critically analytically about this and its limitations. For example, people in prison are more likely to have longer criminal histories than those on community sentences. Factors like these are relevant. See [SCCJR 'The penal system: reducing reoffending'](#) for further information on the effectiveness of community sentence.



### ***Further Reading and Resources***

Community Justice Scotland Learning Hub of Resources:

<https://communityjustice.scot/learning-hub/>

Grant, S., Buchan, J., and O'Donnell, A. (2020) [\*Probation in Europe: Scotland\*](#), Confederation of European Probation (CEP): Utrecht.

McNeill, F. (2018) [\*Pervasive Punishment: Making Sense of Mass Supervision\*](#), Bingley, UK.

Scottish Government (2023) [\*Community Sentencing\*](#), Edinburgh.

Scottish Government (2023) [\*Justice Social Work statistics\*](#), Edinburgh.

Scottish Government (2022) [\*National Strategy for Community Justice\*](#), Edinburgh.

Scottish Sentencing Council (2023) [\*Educational Resources on Sentencing for Modern Studies and Higher Education\*](#), Edinburgh.

Zender, L. (2004) *Criminal Justice*. New York: Oxford. (Book available from libraries).

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*SCCJR's learning resources for schools (Modern Studies) were initially developed by Rebecca Foster and Greg Duncan. They are regularly reviewed and updated by SCCJR researchers. Any queries (including notes of broken links, ideas for development and new topics) about these resources should be sent to [enquiries@sccjr.ac.uk](mailto:enquiries@sccjr.ac.uk)*

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