



An tSeirbhís Phromhaidh
The Probation Service

An Evidence Review of Community Service Policy, Practice and Structure

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Executive summary

Introduction

The Community Service Order ('CSO') was introduced to Ireland in 1983 as an alternative to custody in order to address concerns relating to prison overcrowding and rising crime rates.

International consensus on the null to criminogenic effects of prison on reoffending rates has renewed calls for decarceration. At the same time, the evidence reviewed shows that community service results in lower recidivism rates and more positive outcomes for those who have offended and their community, when compared with short-term prison sentences. Notwithstanding these findings, the CSO remains underutilised in this jurisdiction.

The purpose of this review is to evaluate research findings and knowledge from peer-reviewed journals, national and international policy materials, reports, and publications relating to community service spanning the key areas of strategic innovation, operational practice, legal structure, impact, evaluation and related developments.

The recommendations contained in this report are intended to provide broad guidance to the Probation Service in the development of community service in Ireland, and to highlight key areas that require further investigation.

Policy and principles

The absence of a coherent, overarching purpose and a clear guiding penal philosophy impedes the strategic design and development of the CSO, and inhibits its potential as a non-custodial sanction in Ireland. To address this issue, the review recommends the advancement of a tripartite strategy for the CSO, based on the principles of desistance, restorative justice, and social justice.

The reviewed literature points to the potential of desistance theory to reconcile the core functions of the CSO and to reinforce one overarching message discernible to all stakeholders: the belief that people can change. Contemporary literature on restorative justice emphasises the contribution that practices and techniques can make towards repairing harm and supporting reintegration. Embedding a social justice ethos reinforces broader national and international social policy signals, aligns with the values of the Service, and puts the 'community' back into community service by helping to make our neighbourhoods safer in a way that leaves no-one behind.

The tripartite strategy acts as a guiding framework for the recommendations proposed in the remaining chapters.

Operational structure and practice

The reviewers were made aware of particular concerns relating to the operation and practice of the CSO and targeted the content of this chapter accordingly. In respect of each issue, the review makes recommendations based on international case studies and evidence that align with the tripartite strategy.

The Probation Service has sole responsibility for identifying, securing, and managing community service sites. The reviewed literature indicates a strong shift towards structures based on multi-agency responses and shared responsibility (for example with local community based structures) in the planning, delivery and management of community service, in order to advance social justice indicators and promote desistance.

Evidence supports the contention that many individuals subject to a CSO in rural localities experience greater access issues and less flexibility compared with their urban counterparts. Enhancing localised networks and increasing the use of individual placements are two strategies which have been shown to ameliorate the negative effects of experiencing the CSO in an isolated locality.

The review identifies a lack of knowledge about, and confidence in, the CSO as a barrier to progress. An analysis of communication strategies from neighbouring jurisdictions highlights the need for the Service to develop a national level approach to sharing information relating to the CSO. In particular, the review recommends the development of formalised mechanisms to facilitate two-way communication with the judiciary, in addition to the mobilisation of existing networks and additional resources to enhance public understanding of community service as a means of promoting desistance with a view to making communities safer.

The evidence reviewed is supportive of the development of the integrated community service model in terms of its capacity to promote rehabilitation and desistance. The low take up rate and inconsistent imposition of this model, however, suggests that a thorough evaluation is needed in order to assess if the sanction is operating as intended and to its full potential.

Studies relating to the use of performance indicators for the assessment of the CSO indicate that best practice demands a multi-methods approach to evaluating the sanction. Recommendations are made in relation to building more comprehensive and regular systems of evaluation.

Legal framework

In assessing future priorities, a core issue is whether the current legal framework is sufficient to support the development of the CSO in a way that aligns with policy intentions. To address this issue, the review identifies that further research is needed in order to assess judicial use and

perception of the sanction, in addition to the characteristics and criminogenic needs of the target cohort.

The review considers a range of possible legal reform options that have been introduced in other jurisdictions or advocated for in academic literature. It sets out the benefits and risks of each option and reaches tentative conclusions regarding their suitability for Ireland, bearing in mind their alignment with the tripartite strategy proposed in Chapter 2, in addition to operational observations and recommendations from Chapter 3.

Conclusion

The evidence is overwhelmingly supportive of approaches to community service that aim to advance the principles of desistance, restorative justice and social justice.

On the whole, the literature affirms the establishment of macro-level, multi-agency structures across all stages of the planning, operation and management of community service, that feed down to local level agencies and promote community participation.

Recommendations in this review are tentative, and heavily conditional upon the need for a comprehensive evaluation of the current operation of the CSO, and its perception among key stakeholders, prior to implementing reforms.

Given the limited scope and timeframe of the review, it is recommended that this report is read as the starting point for the development of an in-depth and on-going programme of research to further enhance our knowledge and understanding of the CSO in Ireland, and to ensure that future decisions regarding policy, practice, and legislative reform are informed by the best research available in the field.

1. Introduction

1.1 Objective

This review was commissioned as part of the Probation Service's strategy to maximise the potential benefit of community service in the Irish criminal justice system, and to reform and revitalise the current operating model. The reviewers conducted a desk-based literature review of findings and knowledge from academic journals, national and international policy materials, reports, and publications relating to community service spanning the key areas of strategic innovation, operational practice, legal structure, impact, evaluation and related developments. The recommendations from the report are intended to: inform policy and practice developments; support the advancement of innovative approaches and initiatives; enhance efficiency and effectiveness in the delivery of community service; and strengthen the evidence base for stakeholders.

1.1.1 Terms of Reference

The Probation Service issued the following terms of reference which the reviewers addressed:

- review the policy foundation, structure, models of practice and innovation of Community Service in Ireland and in other jurisdictions;
- review academic journal articles, research papers and published evaluation and policy reports, focusing primarily on publications since 2010;
- examine and report on evidence of the impact of Community Service in sentencing, use of custodial sentences and use in other community sanctions and measures;
- explore and report on innovative practices and policy approaches in the use of Community Service in criminal justice and the feasibility, where appropriate, of transfer;
- identify effective or promising strategies and actions to achieve sustained commitment and buy-in from State, non-government bodies, community organisations, local public services and voluntary service providers working together to support Community Service in meeting community needs;
- explore actual or possible alternative systems of operation and management for Community Service based on review findings; and
- make proposals regarding promising systems of operation and management for further examination.

1.2 Background

The Community Service Order ('CSO') in Ireland was introduced as a punitive measure in response to problems pertaining to prison overcrowding, rising crime rates, and humanitarian concerns (Guilfoyle, 2017, 2018). In more recent years, the reparative and rehabilitative potential of the sanction has been emphasised (IPRT, 2017). A CSO may be imposed as an alternative to a custodial sentence in respect of a person aged 16 years and over (Criminal Justice (Community Service) Act 1983 and amending legislation). A CSO requires a person to conduct unpaid work in the community of between 40-240 hours in lieu of a prison sentence. Further, the sanction may be imposed as an alternative to prison for the non-payment of a fine. A judge can impose a CSO of up to 240 hours where a person has defaulted on a fine imposed on indictment. When dealing with a person who has defaulted on a fine imposed summarily in the District Court, a judge can impose a CSO of up to 100 hours where 100 hours of unpaid work is benchmarked against 30 days in prison (Fines (Payment and Recovery) Act 2014).

The most recent legislative changes to the CSO were intended to expand the use of the sanction, both in respect of higher tariff offences (Criminal Justice (Community Service) (Amendment) Act 2011), as well as for the most minor tariff category (the Fines Act 2014). This strategy was in response to a widespread judicial reluctance to impose the sanction, with the result that many individuals suitable for community service were instead serving short-term prison sentences. The impetus for change also came from the (2009) 'Value for Money and Policy Review of the Community Service Scheme', which highlighted the cost effectiveness of the CSO and the unrealised capacity of community service delivery in the jurisdiction. The CSO remains underutilised, however, despite a strategic shift towards decarceration and the accompanying legislative reform. This position suggests that there are deeper issues relating to the perception, purpose, and functioning of the CSO which are inhibiting its potential as an alternative to custody.

1.3 Approach

It is now held as a 'criminological fact' that in comparison with non-custodial sanctions, imprisonment has no appreciable effect on reducing recidivism, and has a null effect or slight criminogenic effect on people in custody (Petrich et al., 2021). Further, there is consensus in evidence-based criminological studies regarding the detrimental collateral consequences of imprisonment (for example, psychological harm, dissolution of families, negative attitude towards criminal justice agencies, depression of local economies) (Clear, 2007; Western and Wildeman, 2009; Kirk, 2016). Alongside this literature, studies in the community sanctions space highlight the dangers of overusing non-custodial sanctions in a way that does not reduce prison rates, leading to mass supervision and the harmful effects of criminal justice net-widening (Phelps, 2013; McNeill and Beyens, 2013). In response, international protocols and peer-reviewed literature continue to advocate for decarceration. This strategy calls for the increased, though measured, use of non-

custodial alternatives such as the CSO, which have better reoffending outcomes and less severe collateral consequences. As a result, the approach adopted by this review is to explore pathways for expanding and improving community service delivery in Ireland, in a way that promotes a decarcerative agenda underpinned by the principle of minimum intervention.

The policy, practice and structure of community sanctions are increasingly considered in the context of literature relating to the two dominant movements within the global criminal justice landscape in recent decades: desistance from crime and restorative justice. The Service is at a pivotal point in determining the future direction of the CSO. As such, the review highlights the potential of the sanction to support the desistance process in order to achieve the greater aim of building safer communities, through the recognition and advancement of both human and social capital. In this context, the principles and techniques of restorative justice may be further deployed to address the needs of victims of crime, community reparation, and the reintegration of individuals who have offended.

Deploying a desistance-informed agenda to guide the future development of the CSO operates at two levels in advancing social cohesion. In the particular context of community supervision, it supports the person who has offended in constructing a pro-social identity, as recognised and adopted by the Service's forthcoming Irish Offender Supervision Framework (Durnescu et al., 2020). At a macro level, a desistance-informed agenda channels local, national and international intentions in promoting social justice principles through tackling social exclusion, and promoting community solidarity through community participation and multi-agency responses.

Ireland has the benefit of a distinctive criminal justice culture which has retained and cultivated aspects that facilitate desistance and restorative justice, for instance, practitioner discretion and informality (Hamilton, 2019), and a form of 'pastoral penalty' underpinned by a more humane approach to criminal justice responses (Brangan, 2021). A desistance-informed agenda for the CSO aligns with this culture, and can provide a link between the advancement of social justice for citizens who have committed offences, and those who have not (Maruna, 2017). Further, restorative justice provides a tangible and constructive means of supporting individuals who are victims of crime, and those who have offended, with a view to achieving consistent, positive outcomes for all stakeholders (Marder, 2019; National Commission on Restorative Justice, 2009).

The Service has taken important steps towards imbedding desistance theory (Durnescu et al., 2020) and restorative justice practices (Marder, 2019) in the Irish probation practice landscape. The review supports this strategic direction, and recommends ways that this approach may be developed in the context of community service provision specifically, with a view to serving wider social justice priorities at both local and national level.

1.4 Methodology and research procedure

1.4.1 Policy and principles

For recommendations to be effective and enduring, they must align with and promote existing institutional principles and strategy. Therefore, the dominant methodological approach to the evaluation in Chapter 2 involves the development of an analytical framework which identifies key principles and policy trends underpinning the CSO in Ireland, and which accords with the development of the sanction in line with international best practice. Moreover, the framework details the core constructs of the study and explains how they relate to one another (Miles, Huberman and Saldana, 2014). A tripartite analytical framework comprising desistance, restorative justice and social justice principles is identified and developed. The role of the framework for the purposes of the review is threefold. First, it provides the overall environment and direction in which the core objectives of the study may be actualised according to the intended recipients (Ravitch and Riggan, 2016). Second, it operates as a guide to the identification, selection and categorisation of relevant data in accordance with the scope of the review. Third, it serves as a mechanism to assess the significance and value of the collated data, and to guide future research directions.

1.4.2 Operational structure and practice

The analytical framework formulated in Chapter 2 guides the identification, selection and categorisation of evidence relevant to the successful completion of the evaluation of operation and practice innovations in Chapter 3. In addition, the review employs a comparative methodology when assessing international literature on the CSO. As Nelken (2009) observes, at its most basic level the task of a comparative methodology in a criminal justice context is 'to compare and contrast our ways of responding to crime with those practiced elsewhere.' The development of innovative policy approaches and practices relating to community service in other jurisdictions was therefore examined in the context of the Irish criminal justice landscape, to the degree feasible within the scope of the review. Brants (2011) emphasises the need for comparative research to not only consider the law of the relevant jurisdictions, but also the social, cultural, and political context in which the law functions. Van Swaaningen (2011:129) also acknowledges the need to 'see these practices in the context of the structural and cultural characteristics of that specific country.' The terms of the review prevented a comprehensive comparative review of international literature. Therefore, comparative methodology is applied where deemed relevant by the review team in accordance with the aims of the review and the analytical framework.

1.4.3 Legal framework

A doctrinal methodology is applied to the analysis of legal instruments in Chapter 4. There is broad consensus that doctrinal analysis is an effective and reliable form of 'conceptual analysis critique', particularly when used as part of a wider methodological strategy (Hutchinson, 2015). Doctrinal analysis is also particularly useful in the context of reform-oriented research (Hutchinson, 2015), and provides 'a systematic exposition of the rules governing a particular legal category, analyses

the relationship between rules, explains areas of difficulty and, perhaps, predicts future developments' (Pearce, Campbell and Harding, 1987, cited in Hutchinson, 2010:7). A doctrinal approach was employed in order to provide a coherent and unified account of the legal framework underpinning the CSO in Ireland, and at European and international level. Through the application of this methodology, and the critical appraisal of its findings, it is possible to uncover the logically consistent principles underpinning legal mechanisms, with a view to harvesting an understanding of the current legal challenges facing the CSO in the context of the analytical framework devised in Chapter 2.

1.4.4 Research procedure

The research procedure consists of a quasi-systematic review in respect of larger evidence bases (e.g. in the context of international practice), and a closer documentary analysis in respect of small evidence bases (e.g. national policy materials).

A systematic review involves the use of 'explicit and transparent processes to identify, retrieve, code, analyze, and report on existing research studies bearing on a question of policy or practice' (Petrosino, Morgan and Fronius, 2018). This approach aligns with best practice in terms of providing a comprehensive and consistent means of identifying and assessing relevant data, and ensuring that recommendations are guided by a strong evidence base which facilitates the generalisation of outcomes. Given the terms of reference of the review, a quasi-systematic analysis was applied (Davies, 2003), where appropriate, in order to realise the methodologies outlined above. A quasi-systematic analysis provided sufficient latitude to meet the aims of the review, in terms of providing a detailed summary of key findings from larger bodies of literature, on which to base recommendations.

The review consists of an analysis of Probation Service documents, including policy statements, annual reports, reviews and other materials. Most of these sources are publicly available or straightforward to obtain, with unpublished relevant materials being made available by the Service, and analysed in accordance with the above methodologies. National and international literature pertaining to the policy and principles, operation and practice, structure, legal framework and impact of community service sanctions was accessed via the relevant academic databases (i.e. Westlaw, JSTOR, Web of Science, Sage, Proquest and Scopus etc.). Given the timeframe of the project, there was insufficient opportunity to apply for access to non-publicly available materials from international sources, and so the scope of the review is limited to sources available publicly online, via academic databases, and those provided by the Service.

1.4.5 A note on knowledge transfer

Where possible, the review assesses the feasibility of a particular initiative to the Irish criminal justice landscape. However, the terms of reference do not provide scope for a comprehensive knowledge transfer analysis of particular initiatives. Such an analysis would require more detailed consideration of: issues around wider cultural and comparative contexts; how particular activities are to be understood in the Irish criminal justice landscape; the prospect of success; the measure

of successful transfer of initiatives, and; how such projects or strategies ought to be evaluated (Canton, 2009). Therefore, recommendations based on policy and practice from other jurisdictions should be read as requiring a more in-depth investigation. For instance, in the context of community service, particular vectors that would require further consideration include: popular and judicial attitudes about appropriate responses to crime; cultural understandings of the ideas of reparation and unpaid labour; opinions about what constitutes a suitable placement; the availability of suitable sites, and; the extent to which the state enables individuals to conduct unpaid work with reference to their own well-being (Stern, 1999).

2. Policy and principles

2.1 Introduction

The CSO is a pragmatic penal sanction with established benefits (IPRT, 2017). It costs less than custody, it does less social harm than a prison sentence (Petrich et al., 2021), and it has been shown to achieve lower recidivism rates than periods of imprisonment (O'Donnell, 2020). However, enduring concerns relating to prison overcrowding and an overreliance on prison sentences indicate that the CSO has not reached its full decarcerative potential. From a policy perspective, the lack of an overarching purpose and a clear guiding penal philosophy tends to impede strategic design, lessening the prospective role of the CSO as a non-custodial sanction in Ireland (McCarthy, 2014; O'Hara, 2016; IPRT, 2017; Guilfoyle, 2018). In particular, ambiguity around its purpose and impact can lead to issues including: a lack of buy-in from the judiciary which reinforces the overuse of short-term prison sentences; difficulty in gaining public support; a lack of support and investment at state level, and; difficulty in sourcing and coordinating placements.

The review recommends the advancement of a tripartite strategy for the CSO, underpinned by desistance, restorative justice and social justice principles, with a view to re-legitimising the sanction for relevant stakeholders: the judiciary, the community, the state, victims of crime (and victim representatives), and individuals who have offended. A review of community service and wider supervision literature points to the potential of desistance theory not only to reconcile the core functions of the CSO, but to reinforce a broader social capabilities objective, through the communication of one overarching message discernible to all stakeholders: the belief that people can change (Maruna and King, 2009; PS Annual Report, 2020:2). Building on existing progress made by the Service to date, contemporary literature on restorative justice highlights the greater contribution that practices and techniques can make towards repairing harm and supporting reintegration. Finally, imbuing community service strategy with a tangible social justice ethos reinforces broader national and international social policy signals, aligns with the values of the Service, and puts the 'community' back into community service by helping to make our neighbourhoods safer in a way that leaves no-one behind.

The chapter begins with an analysis of the core components of the tripartite analytical framework relating to desistance, restorative justice and social justice. The principles in respect of each component are identified as existing strategies at organisational, national and international level, though with latent potential. The framework is used to advance these principles with a view to maximising the purpose and functionality of the CSO for all stakeholders. Next, the chapter identifies how the framework can be used to reconcile the diffuse rationales underpinning the CSO, in particular: decarceration, retribution, reparation, rehabilitation, and reintegration. Consideration is given to policy innovations that align with the framework, in addition to the challenges facing the implementation of an effective CSO strategy.

It is recommended that community service policy, practice and structural innovations are informed by a tripartite strategy that advances the principles of desistance, restorative justice and social justice. [Recommendation 2.1]

2.2 A desistance-informed agenda

‘Desistance is about more than criminal justice. Desistance requires engagement with families, communities, civil society and the state itself. All of these parties must be involved if rehabilitation in all of its forms (judicial, social, psychological and moral) is to be possible.’

- (McNeill et al., 2012).

The review recommends building on progress made to date by the Service in integrating desistance theory into policy and practice, towards advancing a more overt desistance-informed agenda. Desistance as an overall objective not only galvanises the existing functions of the CSO as discussed in section 2.7, but also provides a means of accommodating broader social justice intentions outlined in section 2.4.

2.2.1 Desistance in penal policy

Desistance has become one of the most influential developments in criminal justice practice over the past three decades (Paternoster and Bushway, 2009; Maruna, 2017). It is now a key priority for probation work across Scotland (McNeill, 2004a, 2004b; Kemshall et al., 2021), England and Wales (Weaver, 2015; Kemshall et al., 2021; Maruna, 2016), the US (National Institute of Justice, 2021), Canada (McCuish, 2020) and Australia (O’Sullivan, 2014). Traditionally Irish penal policy has lacked a clear ideal in relation to its content and direction (McCarthy, 2014). However, there is evidence of increasing awareness in Irish penal strategy of the significance of the desistance paradigm in contributing to safer communities and promoting rehabilitation (Penal Policy Review Group, 2014).

Desistance accords with the traditional strengths of the Service because it legitimises core characteristics inherent in the organisational culture: voluntarism, community participation, social work ethos, multi-agency working and partnerships (McNeill, 2004c). Moreover, it features in the mission, goals and objectives of the Service, in addition to Irish penal strategy more broadly (Healy, 2012). Desistance theory also underpins the approach of the Irish Offender Supervision Framework which is due to be implemented in the near future (Durnescu et al., 2020). There is scope to further imbed and expand a desistance-informed agenda as a means of fulfilling macro-level state objectives regarding sustainable and socially inclusive communities.

It is recommended that the Service pursue a more overt desistance-informed agenda in order to galvanise the existing policy foundations of the CSO, and as a means of incorporating social justice indicators into Irish penal policy. [Recommendation 2.2]

2.2.2 Desistance as a means of supporting social inclusion

Desistance from crime is generally described as a process of individual change, as opposed to a single event (McNeill et al., 2012). The desistance journey is unique to each individual, and so the concept itself is irreducible, reflecting the complex nature of criminogenic behaviour. According to Maruna and Mann, the most established findings from desistance studies suggest that people are more likely to desist from crime when they have ‘... strong ties to family and community, employment that fulfils them, recognition of their worth from others, feelings of hope and self-efficacy, and a sense of meaning and purpose in their lives’ (Maruna and Mann, 2019:7; see further, Farrall and Calverley, 2005; Rocque, 2017).

There is increasing recognition of the wider application of the desistance paradigm beyond the individual, to wider social contexts. For instance, recent literature describes the desistance process as a ‘two-way’ street between individuals and the community in terms of achieving reintegration (Maruna, 2017; McNeill, 2006; Weaver, 2012). In addition, Maruna (2017) puts forward a stronger vision for the future of desistance, recognising its viability as a broader social movement, and not just an individual process, akin to the civil rights movement. Understanding desistance as a shared responsibility, as well as a shared opportunity to promote human and social capital, not only sheds light on particular obstacles to an individual’s desistance journey, but points to the greater social policy innovation that is required in order to take seriously reintegration and social inclusion, as core aspects of the advancement of social justice.

For probation practice, the literature suggests a more intentional desistance-informed agenda that inverts supervision priorities from individualised interventions or programmes, towards a focus on the change process as a central concern, with programmes forming one part of the many ways that change may be supported (McNeill and Weaver, 2010; see also Robinson and Raynor, 2006). Further, a desistance-informed agenda would recognise change as a social process, as much as an individual one, requiring community-level and broader political and social commitment to supporting reintegration. In order to achieve this goal, some jurisdictions place legal obligations on stakeholders to engage in planning for and supporting desistance at various stages. For example, the Scottish model mandates engagement at the planning stage of community service (e.g. see Scottish case study at section 2.4.5). In addition, the Norwegian government legally requires state agencies and private and voluntary organisations to commit and implement a ‘reintegration guarantee’ for those who have served their sentence (McNeill et al., 2012). It is recommended that the Service review its existing network to identify whether or not placing a legal obligation on public/private entities to engage with an aspect of the management of the CSO is necessary and/or desirable.

Further research is needed to assess how the Service presently priorities the change process in how it delivers community service. [Recommendation 2.3]

It is recommended that the Service consider the benefits, disadvantages and cultural feasibility of placing a legal obligation on public/private agencies to engage in discrete aspects of the

management and operation of the CSO e.g. planning, placement, and service provision. [Recommendation 2.4]

2.2.3 Reframing the CSO as a step on the road to desistance

The CSO can play a key role in advancing desistance as a wider social movement. Literature indicates that community service supports individuals in their desistance efforts through its rehabilitative function (McCulloch, 2010), and that community service experiences can reduce recidivism (Killias et al., 2000; Wermink et al., 2010). A reduction in reoffending is particularly evident where the individual has a sense that the sanction was fair, (McIvor, 1992; Killias et al. 2000), meaningful to them and the recipient(s), and has a degree of reciprocity in terms of building relationships with others (McIvor, 1998).

Understanding the CSO as a tool to support desistance in a social context would require greater investment in the markers of social inclusion discussed in section 2.4.3, namely, community participation and more formalised multi-agency responses. This wider frame would acknowledge that the operation of the CSO is not just the responsibility of the Service. Desistance happens in the community, and so the CSO has the potential to support desistance, in particular, where that support comes from a variety of sources that promote the pro-social identity of the person who has offended, including: local government, state agencies, community stakeholders, voluntary organisations, and the private sector.

It is recommended that the CSO is reframed as a step on the road to desistance, and that further empirical research is conducted into how the markers of social inclusion (i.e. multi-agency responses and community participations) currently serve a desistance-informed agenda, and how they may be maximised in the community service context. [Recommendation 2.5]

2.2.4 Desistance-based policy modelling

Because desistance is a personal experience, implementation strategies require flexibility to meet the needs of the individual, their family and their community. Consequently, there is no formal practice guidance nor singular 'desistance' intervention available (Kemshall et al., 2021; Maruna and Mann, 2019). The ultimate goal from a policy perspective, therefore, is to support an approach that facilitates desistance by providing genuine opportunities and tailored resources that promote human and social capital (Farrall, 2004; Maruna, 2017).

To this end, a desistance model has been proposed by Farrall (2004), McNeill (2006), Weaver and McNeill (2012) and Porporino (2010). In terms of informing policy direction Weaver and McNeill (2012) recommend eight guidelines:

1. 'Be realistic' – acknowledge that desistance is a process and it takes time to change. (For example, this guideline could be reflected in how compliance and desistance is measured, as considered in section 2.7.3).
2. 'Favour informal approaches' – adhere to a principle of minimum intervention.

3. 'Use prison sparingly' – redirect investment away from prisons as prison frustrates desistance.
4. 'Build positive relationships' – with the community, the probation officer, and the family. Change is more likely to happen with the support of personal and professional allies.
5. 'Respect individuality' – apply bespoke approaches (in line with IOSF, gender-based working group, mental health working group etc.).
6. 'Recognise the significance of social contexts' – build networks and social capability through a multi-agency response to desistance, opportunities at local level, and a constructive attitude towards those who offend.
7. 'Mind our language' – positive, constructive language that contributes to building pro-social identities is more likely to assist the desistance process. Negative labelling is a barrier to change.
8. 'Promote 'redemption'' – acknowledge change, and attempts at change, in order to signal redemption and reintegration into the community and wider society.

It is recommended that policy regarding the implementation of a desistance-informed agenda is informed by Weaver and McNeill's (2012) desistance model guidelines. [Recommendation 2.6]

2.3 Restorative justice

The integration of a desistance-informed approach can be bolstered by the practices and techniques of restorative justice. The compatibility of the two movements lies in their construct of the individual. As Maruna notes: 'both bodies of research are fundamentally premised on a belief in redeemability or the idea that human beings are not of fixed moral character and even the worst behaved among us have something positive to offer society' (Maruna, 2016:290). Moreover, the markers of a social justice approach, particularly multi-agency working and community participation, also underpin restorative justice.

Restorative justice has made significant inroads into the international (Van Ness, 2005; Marder, 2020), European (Council of Europe, 2018; Dünkel et al., 2015), and Irish (Marder, 2019; National Commission on Restorative Justice, 2009) penal landscapes. It forms a core part of the Service's ongoing strategic intent, as demonstrated by its involvement in the cross-European project, Restorative Justice: Strategies for Change. From this project, the Irish restorative justice strategy aims to bring together stakeholders in order to achieve three key aims around accessibility, knowledge, and cultural change (Marder et al., 2019). In practice, the Service's commitment to a restorative justice approach is borne out by the introduction of the Restorative Justice and Victim

Services Unit (RJVSU) in 2018, and the successful implementation of family conferences, offender reparation panels and mediation services. Despite these developments, however, the provision of restorative justice across communities is inconsistent and inaccessible for many (Marder, 2019; O'Dwyer and Payne, 2016). It is recommended that the Service continue to direct efforts and resources towards building on its existing restorative justice success which supports a desistance-informed agenda, and reinforces a social justice ethos.

From a practical perspective, there is an increasing awareness of the role restorative justice principles can play, not just as an addition to mainstream justice, but at the core of criminal justice processes (Aertsen, Daems and Robert, 2012; Marshall, 2015). For instance, Marder (2019) recommends the use of restorative justice as a default approach to decision-making at all stages of the criminal justice process, which would imbue a presumption in favour of offering and enabling stakeholder participation in order to repair harm, unless the circumstances of the case dictate otherwise.

2.3.1 Restorative justice and the CSO

In the context of the CSO, there is scope for restorative justice approaches to be used beyond the confines of criminal procedure. At the point of planning, restorative justice practices can facilitate relationship building, collaborative design and instigation, participatory decision-making and collective reflection (Marder, 2019). Employing restorative justice techniques would therefore reinforce multi-agency working practices and encourage meaningful community participation in the development of community service policy and practice. Beyond existing services, at practice level, restorative justice could be offered to relevant stakeholders at the point of induction, in order to support the person who has offended in realising how their order might serve reparative and reintegrative purposes. Moreover, one study demonstrates how community service can be part of a restorative justice approach in which a person's placement or assignment is a direct response to the offence and harm caused, where that is feasible and appropriate (The PEW Charitable Trusts, 2020). A restorative justice approach would also help build better working relationships between the person who has offended, the community supervisor, and the probation officer, which would promote desistance by building trust and encouraging the formation of a pro-social attitude. Finally, restorative justice practices are a useful tool in building more constructive responses to breach and compliance issues, as discussed in section 2.7.3.

It is recommended that the Service continue to invest efforts and resources in building its existing restorative justice practice, and to expand its use to reinforce the implementation of a desistance-informed approach to the operation of the CSO. [Recommendation 2.7]

It is recommended that further empirical research is conducted to assess existing restorative justice practices and how they can be maximised in the context of the CSO, e.g., at induction, coproduction of agreement, compliance and breach. [Recommendation 2.8]

2.4 Social justice

This section focuses on the need for greater state-level engagement with the desistance process across non-penal agencies and departments, in response to evidence that calls for recognition of desistance as a social (and not just a criminal justice) policy objective. It begins by casting crime as a social problem, before reviewing recent international and state-level social policy materials that signal a marked shift towards a social investment and capabilities approach, which emphasises values informed by social justice, human rights, and equality and diversity principles. Next, it demonstrates how these values are borne out through strategic objectives that promote community participation and multi-agency structures and practices. Finally, it aligns CSO policy innovation with these signals and objectives in order to facilitate effective communication with state-level stakeholders. In doing so, it demonstrates how reforming the CSO can make a valuable contribution to realising wider governmental priorities, in line with international policy recommendations.

2.4.1 Crime in context

There is a strong international literature on the contribution of social exclusion to the crime problem, and the resultant need to view crime through a social justice framework (Drake et al., 2009; Irish Penal Reform Trust et al., 2010; Irish Penal Reform Trust, 2012). For instance, child policy studies focus on the link between adverse childhood experiences and crime involvement in adulthood (Baglivio and Epps, 2016; Fox et al., 2015; Wolff and Baglivio, 2016). Moreover, numerous studies have found correlations between criminal activity and homelessness (Burton et al., 2018; Roy et al., 2014; Wardhaugh, 2000), and criminal activity and poverty (Imran et al., 2018; Newburn, 2016; Zhao et al., 2014). These findings sit next to a burgeoning literature on the phenomenon of net-widening in criminal justice generally (Kantorowicz-Reznichenko, 2013), and non-custodial alternatives in particular (Cohen, 1985; Phelps, 2013), in addition to the detrimental impact of increased criminalisation (Aebi et al., 2015). Both lines of evidence point to a need to attend to crime at a social policy level, and in a way that minimises unnecessary and potentially criminogenic interventions. At present, social responses to crime largely focus on early intervention (Karoly et al., 2005; Murphy, 2010) and diversion strategies (McAra and McVie, 2010). There is therefore potential for the CSO to play a greater role in recognising and responding to crime as a social problem at the post-conviction stage.

The long tradition of social welfarism within the Service, in addition to its input of social information into sentencing, has advanced social justice within the criminal justice sphere (Raynor, 2018). The Service is therefore in a unique position to make a significant contribution to tackling social exclusion and injustice through appropriate interventions. Given the place of the CSO as a potential conduit for desistance through the advancement of social capital, there is opportunity to reframe this sanction as a tangible means of aligning penal policy with wider social policy concerns, through the reduction of prison sentences and the promotion of practices that support social inclusion and build safer communities.

2.4.2 Foregrounding social justice

Since the economic crisis, there has been increasing global recognition of the need to adopt a social justice framework throughout key policy areas, for example, through social investment strategies (e.g. the European Commission's Social Investment Package (SIP)) and social capabilities strategies (Social Justice Ireland, 2016; Hearne and Murphy, 2019; Jenson, 2009; Perkins, Nelms and Smyth, 2005; Polat, 2011; Robeyns, 2003, 2017; Sen, 1992; and Tikly and Barrett, 2011). The UN 2030 Agenda identifies 17 Sustainable Development Goals ('SDG's) to refocus global efforts around developing and implementing policies that support people and communities in achieving a sustainable future (The United Nations, 2015). This priority is reflected strongly in Irish governmental strategy, which emphasises social inclusion as a central priority (Government of Ireland, 2021; Government of Ireland, 2020; Department of Environment, Community and Local Government, 2015; Government of Ireland, 2019).

SDG 16 (Peace, Justice and Strong Institutions) relates to criminal justice reform, and aims to achieve 'responsive, inclusive, participatory and representative decision-making at all levels.'¹ Data suggests that compared with 15 other EU member states Ireland is making good progress in meeting the aims of Goal 16 (Clark and Kavanagh, 2019). However, high prison rates and problems of overcrowding have been identified as undermining the Goal (Penal Reform International, 2017). Pre-pandemic concerns about overcrowding in Irish prisons (IPRT, 2019), in addition to a longstanding overreliance on prison as a penal sanction (IPRT Press Release, 2019), particularly for short-term sentences (IPRT Press Release, 2019), threaten to derail national progress under this SDG. Further, these issues undermine governmental commitment to the promotion of community sanctions over custody as a core criminal justice policy (Penal Policy Review Group, 2014), and as recommended by international protocols (e.g. Tokyo Rules, 1.5; Confederation of European Probation). Therefore, there is an obligation at state level to prioritise social justice responses to crime through maximising the potential of non-custodial alternatives like the CSO in supporting desistance and promoting social cohesion. Social justice policy innovation is achievable through the advancement of key markers in the CSO context: community participation, co-production, and multi-agency responses.

2.4.3 Key markers of social justice: community participation, co-production and multi-agency responses

The review identifies the promotion of community participation and coproduction of public services as a key marker of a social justice framework. There is an advanced literature on the coproduction of public services as a means of promoting social inclusion (Community Work Ireland, 2016). The approach is further reflected in international protocols like the Tokyo Rules, which recommend including public participation in the management of criminal justice in order to

¹ <https://www.undp.org/sustainable-development-goals#peace-justice-and-strong-institutions>. This intention is also reflected in international criminal justice standards: Nelson Mandela Rules 2, 5(2), 10, 66, 83-85. Bangkok Rules 1, 54-55. Tokyo Rule 2.2. Beijing Rule 1. Havana Rule 4. See, https://cdn.penalreform.org/wp-content/uploads/2016/06/Global_Prison_Trends_2017_Special_Focus.pdf

contribute to the protection of society (Tokyo Rules, 1.2; 10.4; 17.1; 17.2). The Irish government has indicated a strong commitment to the ideals of community participation as a means of promoting social inclusion, particularly in policy materials relating to Community and Rural Development Strategy (Department of Environment, Community and Local Government, 2015; Department of Rural and Community Development, 2018).² Further, the Irish Rural Development Policy promotes a people-centred, participative and inclusive framework in order to foster 'social cohesion amongst all communities and prioritising the needs of those experiencing social or economic exclusion, including rural isolation' (Government of Ireland, 2021:22).

Another key indicator of a social justice approach is the promotion of multi-agency responses in a way that spans penal and social policy. For instance, in the Netherlands, it is acknowledged that the response to crime '... is becoming wider than the judicial domain alone, and the social domain is also coming more and more into the picture' (de Kok et al., 2020: 54). Recognition of the need to involve both public and private sectors in rehabilitative initiatives is also growing. For example, in Japan, public-public and public-private partnerships across the housing, education, employment, welfare, health and social services sectors form the basis of a government-wide strategy to realise rehabilitation (The United Nations, 2020).

Support for multi-agency responses is evidenced in international protocols relating to criminal justice. The Tokyo Rules recommend the introduction of mechanisms that facilitate linkages between services responsible for non-custodial measures, other branches of the criminal justice system, social development and welfare agencies, and both governmental and non-governmental services dealing with health, housing education, labour, and even mass media (Tokyo Rules, 22.1). Again, in the context of community and rural development, the Irish government reinforces multi-agency approaches (Government of Ireland, 2021). For instance, the Rural and Community Development Framework Policy 2015 recommendations are based on core values including social inclusion, equality and respect for diversity through harnessing '... all the potential resources at the disposal of communities by bringing together people, groups, and agencies, voluntary and state bodies to make a positive difference in the development of sustainable communities' (Department of Environment, Community and Local Government, 2015:1). Further, the framework recognises that governmental support is critical to creating sustainable communities and voluntary organisations that work towards developing '... innovative responses to poverty, inequality and social exclusion, including educational, health, economic and cultural initiatives' (Government of Ireland, 2019: 8).

² See also, the Roadmap for Social Inclusion 2020-2025 encourages volunteerism, and the Social Participation (Government of Ireland, 2020: 60) ethos of (Programme for a Partnership Government, Government of Ireland 2016).

2.4.4 Social justice markers and the CSO

National level engagement

The social exclusion of people who have committed offences is not expressly addressed in Irish social policy. This omission tends to reinforce the division of those who offend from the community, which can act as a barrier to desistance. Further, the Service has identified issues regarding the operation of the CSO, particularly in rural areas, as outlined in section 3.4.2. Therefore, it is recommended that the Service engage with other governmental departments, particularly the Department of Rural and Community Development, with a view to expanding its scope to include people who have committed offences in the community. In this context, there is potential for the CSO to be reframed in order to support the successful implementation of social justice strategies for those who are subject to an order, as explored further in Chapter 3. The feasibility of this policy innovation is reinforced by the emergence of the Scottish Community Justice model, discussed at section 2.4.5 (Grant et al., 2020). Such a progressive stance on justice policy adheres with broader Irish social policy objectives. Like Scotland, (and in contrast to England and Wales (Tidmarsh, 2020)), Irish probation has retained a strong social welfare ethos (McNeill, 2004c). Accordingly, it is well positioned to consolidate and expand the welfare and social justice principles that underpin its policy and practice.

It is recommended that the Service moves towards a shared, community model for the CSO. At national level, this would involve engaging with government agencies and departments, particularly the Department of Rural and Community Development, in order to co-design a national strategy to include people who offend within their definitions of social exclusion, and to evaluate how the CSO may be developed to support the successful implementation of a social justice strategy across Irish communities. [Recommendation 2.9]

Local level engagement

Applying a social justice frame to CSO policy requires developing responses around the needs of the individual in their community, as distinct from structures deriving from the responsibility of a particular agency. This approach can be achieved through devising new multi-stakeholder structures to drive national policy at local level, or it may be achieved through the optimisation of existing structures. Scotland is an example of a jurisdiction where probation work, under the auspices of Criminal Justice Social Work (CJSW), forms part of the local authority, which supports the development of sites and placements within the locale. CJSW is required by legislation to consult with other community stakeholders (voluntary organisations, police, judiciary, representatives of victims and of those who offend, and local agencies such as housing) regarding the type of work needed in the particular community (Centre for Justice Innovation, 2020).

The Service has a strong tradition of effective engagement with voluntary and community organisations, in addition to the Prison Service and An Garda Síochána (e.g. Action Plan for the Joint Management of Offenders 2019-2021). These links would benefit from being augmented by the involvement of other state departments and agencies to support planning, management and

implementation of the CSO in a way that advances social policy objectives. For instance, Local Authorities have a key role to play in the implementation of the SDG's at community level (Government of Ireland, 2018). In particular, Local Community Development Committees (LCDCs), Strategic Policy Committees (SPCs), and the Local Government Management Agency (LGMA) have been identified as well placed to implement the goals. Further, a recent evaluation of LCDCs recommends that the Department of Rural and Community Development takes a stronger role at national level in supporting cross-Government coordination of local development and community development and securing greater buy-in at local and national level (Department of Rural and Community Development, 2019).

It is recommended that the Service consolidate voluntary and community connections at local level, and examine the contribution that existing, community-based structures, such as the LCDCs, can make to support the operation of the CSO in a more formal capacity (e.g. involvement in coordinating placements, facilitating public participation, and supporting multi-agency cooperation) with a view to advancing social justice in line with national social policy. [Recommendation 2.10]

A Sustainable CSO

In order to align more closely with the aims of SDGs at community level, in addition to promoting the Department of Justice sustainability goals (Department of Justice, 2021),³ the nature of CSO work in the community could, where practicable, be tailored specifically to promoting local environmental objectives. This approach would support the aims of desistance as people under an order are less likely to breach if they perceive the work they are conducting as worthwhile (McIvor, 1998). A meaningful shared goal would also help strengthen ties between the person who has offended and the community, engendering social solidarity (McIvor, 1998). There are not many examples of this type of practice available in the context of community service, however, an innovative prison example is found in Panama under the auspices of the International Committee of the Red Cross 'EcoSolidos' project. This project abides by the four principles of 'reduce, reuse, recycle and resocialise' which connects the physical aspects of community sustainability to the emotional aspects of ensuring that no person is discarded (The International Committee of the Red Cross, 2018). The programme regenerates 90% of prison waste back into something useful for the community, and the 'Sowing Peace' project turns food waste into organic fertiliser to be used towards reforestation and growing produce (Pitts, 2021). The success of the initiative is evidenced by the fact that plans are underway to replicate it in other detention facilities in the region (The International Committee of The Red Cross, 2018).

It is recommended that consideration is given to the development of 'community sustainability' placements that promote local, national and international sustainability goals, and support

³ Department of Justice. (2021) *A safe, fair and inclusive Ireland Statement of Strategy 2021 - 2023*. Goal 5: 'Accelerate innovation, digital transformation and climate action across the justice sector.'

desistance by giving meaning to the work undertaken by the person who has offended.
[Recommendation 2.11]

2.4.5 Implementing social justice markers

Taking seriously the implementation of social justice markers in the community service space requires an extensive review of working practices across all stages. In the context of multi-agency responses, Scotland's Community Justice model uses language and principles based on a social justice ethos and a localised vision of community justice taking place under the direction of a national strategy (Scottish Government, 2016; Community Justice Scotland, 2020). The model is at an early stage and so a definitive evaluation has not yet emerged. However, the 2019-20 Annual Report indicates that progress is being made towards achieving community justice outcomes at national and local level. Core challenges identified include the impact of the COVID-19 pandemic, issues relating to duplication of work across partnerships, and resource challenges.

Case Study: Community Justice Model, Scotland

The National Strategy for Community Justice defines a modern and progressive country as one that tackles inequalities and 'supports those who end up in our justice system to turn their behaviours around and become contributors to an inclusive and respectful society' (Scottish Government, 2016: 2). It puts forward a shared vision of community justice at national level, in order to support partners and communities in working together at local level in order to improve outcomes.

Key features:

- **Multi-stakeholder input through community planning partnerships.** Individuals, local businesses, victims of crime, people who have committed offences, families, community bodies and representatives, third sector, agencies and services across housing, employment, health, wellbeing welfare etc., work together to support, manage and supervise those who have offended in the community until the point of reintegration.
- **Based on principles of desistance, social inclusion and citizenship.** Focused on challenging stigma, employing people who have offended in the community, participating in community justice planning. Inclusion of victims, those who have committed offences, families and representatives. Holistic, person-centred approach to responding to complex needs of people who offend e.g. education and training, restoring relationships, addressing addiction, addressing financial problems, developing pro-social attitudes, accessing employment opportunities, accessing mental and physical health supports, addressing housing needs.
- **National level strategy based on local and third sector input.** Planning occurs at local level by those with knowledge of the area. To promote participation, statutory partners (e.g. Health Board, Courts, Local Authorities, Police, Prison Service) are under a legal obligation to engage in and support the planning process,

and to report on progress at national level. Third sector are included at the planning stage.

- **Tracking progress and continuously improving.** Development of an 'outcomes, performance and improvement framework' in conjunction with the strategy in order to support the recording and sharing of positive outcomes and the identification of learning and innovation opportunities.
- **Community understanding.** Changing the conversation to reduce stigma and support reintegration and desistance, leading to more responsive services and better community justice outcomes. Creation of strategy that targets education of communities, local media and local decision-makers (e.g. judiciary). Developing local evidence-base to better understand issues in a particular community, and to identify and capitalise upon existing practices and structures that support good outcomes.
- **Community participation.** Involving community stakeholders in the planning, delivery and evaluation of community justice policy, practices and services.
- **Strong national and local leadership.** Leadership at national and local level is essential to ensuring the effective execution of group decisions that align with national strategy.
- **Response based on risk and need.** Delivery of evidence-based interventions appropriate to the risk level and need of the person who has offended.

Another example of how a multi-agency model is embedded in the context of CSOs, in particular, is Wrocław's 'cascade' model.

Case Study: Embedding a multi-agency CSO through a 'cascade model' in Wrocław

The Polish CSO consists of unpaid and supervised work, provided and coordinated by companies, health and social care institutions (e.g. homeless shelters, hospitals, hospices etc.), and charities. The work must provide a benefit to the community and have rehabilitative value for the client. The CSO is managed and supervised by the probation service. It is not a sanction in its own right. Unpaid work is the key element, though additional conditions may be added to the order (see generally, Zglińska, 2017; Janus-Dębska, 2014).

The cascade model was developed in Wrocław in response to a major increase in the number of CSOs being issued with an insufficient number of suitable placements available, an overburdened probation service, perception of the work as not valuable, and resource challenges (Mista, 2017). The model involves local and multi-agency collaboration at two levels of organisation and distribution of community service. The probation service operates at level one in a supervisory and oversight capacity, and level two comprises a local government division called Wrocław Integration Centre, together with a charitable organisation, People for People, whose responsibility it is to source placement providers and provide access to services and supports relating to medical, psychological, social, employment, financial and legal needs of the individual under supervision, as appropriate. The level two organisations are also responsible for monitoring and responding to the needs of local communities, and liaises with local institutions, charities and businesses that express an interest in supporting the implementation of the CSO.

The model is underpinned by a strong reparative ethos, and aims to bridge the gap between citizens, communities, and the justice system.

2.5 Public perception

'[C]ommunity-based approaches cannot be achieved without the understanding and acceptance of the community and the public at large'

- (The United Nations, 2020:11).

The effectiveness of a desistance-informed agenda is contingent on the level at which the community, wider society, the media and the state buy into the message that people can change (Maruna and King, 2004). One line of evidence suggests a marked lack of understanding as to the

nature and purpose of community sanctions (Jansson, 2008; Allen and Hough, 2007), which can breed skepticism and misinformation. Further, there is a perception that public attitudes are generally punitive, which can have an impact on judicial sentencing practices (see section 2.7.3). Another line of literature undermines the assumption of public punitiveness, however. In particular, Maruna and King's (2004) study found that public support for the notion of 'redeemability' is widespread. Moreover, Annison and Moffatt's (2014) study suggests confidence in public understanding and being on board with the idea of desistance as a process.

Taken as a whole, then, the literature suggests that public attitudes tend to be driven by emotion rather than empirical fact (Maruna and King, 2008). As such, ideas around redemption and forgiveness can impact and inspire to the same degree as ideas around retribution and condemnation. The key point is that a focus on retribution brings harm to both the individual who has offended and society because it impedes desistance and undermines social cohesion. Conversely, a careful and measured focus on the sentiment of redemption supports desistance and builds towards safer societies (Maruna, 2001). Therefore, appealing to the compassionate side of society, which is based upon an emotive instinct, can increase confidence in community penalties, particularly where supported by stories of personal transformation (Maruna and King, 2008). Such an approach is therefore a powerful tool in shaping how people think about crime (Applegate et al., 2000), those who commit it, and their place in the community. An example of a campaign that galvanises public sentiment in respect of those who have offended is Singapore's 'Yellow Ribbon' Project (see case study below). Community Justice Scotland has also run an effective 'Second Chancers' campaign that promotes positive attitudes towards those who have offended through sharing their stories on audio, video and social media platforms (Community Justice Scotland, 2019).

The review recommends that the Service develop a more formal, coordinated and extensive communication strategy underpinned by a clear message regarding desistance, restorative justice, social justice, and redeemability, in order to boost public understanding of and confidence in the CSO, challenge prejudice, and reinforce reintegration. Adopting this approach would also bolster the reputation of the Service in the eyes of the community, as Geiran and Durnescu (2019:91) remark: 'It is always easier to defend the organisation in case of "bad stories" when the public is informed already about what the probation service stands for and why and how it carries out its activities.' Section 3.4.4 gives further consideration to how the Service can better communicate with the public and community organisations.

It is recommended that the Service engage in a public education campaign in order to relegitimise the CSO as a step on the road to desistance, and to promote a message of redeemability in order to increase public confidence in community service. [Recommendation 2.12]

Case Study: Yellow Ribbon Campaign, Singapore.

The Yellow Ribbon Project (YRP) is a national public engagement campaign that began in Singapore in 2004 under the auspices of the Community Action for the Rehabilitation of Ex-Offenders (CARE) Network. The aim of YRP is to change society's mindset towards those who have offended with a view to giving them a second chance. YRP has three core objectives (the 3 A's):

Awareness: raising awareness of the need to give second chances to those who have offended, in addition to their families.

Acceptance: encouraging people to accept those who have offended, and their families, into the community.

Action: inspiring community action towards advancing the goals of rehabilitation and reintegration.

YRP is a combination of efforts by community members, partners, and media outreach that shows considerable success in building a national culture of acceptance of and compassion for those who have offended and their families, and is also linked to a decrease in reoffending rates (The United Nations, 2020).

2.6 Monitoring and evaluation

International protocols recommend ongoing monitoring and assessment of community sanction management and operation with a view to developing systematic frameworks of evaluation (e.g. Tokyo Rules, 2.4). Intrinsic to successful evaluation is the efficient and consistent gathering of relevant data. The Service has a strong track record of engaging in progressive research and development activities and programmes. It is recommended that this culture is cultivated further in the context of the development of the CSO. In particular, there is a need for formalised and targeted programmes of research, monitoring and evaluation in order to ensure that the sanction is meeting its objectives and is subject to a process of continuous improvement. Among the key areas to monitor are:

- a. The extent to which the CSO is displacing prison placements as the default sanction, particularly for offences warranting short-term custodial sentences;
- b. Evidence of net-widening indicators;
- c. Data on breach and non-compliance, including gathering experience of such procedures from stakeholder perspectives, in particular individual's reasons for non-compliance;
- d. The development of measures of desistance;
- e. The extent to which CSOs are gender responsive;

- f. The continued development, adaptation and evaluation of assessment tools and programmes with a view to cultivating a desistance-informed agenda;
- g. Judicial, public and other stakeholder perceptions of and attitudes towards the CSO;
- h. Identifying and measuring the benefits of the CSO for the community, the victims of crime, and those who offend; and
- i. Calculating resource needs for implementing a desistance-informed agenda.⁴

It is recommended that the Service develop mechanisms for the ongoing monitoring of community service management and operation with a view to establishing a systematic framework of evaluation. [Recommendation 2.13]

2.7 Policy foundations of the CSO

The CSO was introduced in 1983 as an alternative to imprisonment in Ireland, and with the primary purpose of reducing prison overcrowding (Guilfoyle, 2017; O’Hara, 2016). Operational material from the Service at the time also suggests reparation and punishment in the community as core objectives of the CSO (Probation and Welfare Service, 1984). More recent strategy materials signal the role of the CSO in serving a rehabilitative and reintegrative function (Guilfoyle, 2017).

On one hand, mixed policy signals impede clear messaging about the overall objective of the CSO, leading to confusion around its future strategic priorities (Guilfoyle, 2017; Zedner, 2004). This confusion leads to further practical problems relating to the operation of the sanction in the community. For instance, Pease (1985) notes that the aim of the sanction is of utmost importance when it comes to deciding on types of supervision, work placements, and volunteers, and what each is trying to achieve. On the other hand, the purpose of the CSO is diffuse because much is asked of it in terms of fulfilling a number of divergent functions: decarceration, retribution, reparation, and rehabilitation. It is therefore not necessarily advisable to reduce the stated functionality of the CSO, as doing so would misrepresent what is an unavoidably complex sanction.

An evaluation of national and international penal policy materials demonstrates that the core functions of the CSO each carry import for stakeholders and, as such, remain relevant to discerning its overarching purpose. Drawing on the tripartite analytical framework outlined above, this section highlights how core policy foundations may be reshaped to serve a strategy informed by the principles of desistance, restorative justice, and social justice.

⁴ See further: Penal Reform International. (2016) On probation: models of good practice for alternatives to prison. Available at: <https://cdn.penalreform.org/wp-content/uploads/2016/12/Probation-model-report-final-2016.pdf>.

2.7.1 Decarceration

There is international consensus on the harm caused by mass incarceration (Clear and Frost, 2015; Maruna, 2017) and prison overcrowding (Heard, 2019). A core function of the CSO is to address these issues by providing an alternative non-custodial sanction where individuals can serve their sentence in a community setting through the delivery of unpaid work. This function is validated by research on decarceration and community-based alternatives that supports the contention that community supervision has a role to play in assisting the desistance process (Monteiro and Frost, 2015; Sundt et al., 2016; Farrall et al., 2014; Healy, 2010; McCulloch, 2005). Further, there remain strong signals in favour of the use of non-custodial sanctions towards fulfilling a decarcerative objective both nationally (Strategic Plan 2015, PS Strategic Plan, 2021-23) and internationally (Tokyo Rules). However, the evidence demonstrates that the CSO has done little to reduce prison overuse and overcrowding in its present form (IPRT, 2020).

In Ireland, a significant cohort of those serving a CSO have offended for the first time, suggesting that the order is being overused for lower tariff offences (IPRT, 2017; O'Hara and Rogan, 2015). O'Hara (2016:341) contends that this practice is due to the fact that the judiciary are seeking to legitimise the CSO by attaching long alternative custodial sentences with a view to deterring breach and non-compliance: 'operating in this "safe space" allows them to be retributive while still utilising non-custodial penalties.' This pattern undermines the function of the CSO as an alternative to prison, with potential net-widening consequences (IPRT, 2017). The gap between the intended function of the CSO and the reality of how it is used in the courts indicates a misalignment between penal policy intentions and the sentencing priorities of the judiciary.

For policy purposes, any proposed innovation that aligns with a desistance-informed agenda must promote a decarcerative strategy at the point of sentencing. Therefore, it is necessary for the Service to engage to a greater degree with the judiciary in order to increase confidence in the use of non-custodial sanctions, such as the CSO, particularly in relation to offences that attract short-term prison sentences. Further, there is an opportunity to work more closely with the Sentencing Guidelines and Information Committee to press for decarceration, through the increased use of the CSO, as a means of reducing imprisonment as a barrier to desistance. Practical ways to address communication shortfalls with the judiciary are discussed further at section 3.4.3.

It is recommended that the Service work more closely with the Sentencing Guidelines and Information Committee in order to advocate for decarceration as an overriding policy priority on the basis that it removes barriers to desistance, and to promote the use of the CSO, particularly in respect of short-term sentences for suitable individuals. [Recommendation 2.14]

2.7.2 Cost effectiveness

Its cost effective nature was an important original policy foundation of the CSO (Walsh and Sexton, 1999), and remains a strategic justification for the use of the sanction when compared with the costly nature of a custodial sentence (e.g. Comptroller and Auditor General, 2004; Department of Justice, Equality and Law Reform, 2009). For example, in 2017, the cost of an

average CSO was €2,500 compared with €70,000 for a one year prison placement (IPRT, 2017). In addition, the CSO brings a financial benefit to the community in the form of unpaid work. In 2020, the 1,161 CSOs managed by the Service resulted in over €1.6 million worth of work being completed (Probation Service, 2021c).

While the promotion of the cost effective nature of CSOs remains a salient selling point of the sanction for state and public stakeholders, in particular, it is insufficient on its own to legitimise the sanction as a 'true' or appropriate form of punishment. Therefore, policy innovation must re-legitimise the sanction in the eyes of the judiciary, the state and the public in a way that emphasises its value in terms of advancing greater penal and social objectives. It is recommended that a desistance-informed agenda imbued with the principles of restorative justice and social justice (as discussed above), is the most appropriate means of doing so, in order to reach larger societal objectives that would have mass appeal, for example, making our communities safer.

2.7.3. Retribution

The CSO is billed as retributive in that a core function of the sanction is to restore the balance of advantage between the person who has offended and the community, through punishment in the form of time spent conducting unpaid work in response to the social wrong committed (Pease, 1985; Zedner, 1994). There is little doubt that the contemporary CSO is a form of 'alternative punishment' as distinct from an 'alternative to punishment' (emphasis added) (Duff, 1992; Robinson et al., 2012; McNeill, 2014). Its punitive credentials are reinforced by a line of literature exposing the additional 'pains' suffered by those under non-custodial sanctions beyond time spent conducting unpaid work. For instance, Durnescu (2011) highlights consequences such as the deprivation of autonomy and time, financial costs, and stigmatisation as some of the effects of non-custodial sanctions. These additional harms are not accounted for in the retributive equation at the point of sentencing. Moreover, judicial decision-making in the context of non-custodial sanctions is influenced by a subjective understanding of public and victim opinion (Anderson et al., 2015), which may increase the likelihood of judges taking a more punitive stance in imposing community sanctions if they believe that the public perceives CSOs as a 'soft' option.

There is some evidence of a retributive intention regarding the CSO in Probation Service policy documentation.⁵ This signal tallies with wider Irish penal policy messaging within a similar timeframe (Penal Policy Review Group, 2014). However, an increased punitive emphasis has been largely avoided in the context of community sanctions in Ireland (O'Hara, 2016), in contrast to the trend in England and Wales (e.g. Casey, 2008). It is likely the Service's enduring commitment to a social welfare ethos has spared it a retributive turn. This is a judicious stance because a retributive emphasis on the CSO, (for example, wearing bibs and conducting onerous or humiliating work),

⁵ For instance, the Probation Service Recidivism Study 2007-2011 states that 'Community Service, in Irish legislation, is an alternative to prison and as such is seen as a punitive rather than primarily a rehabilitative measure. It is not expected to target the offenders' behavioural risk factors to reduce the risk of re-offending' (Probation Service, 2012: 4).

has been shown to undermine the work of community sanctions. As Maruna and King (2008:346) note:

[a]ny efforts to 'toughen up' community penalties run a considerable risk of backfiring. If people serving community sanctions are demonized as hate figures needing to be degraded and demeaned, then why are they serving community penalties in the first place when prison would do quite nicely?

Further, desistance literature shows that condemnatory attitudes and punitive symbolism tend to act as a barrier to positive change by polarising people into simplistic categories like 'bad' and 'good', leading to shaming and social exclusion (McNeill, 2006), and therefore impeding the greater social aim of building community cohesion.

Notwithstanding the negative impact of a retributive stance on the prospect of reintegration, the principle remains a central sentencing tenet in Ireland, and the core deontological justification for punishing people. Therefore, there remains a question over the need to prove the penal credentials of the CSO if the judiciary is to view it as a valid alternative to prison, particularly in respect of higher tariff offences. A desistance-informed approach provides a means of reconciling retributive principles with forward-looking policy foundations like rehabilitation and reintegration. For example, the literature supports the recasting of retribution as 'constructive' rather than 'merely punitive', in order to move from a condemnatory approach towards accountability and redeemability in criminal justice responses (Duff, 2001). McNeill (2009:18) asserts the cogency of applying a more positive understanding of punishment to community sanctions as a way of providing 'some of the conceptual resources with which to populate the concept of payback constructively.' In an Irish context, constructive punishment practices might emphasise the established retributive principles of penal parsimony and proportionality, over punitive symbolism. This approach would be reinforced by growing international consensus supporting the principle of minimum intervention (Acosta et al., 2012; Creaney and Smith, 2014; Gelsthorpe and Durnescu, 2016; Smith et al., 2009; Viglione, 2018; Tokyo Rules 2.6; 10.4; 12.2). For instance, greater weight might be given to the diversionary nature of the CSO from the adverse effects of custody as a means of fulfilling current penal policy aims, and the use of the CSO as a more proportional response to certain offences (The PEW Charitable Trusts, 2020), in line with established, constitutional sentencing principles.

It is recommended that the Service, together with core stakeholders, adopt a 'constructive' (as distinct from a 'punitive') understanding of retribution that supports desistance by promoting accountability and redeemability through a greater focus on the established principles of proportionality and penal parsimony in the context of the CSO. [Recommendation 2.15]

Retributive responses to non-compliance

Compliance is another, less visible, site where proportionality and decarceration are at issue. The scale of the concern is evidenced in one Scottish study where it was recognised that the clearest maker of the 'inevitability' of a short sentence is not repeat offending, but serial non-compliance

(Anderson et al., 2015). In Ireland at present, failure to complete a CSO triggers a custodial sentence. This process undermines the principle of proportionality, in addition to the decarceration agenda, because it can result in imprisonment for non-compliance, even where the original offence does not warrant a custodial sanction. Unlike prison, the CSO requires more of the person who offends in terms of their consent to submit to the order, and their compliance towards its completion (Robinson and McNeill, 2008; Sparks et al., 1996). Therefore, if the CSO is to be perceived as a credible alternative to prison, the cooperation or compliance of the person under order is a central concern.

While it is acknowledged that breach is a challenging issue within the operation of the CSO, the literature suggests that prison should not be the automatic result (IPRT, 2017). Further, desistance studies do not support the assumption that compliance is buttressed by swifter and harder enforcement strategies (Robinson and McNeill, 2008). On the contrary, the use of constructive methods to encourage engagement and completion of the order have been shown to be effective (The PEW Charitable Trusts, 2020). Procedures that accommodate flexibility in responses also support desistance by acknowledging the ongoing nature of the desistance process (Bersani and Doherty, 2018), and facilitating appropriate support for those seeking to change. Ireland is fortunate in that the supervising officer has the ability to exercise discretion in the face of breach, and so a more constructive approach to compliance could be facilitated within the present framework. For instance, present discretionary practices could be built on through a more systematic framework that supports officers in identifying 'motivational postures' that underpin non-compliance, with a view to focusing on more meaningful, long-term compliance. In terms of policy response, Robinson and McNeill suggest a 'dynamic' model of compliance as summarised below.

Policy innovation: Robinson and McNeill's 'Dynamic model of compliance'

The authors frame compliance as a 'dependent variable' that is 'negotiated or constructed in the context of the specific legal and policy frameworks created in particular jurisdictions' (at 441). Drawing on Bottoms (2001) they identify three stages of compliance: formal, substantive and longer-term. Present policy is largely concerned with formal, short-term compliance, which is easier to measure and evaluate, particularly in terms of proving breach for non-compliant behaviour in court. The problem with privileging formal compliance is that it can encourage 'postures of defiance' in those subject to orders, and creates barriers for people who are genuinely motivated to change but are subject to chaotic life circumstances that make it difficult for them to comply. It can also undermine the legitimacy of an order by presenting it in a 'superficial' light, as a simple 'turn up' and 'sign in' exercise.

Drawing on insights from regulatory scholarship, a dynamic understanding of compliance in community supervision recognises that enforcement strategies can be more successful at securing compliance in the long-term when they are appropriately responsive in terms of being forward-looking in nature (Murphy, 2005), and moving away from a model which is backward-looking and focussed on censuring and deterrence in the context of future non-compliance (Hawkins, 1984; Reiss, 1984).

It is recommended that breach and compliance policy and procedure is reviewed in order to facilitate a more constructive and dynamic response that manages non-compliance in a way that better supports long-term compliance and desistance. [Recommendation 2.16]

2.7.4 Reparation

Irish penal policy presents the CSO as having a strong reparative function that signals the remorse of the person who has offended for the harm committed to the victim and/or community (Department of Justice, Equality and Law Reform, 2009; Penal Policy Review Group, 2014). The Probation Service Annual Reports also emphasise the role of community reparation in terms of the individual 'making amends', (Probation Service, 2020) and providing 'real benefits to the community' (Probation Service, 2019). Moreover, the reparative nature of the order is represented in more recent literature pertaining to the Integrated CSO (ICS Information Briefing 2018; Durnescu et al., 2020).

The concept of reparation is multifaceted, and can elicit a variety of criminal justice responses from engaging in restorative justice with a victim, to free labour, to financial penalties (McNeill, 2009). There are, however, two key identifiable beneficiaries of reparation: the victim and the community. Reparation, narrowly conceived, relates to the requirement of the person who caused harm to make amends for what they have done to the victim of that harm (Maruna, 2016; Weitekamp and Kerner, 2012). There is consensus that reparation in this sense is best facilitated through the principles and practices of restorative justice which has gained a strong foothold in criminal justice

agencies in recent years (Shapland, 2014), and as recognised in an Irish context through the establishment of the Service's Restorative Justice and Victim Services Unit (RJVSU) (see further, section 2.3).

Not all crimes have a direct, identifiable victim, however, and not all victims wish to be identified. Broadly conceived, then, reparation that addresses the community symbolises atonement for the social harm committed (Zedner, 1994). The attitude encircling this atonement is significant, however. For instance, McNeill (2009) warns that understanding reparation in a punitive sense can have a harmful effect. As Zedner (1994:250) explains: '[p]unishment has a very limited ability to control crime and, to the extent that it is disintegrative, it inflicts further damage on society.' Rather, Zedner recommends exploring the integrative potential of reparative justice as a means of repairing social bonds. For instance, the idea of generativity or 'giving back' has been shown to have a beneficial role for those who offend because it supports 'social redemption' and reintegration (Maruna, 2001; Maruna, LeBel and Lanier, 2004; McNeill and Maruna, 2007; Maruna, 2017). The concept is pro-social because it imbues the person who has offended with a new found sense of self-worth and citizenship that augments their desistance journey (Uggen and Janikula, 1999; Uggen et al., 2004). The literature also supports a generative understanding of reparation in the context of pregnant women and mothers who have offended (Stone, 2015).

Therefore, in line with the understanding of constructive punishment outlined in the context of retribution above, framing reparation as forward-looking and positive helps to recast the CSO as an intervention that can support the desistance process. The CSO has the potential to give generative meaning to reparation by providing opportunities to build social supports, to get involved with pro-social activities, and to impress a sense of belonging, participation and self-worth in the person who has offended (IPRT, 2017). In addition, though restorative justice is largely focused on cases where there is a victim who wishes to participate in the process, restorative justice techniques can also be used as a means of supporting desistance where there is no direct victim. For instance, restorative justice approaches may be employed to concretise and make relevant to the person who has offended, what reparation or 'making good' means to them, and how they might realise it (Daly and Scifoni, 2012).

It is recommended that the Service promotes a generative understanding of reparation so that the CSO is cast as an intervention that supports desistance from crime and social inclusion, with the aid of restorative justice practices where appropriate. [Recommendation 2.17]

2.7.5 Rehabilitation and reintegration

Rehabilitation was not a primary objective of the CSO in Ireland when it was originally introduced (Guilfoyle, 2017). However, this position has changed considerably in recent years, to a point where it forms a core aspect of the Integrated CSO. As Guilfoyle (2018) notes: '[t]he Integrated CSO, for the first time, incorporates rehabilitation into the CSO in a meaningful way.' Probation policy materials signal a commitment to responding to the specific needs of the individual, and to the removal of barriers that inhibit rehabilitation (Probation Service, 2021c). This stance is reflective of wider penal policy which acknowledges the role of the penal system in supporting

rehabilitation, reintegration and desistance from crime (Penal Policy Review Group, 2014). It also tallies with international recommendations that promote rehabilitation as a means of reducing reoffending (Tokyo Rules 10.4; Penal Reform International, 2020), particularly where programmes are tailored to the individual needs of the client and are gender and age-sensitive (Penal Reform International, 2020).

Durnescu et al. (2020) point to Risk-Need-Responsivity (RNR) and desistance as the two most influential rehabilitation models across the globe. The forthcoming Irish Offender Supervision Framework is based on these two models, and promises a bespoke approach to responding to the risk and needs of the person under supervision, aligning with best international practice. The Service's commitment to a rehabilitative ideal is further demonstrated by the introduction of targeted client intervention training programmes, for example, in relation to domestic violence, in addition to mental health and gender specific initiatives, such as The Outlook Women's programme (PS Annual Report, 2020). The progressive nature of this stance is commendable in light of prevailing literature discussed in the context of the analytical framework above, and the reviewers recommend that the Service continue to progress this rehabilitative framework through the Integrated CSO.

It is recommended that the principles underlying the Irish Offender Supervision Framework are applied to the Integrated CSO where appropriate. [Recommendation 2.18]

Enhancing the rehabilitative capacity of the CSO

In terms of policy approaches to enhancing the rehabilitative capacity of the CSO, the literature differentiates between narrow forms of rehabilitation, which are focused exclusively on addressing the individual's needs and promoting their capacities through a 'psychological' or 'correctional' approach, and a broader approach that is achieved through a more overt desistance agenda (McNeill, 2012). While the existing Integrated CSO goes some way towards meeting the narrow form of rehabilitation, it is recommended that a desistance-informed approach is advanced that not only addresses the needs of the person, but focuses more on the greater barriers to rehabilitation also. For instance, if a person makes progress with a rehabilitative programme, but is then rejected by their community or is unable to secure employment, their desistance journey is impeded. A desistance-informed approach to rehabilitation addresses this difficulty by recognising that: 'the pathways to desistance are through repaired relationships – within families, within communities, within the state – and not just through "correction" of the individual' (McNeill et al., 2012). Therefore, a broad understanding of rehabilitation as a function of the CSO requires existing programmes to recognise and address barriers to desistance through repairing informal and formal relationships. Such an approach also aligns with the key markers of social justice as it promotes community participation.

Recognising rehabilitation in a broader, more constructive sense, might involve positive reinforcement of steps towards desistance and reintegration. For instance, evidence supports the concept and practice of celebrating, and marking in a formal way, the 'reentry' of the person who has offended into the community of citizens (Maruna, 2011). The rituals would need to be

conducted in a way, and at a level of formality, that counteracts the degradation of the individual's penal experience in order to engender social solidarity. In an Irish context, the 'Change Works' programme presently conducts graduation ceremonies for participants, and the literature recommends extending this practice to community sentences in order to support the desistance process (e.g. Centre for Court Innovation, 2020:15).

Moreover, studies suggest that rehabilitation and desistance are also served by further tailoring the CSO to meet the needs of the client. For instance, the Centre for Court Innovation (2020) recommends shortening the length of the sanction for lower tariff offences, so that resources may be redirected towards improving supervision for higher risk cohorts. The Integrated CSO goes some way towards addressing the particular needs of those serving a CSO where appropriate (see further, section 3.4.5).

It is recommended that the Service advance a broad understanding of rehabilitation as a central policy foundation of the CSO that accords with a desistance-informed approach. [Recommendation 2.19]

It is recommended that the Service expand the scope of reentry ceremonies to include the CSO and to celebrate on a more formal and consistent level the achievements of those who complete the order. [Recommendation 2.20]

2.8 Key markers for this review

The remainder of the review is underpinned by a strategy that promotes the tripartite framework outlined, and so adheres to the following summative markers when considering recommendations relating to the CSO:

A: Promote desistance through a commitment to inclusive, generative and pro-social policies, practices, cultures, structures, and language, in a way that aligns with the principles of decarceration and minimum intervention.

B: Reinforce and expand restorative justice principles, practices and techniques across key points of community service planning, management and operations.

C: Imbed social justice principles through the consolidation and enhancement of community participation, co-production and multi-agency responses.

2.9 Summary of recommendations

Policy and principles

Recommendation 2.1 - It is recommended that community service policy, practice and structural innovations are informed by a tripartite strategy that advances the principles of desistance, restorative justice and social justice.

Promoting desistance

Recommendation 2.2 - It is recommended that the Service pursue a more overt desistance-informed agenda in order to galvanise the existing policy foundations of the CSO, and as a means of incorporating social justice indicators into Irish penal policy.

Recommendation 2.3 - Further research is needed to assess how the Service presently priorities the change process in how it delivers community service.

Recommendation 2.4 - It is recommended that the Service consider the benefits, disadvantages and cultural feasibility of placing a legal obligation on public/private agencies to engage in discrete aspects of the management and operation of the CSO e.g. planning, placement, and service provision.

Reframing the CSO as a step on the road to desistance

Recommendation 2.5 - It is recommended that the CSO is reframed as a step on the road to desistance, and that further empirical research is conducted into how the markers of social inclusion (i.e. multi-agency responses and community participations) currently serve a desistance-informed agenda, and how they may be maximised in the community service context.

Recommendation 2.6 - It is recommended that policy regarding the implementation of a desistance-informed agenda is informed by Weaver and McNeill's (2012) desistance model guidelines.

Restorative justice

Recommendation 2.7 - It is recommended that the Service continue to invest efforts and resources in building its existing restorative justice practice, and to expand its use to reinforce the implementation of a desistance-informed approach to the operation of the CSO.

Recommendation 2.8 - It is recommended that further empirical research is conducted to assess existing restorative justice practices and how they can be maximised in the context of the CSO, e.g., at induction, coproduction of agreement, compliance and breach.

Social justice

Recommendation 2.9 - It is recommended that the Service moves towards a shared, community model for the CSO. At national level, this would involve engaging with government agencies and departments, particularly the Department of Rural and Community Development, in order to co-design a national strategy to include people who offend within their definitions of social exclusion, and to evaluate how the CSO may be developed to support the successful implementation of a social justice strategy across Irish communities.

Recommendation 2.10 - It is recommended that the Service consolidate voluntary and community connections at local level, and examine the contribution that existing, community-based structures, such as LCDCs, can make to support the operation of the CSO in a more formal capacity (e.g. involvement in coordinating placements, facilitating public participation, and supporting multi-agency cooperation) with a view to advancing social justice in line with national social policy.

Recommendation 2.11 - It is recommended that consideration is given to the development of 'community sustainability' placements that promote local, national and international sustainability goals, and support desistance by giving meaning to the work undertaken by the person who has offended.

Public perception

Recommendation 2.12 - It is recommended that the Service engage in a public education campaign in order to re-legitimise the CSO as a step on the road to desistance, and to promote a message of redeemability in order to increase public confidence in community service.

Monitoring and evaluation

Recommendation 2.13 - It is recommended that the Service develop mechanisms for the ongoing monitoring of community service management and operation with a view to establishing a systematic framework of evaluation.

Decarceration

Recommendation 2.14 - It is recommended that the Service work more closely with the Sentencing Guidelines and Information Committee in order to advocate for decarceration as an overriding policy priority on the basis that it removes barriers to desistance, and to promote the use of the CSO, particularly in respect of short-term sentences for suitable individuals.

Retribution

Recommendation 2.15 - It is recommended that the Service, together with core stakeholders, adopt a 'constructive' (as distinct from a 'punitive') understanding of retribution that supports desistance by promoting accountability and redeemability through a greater focus on the established principles of proportionality and penal parsimony in the context of the CSO.

Recommendation 2.16 - It is recommended that breach and compliance policy and procedure is reviewed in order to facilitate a more constructive and dynamic response that manages non-compliance in a way that better supports long-term compliance and desistance.

Reparation

Recommendation 2.17 - It is recommended that the Service promotes a generative understanding of reparation so that the CSO is cast as an intervention that supports desistance from crime and social inclusion, with the aid of restorative justice practices where appropriate.

Rehabilitation and reintegration

Recommendation 2.18 - It is recommended that the principles underlying the Irish Offender Supervision Framework are applied to the Integrated CSO where appropriate.

Recommendation 2.19 - It is recommended that the Service advance a broad understanding of rehabilitation as a central policy foundation of the CSO that accords with a desistance-informed approach.

Recommendation 2.20 - It is recommended that the Service expand the scope of reentry ceremonies to include the CSO and to celebrate on a more formal and consistent level the achievements of those who complete the order.

3. Operational structure and practice

3.1 Introduction

This Chapter concerns the operational structure and practice of the CSO. It describes the process from when an order is first contemplated by a judge up to its completion by the individual subject to the sanction. Next, it identifies and evaluates trends in the use of the CSO, and explores issues relating to how the sanction currently operates. Finally the chapter makes recommendations for change based on experiences from other jurisdictions and the best available international research evidence. The recommendations are made in accordance with the tripartite strategy outlined in Chapter 2, and so are informed by the principles of desistance, restorative justice, and social justice.

3.2 Current operation

A judge has a range of sentencing options available to them post conviction, including the CSO. The CSO is not a sanction in its own right, however, and can only be imposed as an alternative to imprisonment. Consequently, before a judge can consider a CSO they must first form the view that a custodial sentence is warranted.⁶ If so, the judge then proceeds to consider whether or not it would be suitable and appropriate to impose a CSO as an alternative to the custodial sentence.

3.2.1 Requesting a Community Service Report

Under Section 4 of the Criminal Justice (Community Service) Act 1983, prior to imposing a CSO, a judge must satisfy themselves that the person is suitable to perform community service and that arrangements can be made for the work to be carried out. In complying with this requirement, judges must request a Community Service Report from the Service addressing these issues. In certain locations, for example, at the Criminal Courts of Justice in Dublin City, a probation officer can meet with the person being sentenced immediately, and can assess and issue the report that day. If, however, an issue arises when speaking with a client that requires further consideration, then the assessment will be postponed. The probation officer will inform the judge and the case will be adjourned for an assessment to take place at a later date. Where a postponement occurs, or where a Community Service Report is requested in a court that does not have same day assessment facilities, the client's details are recorded by the probation officer in court, or if no probation officer is present, by court service staff. This process is completed by filling out Form A which records client details, including: date of birth, contact details, the offence committed, the Garda involved in the offence etc. Form A is then sent to the Service's offices where it is received by clerical staff and then sent to a senior probation officer. The senior probation officer assigns a

⁶ See Chapter 4 for a more detailed explanation of the legal framework of the CSO.

probation officer to the case and an appointment is made with the client for the assessment to be conducted. The time it takes for a Community Service Report to be submitted varies across locations.

3.2.2 Community services assessment

In assessing an individual's suitability to perform community service, the probation officer is guided by a template/checklist of issues, including those related to drug or alcohol addiction, the use of prescription medication, physical and mental health difficulties, and health and safety matters. If a particular issue arises, the officer has discretion to decide whether its presence is sufficient to deem a person unsuitable. In making their final assessment, however, the probation officer's primary concern is the safety of the individual, the site supervisor, other people performing community service on site, and the general public.

The probation officer will also explain to the person being sentenced what is involved in a CSO. They will discuss the types of projects that are available, on what days they operate, and what would be required of them if a CSO was imposed. The person being sentenced is then asked if they would consent to the CSO if the judge sought to impose the order. A CSO cannot be imposed on an individual who does not consent.

The report itself is generally quite brief and is not as comprehensive as a pre-sanction/probation report. In particular, it provides some background information, indicates whether or not the person who has offended accepts their guilt, their willingness (or otherwise) to consent to a CSO, and whether or not the individual is suitable to perform community service. Where the individual is deemed suitable, the report will indicate that suitable work is available for the individual to perform. Where an individual is deemed to be unsuitable, the report will state the reason why the probation officer has reached this conclusion.

3.2.3 Induction meeting

Following a judicial decision to impose a CSO, the individual is sent an appointment for an induction meeting with a probation officer, at which the CSO is served on the client. The remainder of the induction involves agreeing on what community service project the client will work on and the details of their work schedule. There are two types of community service placements. The first type is the most common and involves placements on projects that are run and managed by the Service i.e. by a community service supervisor. The second, less common, type of placement is an individual placement, where a client performs their community service within a host organisation (for example in a charity shop or soup kitchen). A member of the host organisation performs the role of the community service supervisor, records the attendance of the client, and supervises their work. This type of placement is generally only suitable for clients who have few or no support needs.

Clients will also be informed that up to one third of their CSO hours can comprise a development/rehabilitative element. It is the responsibility of the client to identify a suitable

programme/course and to make arrangements to participate in it. The probation officer must deem it suitable and there must be a commitment from a responsible person in the relevant agency to sign off on the completion of the hours before the activity can be included in the contract. These development/rehabilitative hours will only be accredited once the rest of the CSO hours have been completed.

As well as agreeing on the details of the work placement, the probation officer will also explain to the client their duties and responsibilities. For instance, the client is informed about what is and is not an acceptable excuse for missing a day, how they should inform the Service if they are unable to attend, and the consequences of non-compliance or misbehaviour. They are then provided with contact details for their community service supervisor, told the site location and start date and time, and provided with work equipment, where necessary (e.g. work boots). Once the meeting is finished, the community service supervisor is contacted and sent a time card along with basic information about the client (physical or mental health problems, drug use, health and safety concerns etc.). Where a client is doing an individual placement, this card is sent to a designated member of the host organisation.

In areas where there is a community service unit (e.g. Cork and Dublin), a new probation officer will then usually be assigned to the client. In these units, probation officers are given responsibility to oversee certain sites and community service supervisors. Therefore, the probation officer who has responsibility for the site that the client will be working on will be assigned to the case. In other areas the same probation officer who wrote the community service report and inducted the client will continue to oversee the case while the client performs their community service hours.

3.2.4 Performing community service

When the client reports for community service for the first time the community service supervisor will give them a site induction. This involves explaining to the client what they will be doing, the rules of the site and general health and safety instructions. Most supervised sites will have a start time and finish time, for example 10am to 5pm (for clients on individual placements the start and finish times may differ and be more flexible). The client is expected to turn up on time with the work gear that was provided to them at the induction meeting. Once on site, they are expected to remain there until the set finish time or until they are instructed to leave by their supervisor.

At the beginning of each day, the community service supervisor will explain to the clients (maximum of eight per site) what they will be doing for the day and, if necessary, show them how to perform the tasks (painting, graffiti removal, grounds maintenance, cleaning etc.). The community service supervisor oversees the work and makes sure that work is carried out safely and to a sufficient standard.

For the development/rehabilitation element, the client will complete their hours, the responsible person within the relevant agency will sign off accordingly, and the hours will be accredited at the end of the CSO.

3.2.5 Non-compliance

The community service supervisor will take a record of attendance each morning. The general rule is that if a client fails to attend without a reasonable excuse they will be issued a warning letter, and after three warning letters, they will be returned to court. In practice, however, the action that is taken varies and it is very much dealt with on a case-by-case basis and at the discretion of the probation officer. When a client does not turn up the probation officer will usually be informed. They may then ask the client to provide a valid reason for their non-attendance. If the client is absent without a valid excuse the probation officer will then decide whether or not to issue an official warning. In making this decision the probation officer will usually consult the community service supervisor.

Warning letters may also be issued if a client turns up under the influence of drugs or alcohol, if they turn up late, if they turn up without their work gear or if they are disruptive on site. It is the community service supervisor's responsibility to supervise the work of the clients and manage the site. If an incident arises they will first decide whether or not they think it is something that they can deal with themselves without informing the probation officer. If they feel that the probation officer does need to be informed they will contact them and inform them of the incident. The probation officer will then have to decide if they need to speak with the client, if they are going to issue an official warning letter or, if sufficiently serious, initiate breach proceedings.

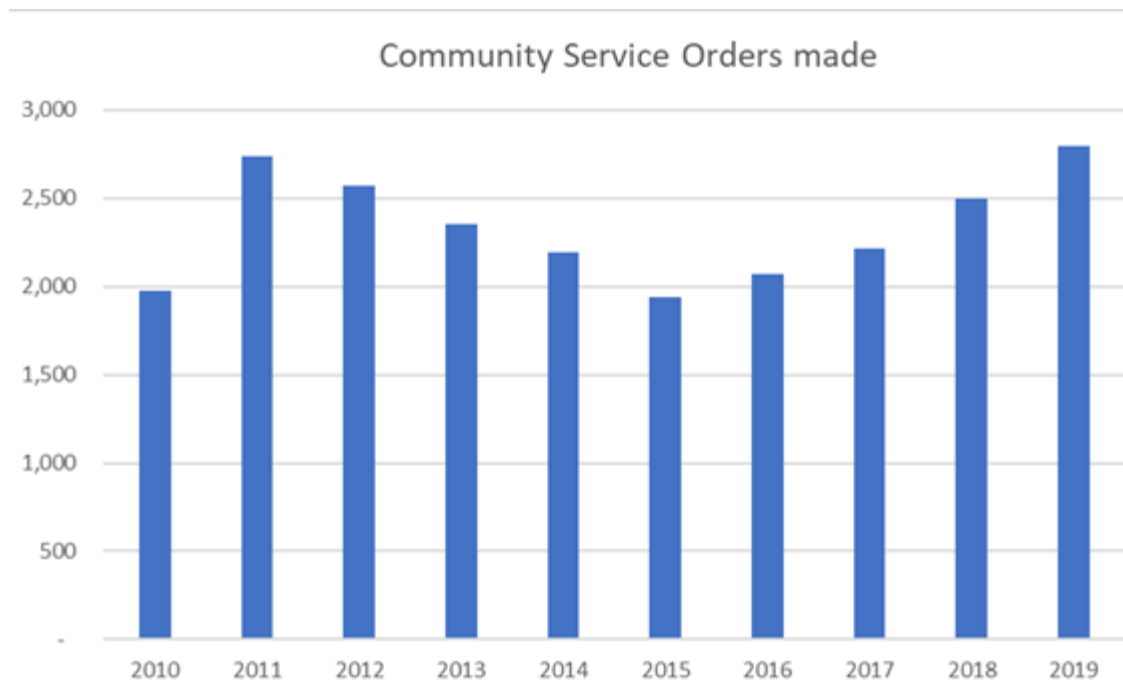
Where a client fails to turn up having already been issued two warning letters it does not automatically result in the client being returned to court. While it is the general rule, the probation officer holds a significant degree of discretion. Probation officers may request to meet with the client to find out why they have not been attending and to try to re-engage the client. If they are of the view that altering the work plan (the number of days a week that they agreed to work or the site they have been assigned to) would result in the client performing their hours, then this may be done. If the client does not respond to the request to meet or if they continue not to cooperate, a breach notification will then be sent to them. Even at this point if a client contacts the probation officer and looks to engage and the probation officer is of the view that the person will cooperate they may be given another opportunity to perform their hours. Where the breach proceedings have been initiated and a court summons issued to the client, the probation officer may still allow the client to perform their hours if such a request is made. In those circumstances, however, the court date is usually kept but if the client performs their hours before the court date, the breach proceedings will be struck out. If they are in the process of doing so the case will likely be adjourned to allow the person to finish their community service hours, after which the case will be struck out. It can be seen therefore, that community service supervisors and in particular, probation officers have a significant degree of discretion when it comes to issuing warnings and initiating breach proceedings. The decision to return a case to court is technically made by a senior probation officer though in some areas this can be a mere formality with the decision in reality being made by the probation officer overseeing the case.

3.3 Key trends

The lack of sentencing data in Ireland prevents any meaningful analysis of trends in the use of the CSO. It is not possible, for example, to accurately set out the proportionate use of the CSO in comparison to other sanctions over an extended period of time. This information is important in order to gain an understanding of how trends in the use of the CSO fit within broader sentencing patterns. Further, it would help to explain increases and decreases in the use of the sanction over time.

With the data available it is only possible to set out trends in the use of the CSO in isolation. Below is a graph which shows the number of CSOs imposed each year from 2010 to 2019. According to the figures, the use of the CSO rose significantly in 2011, which corresponds with the introduction of the Criminal Justice (Community Service) (Amendment) Act 2011. Section 3 of the 2011 Act introduced a requirement on judges to consider imposing a CSO in all cases where they would otherwise have imposed a prison sentence of 12 months or less. Therefore, the provision simply told judges that they had to 'consider' imposing a sanction that was already available to them. While little may have changed in a legal context, the legislation resulted in the CSO receiving significant attention in parliament and in the media running up to the time of its implementation. Despite an initial rise in the use of the sanction between 2010 and 2011, the following year witnessed a decline in its use and the 2014 figures put it back to the level it was at prior to the introduction of the 2011 Act.

The use of the CSO began to rise once again from 2016. This increase corresponds with the introduction of the Fines (Payment and Recovery) Act 2014 which commenced in January 2016. The 2014 Act gave judges the power to impose a CSO as an alternative to prison for non-payment of a fine. It is not possible to ascertain from the available data how many of the CSOs are imposed each year as an alternative to prison for fine defaulters under the 2014 Act. However, it was reported in *The Irish Times* on the 18 March 2020, that 824 CSOs have been imposed for non-payment of fines since the commencement of the 2014 Act (Hutton, 2020).



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The strategic importance of monitoring and evaluation for the purposes of the analytical framework is explained at section 2.6. The current lack of sentencing data hampers the ability to engage in meaningful analysis of CSO sentencing trends, and trends in the use of criminal sanctions more generally. The reviewers understand that efforts are underway within the Department of Justice to improve the collection of data across the criminal justice system (Department of Justice and Equality, 2018). It is important that the Service engages with this process where possible. There may also be an opportunity to work more closely to this end with the newly formed Sentencing Guidelines and Information Committee who are tasked with collecting, analysing and disseminating sentencing information.

3.4 Operational challenges

Responses proposed to the challenges outlined in this section are underpinned by the tripartite analytical framework outlined in Chapter 2, which comprises the principles of desistance, restorative justice and social justice.

3.4.1 Site sourcing

A key challenge facing the operation of the CSO is the Service's capacity to continue to secure a sufficient flow of community service sites with the appropriate characteristics. If decarceration

as a penal aim is to be pursued further (as discussed in section 2.7.1), it is imperative that the process of identifying, planning, managing and operating CSO placements is at a sustainable level, underpinned by social justice markers, and supportive of desistance and restorative justice processes. In particular, each placement should provide sufficient flexibility to respond to the needs of an individual, where necessary (bearing in mind the principle of minimum intervention), and in a way that facilitates meaningful opportunities to build social connections, repair harm, promote self-worth, and aid in the construction of pro-social identities.

In respect of group projects, the type and availability of community service is very much dependent on the capability of the local community service supervisor to identify and secure suitable sites. Supervisors with strong connections in the local community will have much greater success in securing a range of projects available when needed than a supervisor with a smaller network. Consequently, there is significant variance in the quantity and type of community service projects available throughout the country. The challenge of site sourcing is not unique to Ireland, and so it is helpful to examine recent responses to the issue in our neighbouring jurisdictions of Scotland, England and Wales, and Northern Ireland, before providing recommendations. The analysis provides an overview of the wider context of the reforms, particularly in relation to Scotland and England and Wales, in order to highlight the greater strategic shift that may be required in order to ensure that an adequate level of CSO sites are made available.

What follows signals to section 2.4.3 in terms of the development of social justice indicators relating to community participation, co-production and multi-agency responses. Attention is also drawn to the need for placements to provide a sense of meaning for the person sentenced, in addition to a reciprocal benefit to the community, in order to promote positive outcomes. For example, McIvor (1992) found that in Scotland individuals who described their community service work placements as enjoyable and worthwhile had lower levels of unauthorised absences, and were more likely to complete their order.

Scotland

Scotland's Community Payback Order (CPO) was introduced under the Criminal Justice and Licensing (Scotland) Act 2010. It replaced probation, community service and supervised attendance orders. In terms of delivery, there are 32 local authorities in Scotland which all have their own operational arrangement for providing statutory social work services including criminal justice social work. Therefore, when a court imposes a community-based order such as a CPO, it is the relevant local authority that allocates the case to a supervising social worker. The sanction allows the court to impose any of ten requirements when sentencing an individual to a CPO including unpaid work or other activity, supervision, treatment programme requirement, and mental health treatment (Grant et al., 2020).

The CPO permits justice social workers to place a client on a project which best suits their needs and abilities and, as such, the inherent flexibility of the model aligns with a desistance-based

approach to community sanctions. However, implementing the CPO proved challenging and was criticised for having a limited effect on the delivery of community service, owing to the lack of available projects and other resources to support the requirements of a given order (McIvor, 2010; Scottish Government, 2015b). In addition, it was reported that the criminal justice social workers faced difficulty in seeking to match the particular skills of a client to the available placements, and in finding appropriate placements for those with complex needs (Scottish Government, 2015b).

Efforts were made to address the issue outlined above in a national consultation by the Scottish Government on the future shape of community justice which commenced in 2012, and a new model for community justice in Scotland was formally launched in 2017 (Grant et al., 2020). The Community Justice (Scotland) Act 2016 was key in the creation of the new community justice model and underpinned the establishment of a national non-department public body, Community Justice Scotland (CJS). An overview of the model is provided at section 2.4.5, in the context of its alignment with a social justice approach to the provision of community service.

The model adopts a community partnership approach which places duties on community justice partners to engage in and be accountable for local strategic planning in respect of the provision of community service, including the issue of site sourcing. The partnerships, which include Local Authorities, Health Boards, Skill Development agencies, NGOs etc., are set up in a local authority area and work with the local authority justice social work team to provide a variety of services, such as those relating to accommodation, employment, addiction, and mental health (Confederation of European Probation, 2018).

An example of how these partnerships operate effectively in practice is provided by the The Ayrshire Community Trust and Criminal Justice Payback Team partnership. The partnership created, and continues to maintain, the Demonstration Garden project, which includes placement opportunities for people serving a CPO.

Case study: Eglinton Park Demonstration Garden

The Community Payback Team works in close partnership with The Ayrshire Community Trust to provide placements for people on a CPO with an unpaid work requirement at the Demonstration Garden project, Eglinton Park, Ayrshire.

The aim of the initiative is underpinned by a desistance-based approach because it is designed to enhance the employability of people on a CPO through the development of horticultural, landscaping, and upcycling skills. The project further supports desistance through nurturing community relationships, as not everyone on the project is subject to a CPO, so the person under order is also working with volunteers in the community who have not offended. The project is also sensitive to the ongoing nature of the desistance process because even after the completion of their CPOs, and the involvement of Criminal Justice social work ceases, the Trust continues to offer support to those who still need it. Further, there are plans to broaden this partnership

with Ayrshire College so individuals will gain a recognised qualification from the work they are doing (Scottish Government, 2016a).

In learning to cultivate seeds and grow crops, the project aligns with the principles of community sustainability, as discussed in more detail at section 2.4. In addition, the nature of the work is such that individuals are more likely to gain satisfaction and meaning from it which, in turn, makes them more likely to complete their order and less likely to reoffend.

The Scottish response to the problem of site sourcing highlights the need to consider macro-level changes to the operation of the CSO, that create mechanisms of shared responsibility with other governmental and non-governmental agencies and departments in the planning, management and delivery of community service initiatives. Moreover, it sheds light on the requirement to provide placements that hold value both for the person completing the order and for their local community.

England and Wales

In England and Wales, the Criminal Justice Act 2003 created one Community Order (CO) under which a combination of requirements can be imposed. At least one of fifteen requirements must be contained in a CO including unpaid work, curfew, rehabilitation activities, attending programmes, and engaging with mental health services. In respect of the unpaid work requirement, the probation staff are responsible for consulting the individual to source suitable placements which would both benefit the community and meet the individual's needs and risks (Bird and Ward, 2021). Several issues have been raised in relation to the operation of COs in England and Wales which relate to the issue of site sourcing, and which need to be understood in the context of the wider supervision landscape.

Over the past decade, the number of COs imposed each year has almost halved (down 46%) (Guilfoyle, 2021). Reports and research studies have identified a range of potential issues with the CO and its operation proffering an explanation as to why it is declining. The 'Transforming Rehabilitation' (TR) reform was introduced in 2014 and this split the delivery of the CO between the National Probation Service (NPS) and the Community Rehabilitation Companies (CRCs) (Guilfoyle, 2021). CRCs are private/third sector organisations. The rationale for these reforms was to open the market to a range of diverse rehabilitation providers and to incentivise them to innovate through payment by results for their performance in reducing reoffending rates (Bird and Ward, 2021).

The TR reforms did not achieve the aim of enabling more significant involvement from the voluntary sector or reducing reoffending. As CRCs are mostly private companies there was a focus on profit, therefore programmes/activities would only be set up and operated if there were a sufficient number of individuals required to participate in the programme/activity (HMI Probation, 2018b; Tidmarsh, 2020). Ultimately, CRCs were more concerned with meeting targets than purposeful rehabilitation (HMI Probation, 2018b). In addition, the payment by results mechanism

was vulnerable to any unforeseeable changes in case volumes, case mix and reoffending performance. This left CRCs without the necessary funding to invest in innovative approaches (Bird and Ward, 2021).

Even when there were programmes/activities in existence, poor communication between the probation staff and CRCs meant that in some areas probation staff (who assessed individuals and wrote court reports) were not aware of the projects that were available in their area and organisational divisions therefore emerged between CRCs and probation staff (Centre of Justice Innovation, 2018; Tidmarsh, 2020). It was further found by Her Majesty's Inspectorate of Probation (HMI Probation, 2018a) that poor practice was widespread in CRCs and that probation staff did not always draw on available information from other agencies such as the police and social services. This was particularly the case when CRCs dealt with domestic abuse matters. It was also noted that while caseloads decreased, individual workloads for probation staff increased (HMI Probation, 2017c). Time and resource strains led to a lack of detail and quality in pre-sentence reports which in turn resulted in individuals being handed community sentences that were not tailored appropriately to their needs (Crest, 2017). Therefore, the combination of organisational divisions between CRCs and probation staff, increased individualised workloads, and financial and performance pressures 'largely mitigated the potential benefits of TR to staff in the CRCs' (Tidmarsh, 2020:141).

In response to these difficulties, a government consultation in 2019 resulted in the creation of a unified Probation Service integrating NPS and CRC staff to supervise all adult clients of all risk levels. The new probation service model, the 'Dynamic Framework', was launched in June 2021 which brings back the delivery of interventions to the public sector, and where external organisations have the opportunity to become providers of commissioned rehabilitation services. As such, the new model emphasises the importance of probation services working in partnership with local and national organisations (Bird and Ward, 2021). Under the framework, voluntary third party providers (both voluntary sector and private sector organisations) tender for and deliver a range of services and programmes including rehabilitative and resettlement services that are needed by the probation system (House of Commons Justice Committee, 2021). The framework runs flexible call-off competitions and contracting for services in particular geographic areas, or in response to particular cohorts or needs, bearing in mind the requirements of the local community (HMI Probation, 2020).

As this framework has only recently commenced, the means of assessing progress is limited to an independent review commissioned by the Ministers for Prisons and Probation, and published by Clinks in August 2021 (Oldfield, 2021).⁷ The review highlights that the design of the framework makes it difficult for small and medium-sized enterprises (SMEs) and voluntary community and social enterprises (VCSEs) to contribute (Oldfield, 2021).⁸ Yet, the policy objective is for SMEs and VCSEs to help probation in delivering its aims including reducing reoffending. The review

⁷ Clinks is an infrastructure organisation supporting voluntary organisations in the criminal justice system in England and Wales.

⁸ See further: <https://www.gov.uk/guidance/vcses-a-guide-to-working-with-government>).

concluded that the Government could do more to encourage participation of VSCEs and SMEs (Oldfield, 2021). The Financial Secretary, Lucy Frazer, acknowledged the review and was working to implement most of the recommendations made at the time of writing (Parallel Parliament, 2021).

The experience of England and Wales in the delivery of community service reaffirms the need to ensure that provision of interventions remains firmly under the control of the public sector, but with additional support from external organisations in terms of the delivery of commissioned services. Though there is limited data on the operation of the new model, the independent review indicates that securing cooperation and participation from non-governmental agencies requires a co-productive approach to planning in order to ensure that design promotes, rather than impedes, multi-agency working as a social justice marker.

Northern Ireland

In Northern Ireland, a Combination Order (CO) was created under the Criminal Justice (Northern Ireland) Order 1996. A CO allows the court to combine a Probation Order with a CSO. Enhanced Combination Orders (ECO) were also piloted from 2015 and are an alternative to short prison sentences of 12 months or less (OECD, 2016). An evaluation of the ECO pilots conducted by the Northern Ireland Statistics and Research Agency (NISRA, 2017) concluded that the ECO initiative was working effectively. It does not appear that the ECO has been rolled out nationally as yet, and so it is still only available in two court areas at the time of writing (PBNI, 2021).

The ECO model can be used on a wide range of individuals and can therefore be imposed in a number of different forms, lending it a level of flexibility which aligns with a desistance approach. Further, almost half of all placements in Northern Ireland are individualised and supervised by host organisations, which the Probation Board Northern Ireland (PBNI) has indicated has had a positive impact on the use of community service in rural areas, in particular (PBNI, 2010). Group placements are supervised by a work placement squad which is overseen by the PBNI (PBNI, 2010). The PBNI now works with a large network of community organisations who are willing to continue to source additional placements which increases their capability to place individuals on projects suitable to their needs and abilities and close to where they live (PBNI, 2010).

The PBNI (2020:8) aims to develop a range of projects that enable staff to intervene as early as possible so as to prevent harm and criminality and states that their 'ability to carry out work with individuals "upstream" is having a positive impact across the justice system.' One example project is Aspire, which aims to reduce risk-taking behaviour in men aged 16 to 30 who are marginalised from communities, and at risk of being involved in paramilitarism (Richie and MGreevy, 2019). A second example is a non-adjudicated Domestic Abuse Programme rolled out in all five trust areas (PBNI, 2020). There is also an innovative project run by the PBNI and the Prison Arts Foundation, where community service clients were offered the opportunity to work at a Braille unit in Belfast city centre to convert a range of children's books into Braille for libraries across Northern Ireland. This project not only enabled clients to give back to local communities but also assisted them in

understanding the importance of helping people (Young, 2019), lending a generative aspect to this project for the purposes of supporting desistance.

The increased use of individualised placements, particularly in rural settings, may assist the Service in facilitating more meaningful community service experiences at a more consistent level across the country. Further, galvanising and formalising existing networks of community organisations could support and enhance the capacity of the community service supervisor to source additional placements in a way that accords with multi-agency work practices as an indicator of social justice.

Recommendations for the CSO

The successful operation of the CSO relies on meaningful and worthwhile community service projects across both urban and rural locations throughout the country. To enhance the ability of the Service to source projects and to ensure consistency, a national level approach to engaging with local communities and community organisations should be developed. The issue of site sourcing is symptomatic of the need to consider macro-level strategic and operational changes to the planning and delivery of the CSO, in order to enhance community participation and co-production, and to accord with a multi-agency approach. Section 2.4 discussed policy recommendations relating to this issue. In the particular context of site sourcing, **it is recommended that the Service explore how responsibility for identifying, securing and managing placements can be shared more extensively within existing community based structures, such as Local Community Development Committees, Strategic Policy Committees, and the Local Government Management Agency (LGMA).** [Recommendation 3.1]

Though it remains too early to reach definitive conclusions, Scotland's Community Justice model appears promising because it is evidence-based and facilitates social justice indicators (multi-agency working, community participation and co-production) at both local and national level. It is not simply an ad hoc or narrow solution to the problems facing community service and supervision, but a comprehensive and pervading approach that takes seriously the concept that community justice issues are not just the responsibility of criminal justice agencies. In doing so, it provides detailed and workable mechanisms for other statutory bodies, NGOs, and local organisations to work together in a way that supports desistance and aligns with the principles of social justice. The partnerships can raise awareness of community service and encourage others to work with those currently responsible for delivering probation services to source suitable projects. There may be an opportunity for a similar approach in Ireland through the Community Safety Partnerships provided for in the Policing, Security and Community Safety Bill 2021. **It is recommended that the Service explore how it could use Community Safety Partnerships to promote community service, build links with local communities/community organisations and source community service projects.** [Recommendation 3.2]

There are also benefits to the Northern Ireland approach of using individualised placements to a greater extent than is currently the case in Ireland. **It is recommended that the Service explore the possibility of increasing its use of individual placements. These could be identified and agreed**

locally (through existing community based structures or through Community Safety Partnerships, if established) or at a national level with organisations that have a reach in local communities throughout the country. [Recommendation 3.3]

3.4.2 Problems specific to rural locations

As noted in the previous section, the availability of community service projects varies significantly across the country. The variance is most pronounced between urban and small towns/rural areas. A person sentenced to a CSO in a city will generally have some flexibility when arranging their community service work schedule. There will most likely be a variety of different projects operating in an area close to where they live and on a number of different days of the week, giving them the ability to be placed on a project that best suits their needs, abilities and interests. Further, if the person does not want to work too close to where they are living, or if there is a particular project that interests them in another area of the city, access to public transport makes it easier for them to attend these other projects outside of their own locality. This experience can be very different to that of a person living in more isolated locations. For example, a person could be living in a location where there are no community service projects operating in the vicinity, or where they would have to travel a considerable distance to attend a site, in some cases, without access to public transport. There are also many towns where just one community service project operates, and to a limited degree e.g. just one day a week. So even if a person lives in an area where a project operates, the day of the week may not be suitable for them, or the type of work that is carried out on the site may not be appropriate to their needs and abilities. This situation can be a significant consideration for legal counsel in deciding whether or not to advocate for the imposition of a CSO, for probation officers when assessing a person for community service, and for judges when considering imposing the sanction.

Addressing issues with site sourcing generally, as discussed in section 3.4.1, will likely have a positive impact on increasing the availability and range of community service projects/placements in rural areas. However, it will not necessarily address all of the issues with rural community service, in particular, ensuring there are supervised sites (suitable for individuals with criminogenic needs) available and accessible to individuals regardless of their location.

Approaches taken to operating rural community service in other jurisdictions

The Scottish Government (2015) identified that a key requirement of the CPO is to meet the basic, practical needs of a client, which includes flexibility in making appointments, not having to travel too far to access a site, and being fully reimbursed if travel is necessary. This requirement is particularly relevant to those living in rural areas. The issue of rural locations was noted recently by local authorities such as East Lothian in their recent Community Justice Improvement Plan 2021-24 (2021). There is a demand for community justice services in East Lothian but it was noted that limited access to education establishments and internet connectivity pose particular challenges in rural areas. Similar issues were reported by individuals trying to access substance misuse services, which the Plan suggests may increase the need for more outreach or online

services. It was also noted that transport costs were often highlighted by individuals as a barrier to engagement with services, whether in relation to accessing education or substance misuse treatment facilities. A Community Engagement Workstream was convened by the Community Justice Partnership in 2019 to embed the commitment to working with people, communities and local services involved in the community justice arena into practice. The objective of the Workstream is to link community volunteering opportunities with people/services undertaking and delivering CPOs, to consult with the community, and to promote the particular benefits of a locally based CPO (East Lothian Community Justice Team, 2021).

The issue of travelling to access services was also addressed in a recent report by the English Government, outlining its intention for reform in probation services (HM Prison and Probation Service, 2021). The report noted that travel time for supervised individuals to attend a contact meeting with a probation officer should not exceed 60 minutes each way. It was recognised that adhering to the 60 minute limit would be a challenge in some rural areas. However, the report emphasised that the recommendation was based on research showing that when a client perceives a journey time as reasonable and not costly, they are more likely to attend and to comply with the sanction (HM Prison and Probation Service, 2021).

As stated in section 3.4.1, Northern Ireland community service is carried out by either work placement squads or individual/community placements. The large network of community organisations and the relatively high use of individual placements has therefore assisted in placing individuals on sites close to where they live and suitable for their needs and abilities. In addition there is a policy to pay travel expenses of clients which increases the capability of CSOs operating successfully in rural areas (PBNI, 2010).

Recommendations for the CSO

Difficulties relating to accessing sites, travel costs and internet connectivity can act as barriers to compliance, and therefore impede the desistance process for individuals experiencing these issues. Promoting a desistance-informed approach, as promulgated in Chapter 2, requires the Service to recognise and address these challenges to a greater extent.

As a result of the pandemic, the Service (in partnership with IASIO, NIACRO, and the Irish Red Cross (Prisons to Community) Initiative) successfully developed and integrated online learning initiatives into the Integrated CSO (Probation Service, 2020). **It is recommended that this practice is evaluated and expanded, where appropriate, as a means of enhancing placement opportunities for those in isolated areas and/or with other access issues. [Recommendation 3.4]**

To increase the availability of community service in rural areas there is a need for greater engagement with local communities, agencies and organisations. As noted in section 3.4.1, this recommendation could potentially be achieved through existing community based structures (e.g. LCDCs, Irish Local Development Network, Rural Development Offices) or through the proposed Community Safety Partnerships, if they are established. **It is recommended that the Service explore how it might tap into and use existing rural networks to promote community**

service and to source work sites/placements, including the continued use of online initiatives. [Recommendation 3.5]

Due to the low use of CSOs in rural areas and the difficulty in operating group projects in many rural towns **it is recommended that individual work placements are utilised to a greater extent than is currently the case. [Recommendation 3.6]** This approach would allow for people in rural areas to complete their community service locally, without the need for considerable travel, and would also allow for greater flexibility in the type of work that could be performed.

Individual work placements will not be suitable for every person and some will require a group placement supervised by a community service supervisor. When this occurs in a rural area, where the nearest supervised project is a considerable distance away from where the client resides, **it is recommended that the Service should consider, under certain circumstances, paying the cost of travel for a client to attend a supervised project. [Recommendation 3.7]** It runs counter to best practice that community service is not available to a person as an alternative to prison simply because they do not have the ways or means to attend a site. The cost of travel need not be paid for all clients. It could only be paid for those who meet set criteria, which would be adjudicated and decided upon by the Service at the assessment stage.

3.4.3 Communicating with the judiciary

The judiciary are the key decision-makers in the imposition of the CSO. Available evidence points to a lack of information on, and a lack of confidence in, the sanction as key drivers of the lower take up rate among the judiciary in Ireland (Riordan 2009, Department of Justice, Equality and Law Reform 2009), with the two factors interlinked. For instance, the Value for Money and Policy Review of the Community Service Scheme found that only 34% of judges surveyed were aware of what CSO projects were operating in their area (Department of Justice, Equality and Law Reform, 2009).⁹ The same study also found that just half of those surveyed thought that community service sites in their area were beneficial to the client or the community. Similarly, in other jurisdictions it has been shown that a lack of information about the availability of local projects and programmes, and the ability of local initiatives to positively impact clients and local communities negatively affects confidence in community sanctions amongst sentencers (Dowel, 2018; Birkett, 2016). Consequently, there is a pressing need to ensure clear communication around the use, operation, impact, and benefits of the CSO in order to boost judicial confidence in the sanction.

At present, communication pathways between the Service and the judiciary about the CSO remain relatively limited and inconsistent. The Director of the Service has presented at the Annual Judges Conference, and information about the CSO is included in a national Probation Service newsletter that is distributed to members of the judiciary. Guilfoyle (2018) also notes that some districts

⁹ Note that the Value for Money and Policy Review of the Community Service Scheme and the Riordan (2009) study are over 12 years old, and so a degree of caution must be exercised when relying on these findings to shed light on current issues. That said, the lack of progress in terms of decarceration in Ireland suggests their findings remain cogent.

support strong lines of communication between the presiding Judge(s) and the local Probation Service, but this practice is not consistent throughout the country. Further, a study by Maguire and Carr (2017) on pre-sentence reports found that in many cases, probation staff do not receive judicial feedback about their reports, apart from finding out the sentencing outcome in a given case; some staff would welcome such feedback. Consequently, there is space to enhance the level of communication between the Service and the judiciary in order to ensure that judges are fully informed about the CSO, in particular, what projects are operating in their area, and how those projects can benefit clients and the local community. Moreover, probation staff would benefit from input from the judiciary in terms of better understanding their level of confidence in, and knowledge of, the sanction.

England and Wales, Scotland and Northern Ireland have established (though diverse) judicial communication strategies, which warrant closer evaluation in the context of their particular community supervision landscapes.

England and Wales

England and Wales takes a formalised and structured approach under a national level agreement governing liaison arrangements between sentencers and providers of probation services. Guidance is issued to District and Circuit Court Judges by the Senior Presiding Judge and to Probation Service Providers by a Probation Instruction (PI, 05/2018).¹⁰ The guidance ensures structures and processes are in place to allow for national and local level communication between sentencers and providers of probation services about the delivery of community sanctions. The guidance does not seek to prescribe a one size fits all liaison arrangement, rather it permits local arrangements to develop within the parameters of the broad guidance issued.

An inspection by HM Inspectorate of Probation in 2017 noted that in the locations inspected, the 'nationally set (but not unduly restrictive) requirements for local liaison are being delivered well locally' (HMI Probation, 2017b:15). Other studies and reports, however, highlighted some issues with the communication of information to the judiciary (HMI Probation, 2017a; Crest, 2017; Centre for Justice innovation, 2019). These problems stemmed primarily from the Transforming Rehabilitation (TR) reforms which privatised parts of the provision of probation services in England and Wales. For instance, the Centre for Justice Innovation found that NPS staff who participated in their research had widely divergent knowledge of the interventions available in their area (Centre for Justice Innovation, 2019:11). Where NPS staff lacked knowledge of programmes and interventions operating in their area it inevitably impacted their ability to inform sentencers. Further, a survey of magistrates conducted as part of the Crest (2017) study found that 47% of participants felt they did not have sufficient information about services operating in their area.

¹⁰ Probation Instruction and Guidance issued by Senior Presiding Judge available at <https://www.justice.gov.uk/downloads/offenders/probation-instructions/PI-18-2016-Liaison-Arrangements-between-Sentencers-and-Providers-of-Probation-Services.doc>

The literature suggests that communication problems experienced in England and Wales were largely related to a breakdown in communication between CRCs and NPS and between CRCs and the judiciary, rather than between NPS and the judiciary. In June 2021, TR was replaced with a new probation service model, the 'Dynamic Framework', which gives responsibility to the NPS (see further, section 3.4.1). This reversal should go some way towards addressing the communication problems identified in the Centre for Justice Innovation and Crest reports.

Scotland

In Scotland, the provision of probation services is localised under the Community Justice model (see further, section 2.4.5 and 3.4.1). Many Local Authorities publish an Annual Report on the delivery of supervision services.¹¹ The report provides detailed information about the type of unpaid work carried out and the range of services used by individuals sentenced to a non-custodial sanction during the year. It is unclear how widely these reports are publicised and distributed. With the introduction of the new model, each Community Justice Partnership (CJP) is required to develop a communication strategy from the outset, which includes a plan to communicate with local decision-makers, such as the judiciary. Communication strategies focus primarily on delivering short briefings on the work of the CJP and on specific services and initiatives available in the area. In addition, strategies include plans to ensure regular meetings with the local liaison Sheriff in order to facilitate two-way communication on relevant issues.¹² As these reforms are very recent, to date, there is no information or research available on whether the strategies have been implemented and how effective they have been.

Northern Ireland

The Probation Board for Northern Ireland (PBNI) communicates information to judges via a bi-annual sentencer newsletter - 'Probation Works'. The newsletter, which was first published in 2016, provides judges with information on community sanctions and outcome statistics, the work of the PBNI, new initiatives and innovations, programmes and interventions, and examples of community service projects.¹³ In addition, the PBNI also seeks feedback from the judiciary through periodical surveys. The purpose of the survey is to assist the PBNI in continuing to: 'develop and refine practice in the preparation of reports, and continue to provide a responsive service to meet the needs of Courts and Sentencers' (PBNI, 2018).

The above examples demonstrate that there are mixed levels of approach to communicating with sentencers across neighbouring jurisdictions, with recent reforms in England and Wales and

¹¹ For example see Falkirk Council Annual Community Payback Order Annual Report 2016, available at <https://www.falkirk.gov.uk/services/people-communities/docs/community-justice/04%20Community%20Payback%20Order%20%e2%80%93%20Falkirk%20Annual%20Report%202015-2016.pdf?v=202104060906>

¹² For example see Glasgow Community Planning Partnership – Community Justice Glasgow Communication Strategy 2018-23, available at <https://www.glasgowcpp.org.uk/CHttpHandler.ashx?id=39944&p=0>

¹³ For example see Probation Works 2016 Issue 1, available at <https://www.pbni.org.uk/wp-content/uploads/2018/11/Sentencers-Newsletter-Issue-1-January-2016-03.02.16.pdf>

Scotland making it difficult to assess their efficacy at present. What these jurisdictions have in common, however, is the establishment of formal mechanisms to allow for the two-way, consistent communication of information pertaining to the use of alternative sanctions.

Recommendations for judicial communication strategy for the CSO

It is recommended that the Service develop a general communication strategy, part of which includes a tailored plan to communicate with judges. [Recommendation 3.8] In developing the communication strategy the Service could explore the following options:

- A. **A national level agreement between the Service and the judiciary which sets out procedures and broad guidance for national and local level communication between Probation Service staff and judges.** This recommendation would allow for two-way communication between the Service and the judiciary. Probation Service staff could provide judges with information about community service projects and other services available in the local area. They could also provide information about the outcomes of CSOs, the types of activities individuals engage in as part of the integrated element of a CSO, and tangible benefits of the CSO to individuals and to the local community. The feedback from judges would also be of benefit to the Service. It would ensure Probation Service staff are aware of any issues or concerns of local judges, it would allow for any misunderstanding to be addressed, and it would enhance the Service's ability to deliver a service that is responsive to judges (within reason and acknowledging the separate functions and roles of each body). The guidance could set minimum standards (e.g. annual/biannual meetings) while also being flexible enough to allow for the development of local preferences and initiatives.
- B. **An annual or biannual newsletter specifically targeted at judges.** The newsletter could provide national level information about the CSO and probation services, outcome statistics, new initiatives, etc. as well as local information. For example, each region could provide a page of information about local projects and services, outcomes, and the benefits to particular individuals who completed a CSO, and to the local area.
- C. **Periodical survey.** The Service could initiate a periodical survey of sentencers in order to facilitate feedback from judges on their understanding and use of the CSO. This information could be used to inform content of the newsletter in order to build a cohesive communication pathway between the Service and the judiciary.
- D. **Annual training event.** The Service could engage with the newly formed Judicial Studies Committee about the possibility of running an annual training event for judges regarding the impact, operation and benefit of sanctions like the CSO.¹⁴

¹⁴ For a successful example of Probation Service staff providing judicial training see *Good Practice Case Study 5 – Magistrates Training in Leicestershire* cited Centre for Justice Innovation (2019: 23).

- E. **Building links with legal professionals.** Criminal defence practitioners can play an important role in informing judges about community service and the types of programmes available in their area. The Service could build stronger links with professional societies and organisations, such as The Law Society of Ireland and The Criminal Bar Association, in order to enhance criminal defence solicitors' and barristers' awareness of community service, and the integrated model of community service.

3.4.4 Communicating with the public and community organisations

Section 2.5 outlines the importance of communication in building an effective desistance-informed approach to the CSO. This section provides further details on practical steps that may be taken to enhance public education and communication around the operation and impact of the sanction.

To date, no research has been conducted in Ireland exploring the public's knowledge of and confidence in the CSO. However, research from other jurisdictions suggests that the public have a limited understanding of community sanctions, in addition to low levels of confidence in them (Wilson and Ellis, 2013). Research also shows that the more informed the public are about community sanctions, the greater levels of confidence they have in them (Marsh et al., 2019; Hough et al., 2013; Hough and Roberts, 2011). Increasing the public's knowledge of the CSO and raising awareness about CSOs among community organisations will give rise to a number of benefits. First, it will ensure that public debate about sentencing, and the use of non-custodial sanctions in particular, is better informed. Second, it will help to enhance public confidence in and support for the CSO. Third, it will help the Service in sourcing sites and placements for individuals sentenced to a CSO, and will enhance public engagement with CSOs.

England and Wales, Scotland and Northern Ireland have communication strategies in place which can assist in informing recommendations in an Irish context.

England and Wales

In England and Wales, the Sentencing Council has a statutory duty to inform the public about sentencing. Informing the public about community sanctions would appear to fall within this broad duty. The Sentencing Council has a range of interactive features and information about sentencing, including community sanctions, on their website. They have also recently commissioned research on public knowledge of sentencing and are working towards developing a wider strategy for promoting awareness of sentencing matters which includes the use of social media, packages for schools, and targeting information at key audiences (Sentencing Council, 2020; Holroyde, 2020; Marsh et al., 2019). In addition, providers of probation services have also been encouraged to promote and raise awareness of community sanctions among the public and community organisations. It is suggested in a non-binding guidance document that probation providers should promote a consistent message about the purposes and benefits of community service (HM Prison and Probation Service, 2019). The guidance also emphasises the importance of abiding by liaison agreements in place with bodies such as Police and Crime Commissioners, Community Safety

Partnerships, as well as other community forums, to ensure that community leaders and local officials fully understand community service work and its benefits to the local community.

Scotland

As noted above and outlined in greater detail at section 2.4.5, Community Justice Scotland provides information and raises awareness about community justice at a national level. Community Justice Partnerships do so at a local level. These partnerships have the potential to act as an effective mechanism for communication and collaboration between providers of probation services and other statutory and community bodies and organisations. The partnerships create a sense of ownership of community justice among a wide range of stakeholders. They allow for information to be provided to representatives from each body/organisation who sit on the Local Community Justice Partnership, who in turn can distribute it within their body/organisation and their networks. Community Justice Partnerships are also required to develop communication strategies to raise public awareness about community justice in their local areas (Scottish Government, 2016b). A number of agencies are currently engaged in campaigns, including public events in community spaces, online videos and social media activities (Grant et al., 2020).

Northern Ireland

A recent review of sentencing in Northern Ireland highlights the importance of communicating information about sentencing to the public. It recommends that the Department of Justice work with justice partners to develop, enhance and refine publicly available information (Department of Justice, 2019). It also recommends the development of a communication plan in order to establish a strategic approach to communication that enhances public knowledge and understanding about sentencing (Department of Justice, 2019). Currently the PBNI publishes information about community service on their website. They highlight the work done on community service projects, publish official statistics and key facts and figures relating to the work of the PBNI more generally. The PBNI is also one of seven organisations formally designated onto all local Policing and Community Safety Partnerships, organised by district, whose purpose is to form and deliver community safety action plans alongside police, housing, voluntary and community sectors.¹⁵ Policing and Community Safety Partnerships, similar to Community Justice Partnerships in Scotland, provide the PBNI with a mechanism to raise awareness of the benefits of community service amongst other statutory organisations, political representatives, community representatives and community/voluntary organisations.

Recommendations for public communication strategy for the CSO

It is recommended that the Service develop a communication strategy that seeks to enhance the public's understanding of community service and to raise awareness of community service amongst community organisations. [Recommendation 3.9] Section 2.5 recommends a strategy underpinned by clear messaging promoting desistance, restorative justice, social justice, and

¹⁵ For more information about Policing and Community Partnerships see <https://www.pcsp.org/>

redeemability, in order to boost public understanding of and confidence in the CSO, challenge prejudice, and reinforce reintegration. Enhancing the public's understanding of sentencing and community sanctions is challenging. Though the Service provides useful information on websites and in reports, it is necessary to devise a more extensive and formalised communication strategy that takes into account how the public consume and process information relating to criminal justice issues. Increasingly, researchers from across the sciences are recognising that 'facts are not enough' in communicating with the public (Hornsey, 2020).

In addition to recommendations and examples set out in section 2.5 regarding larger scale initiatives, the Service could also mobilise existing networks in developing a more extensive communication strategy. For instance, one of the duties of the recently established Sentencing Guidelines and Information Committee is to collect, analyse and publish information about sentencing. There may be an opportunity for the Service to work with the Committee on initiatives to enhance the public's knowledge and understanding of community sanctions. In addition, the Policing, Security and Community Safety Bill 2021 provides for the creation of Local Community Safety Partnerships in Local Authority Districts in Ireland. The Service should explore the possibility of engaging with these partnerships in order to raise awareness about community service amongst other statutory and community organisations.

3.4.5 Integrated community service

In 2014, the Penal Policy Review Group published a comprehensive review of Penal Policy in Ireland (Penal Policy Review Group, 2014). As part of their report, the Group recommended that the Service examine the feasibility of introducing, on a pilot basis, an integrated CSO where community service could be imposed with additional conditions (Penal Policy Review Group, 2014). In response, the Service recommended a pilot programme on Integrated Community Service in Dublin, Cork and Limerick. The pilot programme that was initiated, however, was somewhat different from what was originally set out in the report. Instead of allowing for additional conditions to be attached to a CSO, Integrated Community Service allowed for probation officers to grant the client permission to spend up to one third of their CSO hours in education, training or treatment. The client must want to participate and opt-in and the probation officer must be satisfied that the activity is suitable.

Evaluation of the Integrated CSO

A 2017 evaluation of the pilot programme found that the response to the pilot, from both clients and staff, had been universally positive.

'It is seen to give offenders the incentive to continue attendance on their programmes and indeed opens up new experiences. Probation Officers are positive that they have discretion in the constitution of the order. . . Probation Officers have an element of control of the process subject to the ongoing motivation of the client and are not subject to the direction of the court in this regard' (Probation Service, 2017:12).

It did, however, also highlight some issues. It noted that there were some inconsistencies in how integrated community service operated. In particular, the key protocol that developmental hours would not be attributed until completion of the remaining hours was not followed by all and there were differences in the number of hours attributed for different activities (Probation Service, 2017). It further noted that:

'[c]onfidentiality restrictions for some of the agencies facilitating the integrated hours was a concern for some officers in the initial establishment of the ICS contract. Clients committed to establishing mechanisms for reporting/verifying but were unable to follow through. Some officers considered that confidentiality prevented them from contacting the referral agencies and in being more proactive' (Probation Service, 2017:13).

The review of the pilot programme ultimately recommended that integrated community service should be rolled out nationally on an incremental basis (Probation Service, 2017). This recommendation was followed and integrated community service is now available throughout the country.

Alignment with strategic framework

There are many positive features to the concept of integrated community service that align with the tripartite strategy which promotes the principles of desistance, restorative justice and social justice, as outlined in Chapter 2.

First, the optional nature of the sanction is an indicator of its potential to support desistance because the Integrated CSO gives the client the choice of whether or not to participate. (This approach sits in contrast to jurisdictions such as England and Wales where rehabilitative requirements are bolted onto community service by a judge as a particular condition of the order with which individuals are mandated to comply). Giving clients the option to opt in and the ability to choose the type of personal development activity they undertake, is likely to result in better outcomes than an approach that requires participation on a specific programme that the client had no part in choosing (Marder, 2019).

Second, the Integrated CSO has the potential to support desistance in a meaningful way through responding to the particular needs of an individual under an order. In its original form, the CSO did little to identify and actively address clients' rehabilitative needs.

Third, the sanction supports the framework outlined in Chapter 2 because it is underpinned by a generative, rather than condemnatory, approach with a focus on encouraging the client to engage in personal development and rewarding them if they do so. Moreover, services and activities provided through the Integrated CSO can help to build confidence, support the development of a pro-social identity, and develop skills.

Finally, the Integrated CSO is more likely to promote a constructive understanding of compliance than the standard CSO. Jurisdictions that allow judges to add on rehabilitative requirements and

require an individual to participate in rehabilitative programmes run the risk of making the sanction more and more difficult to complete resulting in higher breach rates and the non-custodial sanction becoming a stepping stone to prison (Salomon and Silvestri, 2008; Mair et al., 2007). Integrated CSOs avoid this risk because if an individual fails to complete their rehabilitative/personal development programme or activity, it does not trigger breach proceedings. Instead, the client is required to carry out all community service hours doing unpaid work in the community with standard breach and compliance requirements applying.

Recommendations to enhance the Integrated CSO

There has been no follow-up evaluation of the use and operation of the Integrated CSO since its national roll-out in 2017. As a result, it is not clear whether the issues identified in the initial review have been fully resolved or whether the concept of integrated community service is operating as intended and to its full potential. Figures obtained from the Service as part of this review show that the use of integrated community service is relatively low. As of the end of October 2021, just 231 CSOs included an integrated element. The figures also show huge variances between probation regions, with 69% of integrated CSOs coming from one region in the South. **It is recommended that the Service prioritise the commissioning of an evaluation of the use and operation of the Integrated CSO across the country. [Recommendation 3.10]**

While the lack of information about how integrated community service is operating in practice limits our ability to review it in detail, from the initial review of the pilot scheme and from discussion with probation staff, the reviewers have identified some aspects of its operation that could be enhanced in order to imbed the principles of desistance and restorative justice into the sanction to a greater degree.

First, the current model could do more to mobilise the skills of the probation officer in assisting the desistance process. Under the current approach, it is the client's responsibility to identify, source and arrange the integrated/personal development element of their CSO. Many individuals sentenced to a CSO will have challenging personal circumstances which can impact their ability to determine and organise suitable rehabilitative/personal development activities, therefore limiting the use and potential of the integrated element of the CSO in responding to client needs. Moreover, the CSO continues to be perceived primarily as a punitive and reparative sanction. As a result, the focus for probation officers in induction meetings is on ensuring clients are placed on suitable sites and that they complete their designated community service hours.¹⁶ While the Integrated CSO requires a certain degree of focus on identifying clients' criminogenic needs and opportunities for personal development, it would appear that this aspect of the sanction remains secondary. It has been stated in the literature that probation cannot produce desistance, but it can play an important role in creating conditions that make desistance more likely (Phillips et al., 2020). It is clear that in order for the integrated element to be used more often and for it to operate to its full potential, there must be a greater focus placed on assisting and supporting the particular

¹⁶ The reviewers acknowledge that practice may vary and this may not be the case in every area.

needs of the client, as appropriate.¹⁷ Northern Ireland's Enhanced Combination Order provides an example of a model that maximises the skills of the probation officer in supporting the desistance process.

Case study: Enhanced Combination Order, Northern Ireland

The Enhanced Combination Order is outlined in greater detail in section 3.4.1.

The order focuses on higher risk probation clients and is underpinned by the principles of rehabilitation, restoration, and desistance, in that it responds to the particular criminogenic needs of all participants.

A particular feature of the order is that, at the point of induction, each individual is offered a psychological assessment in respect of issues such as those relating to mental health, parenting, and family support. This step supports the client in identifying any underlying circumstances that may be acting as a barrier to their desistance journey.

In addition, a probation support officer is appointed to act as a liaison point to support the client in accessing services. The officer does not have supervision responsibilities, but is rather focused on advocating on behalf of the client in gaining entry to relevant services and activities.

Though measuring recidivism alone provides limited insight into the effectiveness of the order, it is noteworthy that an evaluation of the programme found that the re-offending rate under the Enhanced Combination Order was 17.3% in the six months following sentence, compared to a 57.7% recidivism rate in the six months prior to sentencing (Centre for Court Innovation, 2020).

It is recommended that probation officers play a greater role in: assisting clients in identifying their criminogenic needs, and/or opportunities for personal development; supporting and encouraging clients to undertake the integrated element where appropriate, and; acting as a link between clients and external service providers, and advocating on their behalf where necessary. [Recommendation 3.11]

Second, the Service has developed a strong restorative justice strategy setting out the ways restorative justice practices can be used in delivering probation services (Restorative Justice: Strategies for Change, 2021; see further section 2.3 of this review). While community service does feature in this strategy, **there may be scope to incorporate, to a greater extent, restorative justice interventions and practices in the delivery of integrated community service and CSOs generally. [Recommendation 3.12]**

For instance, restorative justice interventions could be offered as part of the integrated element of the CSO. Marder's (2020b) analysis of the Council of Europe adopted Recommendation CM/Rec(2018)8 concerning restorative justice in criminal matters highlights the potential application of restorative practice across probation. In particular, Rule 58 and 59 ask probation

¹⁷ Note that any changes ought to align with the principle of minimum intervention, as outlined in section 2.7.3.

services to reimagine the sentencing planning process, noting probation officers can make decisions without obtaining input from other stakeholders or, as Marder puts it, they could use restorative justice alongside sentencing planning. These Rules provide a basis for agencies to conceive, select and deliver a range of interventions differently (Marder 2020b). For a CSO, it might involve identifying whether there are any direct or indirect victims and other stakeholders (such as the parties' families) who may be willing to engage. If so, these parties would then be invited to a restorative process where they can discuss the harm that was caused, how to improve the situation, and how to prevent the harm from occurring again. If, however, no-one is willing to engage, then the probation officer can revert to normal case planning (Marder, 2020a).

Restorative practices support and help with collective decision-making. Therefore, there is scope to include restorative practices in induction meetings when officers are working with clients to understand their criminogenic needs and identify suitable personal development activities to carry out as part of the integrated element of the sanction. When the client participates in the decision-making process, the interventions will likely represent the client's unique needs and interests (Schiff, 2007) which should increase the benefits of the intervention for the client, in addition to making compliance more likely (Marder, 2020a; see further: Tyler, 2006).

Finally, restorative justice practices can be used effectively in CSO breach proceedings to understand why clients have breached their order and to work with them to address the root causes of the breach. It has been acknowledged that restorative justice can be expanded within criminal justice particularly when there is a conflict between probation officers and the clients whom they supervise (Marder, 2020a). Taking a restorative approach when there is a breach and a subsequent conflict between the probation officer and client will assist the probation officer in understanding the client's perspective, in addition to helping them address it. If this approach is further embedded in the Service as 'the new default' (Marder, 2019), it could potentially reduce breach rates and promote compliance and desistance.

3.4.6 Performance indicators for evaluation of the CSO

As discussed in section 2.7, the CSO has a number of discrete, though necessary, functions which can make the evaluation of the sanction challenging. The CSO in Ireland was originally designed as an alternative to imprisonment, capable of punishing individuals and allowing for reparations to be made to the community. In recent times changes have been introduced, most notably the introduction of the integrated model, that seek to incorporate a rehabilitative element into the sanction. Section 2.7 outlines how the various rationales of the sanction can be reconciled through the use of a desistance-based approach, which also aligns with the principles of restorative and social justice.

From a policy perspective, section 2.6 outlines the requirement for appropriate monitoring and evaluation systems to be in place in order to accord with international recommendations, and as part of the tripartite strategy recommended by this review. Having comprehensive performance indicators is vital in order for the Service to accurately assess the operation of the sanction. In

particular, it needs a comprehensive understanding of what is working well and what is not in order to ensure that the CSO can continuously be developed and improved. It is also vital in order to highlight to judges, organisations, and the public generally, the extent to which the CSO is achieving its aims. Consequently, evaluation mechanisms should be ongoing with the results published bearing in mind the communication needs of key stakeholders.

Recidivism rates

At present, the primary tool used to evaluate the CSO tends to be recidivism rates, (Heard, 2015) which is problematic for a number of reasons. First, recidivism rates measure just one aspect of the CSO; they do not evaluate whether or to what extent the CSO is achieving its other aims. Second, recidivism rates are a blunt and inadequate measure of rehabilitation and desistance, as they are incapable of capturing incremental changes that form part of the desistance process. For example, they fail to reflect reductions in the type and/or seriousness of the offences committed, in addition to any benefits a person might have gained from completing a CSO, such as developing pro-social attitudes and behaviours, gaining skills, securing employment, accessing housing, improving relationships with family, building community links etc. (Heard, 2015). Third, focusing on recidivism rates, in particular, when comparing rates between sanctions, presumes that the sanction imposed is the determining factor in whether or not an individual committed another offence. As a result, key factors, most notably, the role of judges in determining who is sentenced to a CSO, are not taken into account. Generally, judges will impose a CSO on low/medium risk individuals and impose a prison sentence on higher risk individuals, those more likely to commit another offence in the future. Finally, recidivism rates are solely outcome focused and, as a result, are not helpful in assessing the operation of the CSO nor in identifying ways to improve the sanction.

Therefore, further measurements of effectiveness for the CSO should be mobilised in order to allow for a much greater understanding of the operation of the sanction and its outcomes (Guilfoyle, 2021). One approach to evaluate the apparent success of community service is to measure its achievements against its stated aims. As discussed in Chapter 2, the aims of community service are: decarceration, cost effectiveness, retribution/punishment, reparation, and reintegration/rehabilitation. Methods of evaluating decarceration and cost effectiveness are presently in operation, and so measures relating to the remaining aims are considered below.

Punishment (completion rates)

The principle of retribution frames time taken to conduct unpaid work as punishment for the purposes of the CSO. The completion of the work, and the conditions of the order, therefore, are a means of measuring whether the retributive objective has been met. As such, completion rates facilitate the assessment of the extent to which the courts' requirements that individuals perform community work have been accomplished (McIvor, 1992). In addition, the availability and completion of unpaid community service is important in contributing to public and judicial confidence in community service schemes. In studies that examined this issue, completion rates

for community service schemes were high, to the point they were considered a success by this measure (Turner and Trotter, 2013).

Evaluating completion rates involves measuring the length of the order and the number of breaches. McIvor's (1992) study found that the cause for most breaches of community service in Scotland was absenteeism and repeated unauthorised absences. Therefore, directing energy and resources towards supporting clients to complete their community service improves the operation of the sanction and demonstrates its effectiveness. Section 2.7.3 highlights issues relating to compliance in this context, and focuses on how a more flexible, problem-solving approach to breach and compliance is more effective in supporting desistance than a more punitive approach, thereby aligning with the tripartite strategy proposed in Chapter 2. In addition, the study highlighted that the higher breach rates in Scotland correlated directly with the length of the order: the longer the duration of the CSO, the more likely the client was to engage in absenteeism and breach the order. This finding has implications for sentencing approaches. Imposing shorter orders, where appropriate, is more likely to promote the legitimacy of the sanction for the individual, in addition to increasing the likelihood of them completing it and, in turn, progressing on their desistance journey.

Failing to complete an order is also related to issues discussed at section 3.4 relating to site sourcing and rural isolation. At the pre-commencement stage, Houghton's (1991) study demonstrates that where staff experience difficulties in securing and maintaining appropriate placements, requiring clients to wait before commencing work, '[b]oth the diversionary and rehabilitative impacts of the scheme are lost' and clients become 'unmotivated' (Houghton, 1991:28). A lack of motivation is an underlying cause of non-compliance, as discussed in section 2.7.3. Houghton's (1991) study further emphasises the importance of improving attendance rates by assisting clients with transport to work sites where poor public transport is a problem, especially at weekends. Moreover, McIvor (1992) concludes that a prompt commencement of community service work following the issuing of the order can assist in improving completion rates. Legislative and operational changes were subsequently made in Scotland to incorporate these findings.

Reparation (benefit to the victim, the community, and the client)

The aim of reparation in community service is for the person who has offended to 'make good' for harms caused to the victim/community as a result of their actions, through providing unpaid labour of benefit to the community. In order to align with the strategic framework, section 2.7.4 proposes a broader understanding of reparation as generative and reciprocal, so that it can support a desistance-based approach to community service. A positive approach to reparation promotes self-worth and a sense of citizenship, which serves to build more inclusive and safer communities.

Measuring reparation through capturing and assessing community beneficiaries' satisfaction with the work completed provides an additional measure of the effectiveness of the community service schemes (McIvor, 2010). As stated by McIvor (2010:52):

'The views of beneficiaries provide an important indication of the benefit to the community of unpaid work undertaken by offenders, though this aspect of the sanction has tended to receive relatively scant empirical attention.'

Several studies have examined the views of beneficiaries and found on the whole that they consider the schemes to be worthwhile and beneficial (see further, CJINI, 2010, 2013; McIvor, 1992, 2010). In Scotland, McIvor (2010) found that in most cases work done by individuals on community service was highly valued by individual and agency beneficiaries.

The nature of the benefit is also a useful measure in terms of indicating the reparative functionality of community service in the context of the tripartite strategy outlined in Chapter 2, as evidenced by a 2010 study in Northern Ireland. Community Justice Inspection Northern Ireland (CJINI) conducted a thematic review of the PBNI's arrangements for persons to perform unpaid work as part of CSOs and combined orders (CJINI, 2010). One of the key aims of the study was to evaluate the reintegration of the individual into the community through community reparation by the undertaking of work that is of social use (CJINI, 2010). A clear objective of the scheme was that any work carried out could only be for those who did not have the resources to do it themselves or to pay others to undertake the work. The Inspection found that the work undertaken was socially useful, positive and of benefit to the community (CJINI, 2010). The inspection included field work in the form of community service placement observations, structured interviews, focus groups, and questionnaires being carried out with PBNI staff and clients, placement providers and sentencers across various locations (Turner and Trotter, 2013).

Reparation is also measurable through the assessment of restorative justice outcomes. Conferencing, circles and mediation are dynamic and holistic processes, and so the literature supports the position that restorative justice approaches should be evaluated using methodologies that provide a more comprehensive measure of client, victim and community impact, rather than recidivism or revocation rates alone (Stewart et al., 2018), particularly those that capture participant satisfaction.

Rehabilitation (reoffending rates plus other measurements of progress/desistance).

Recidivism rates tend to be the most commonly used measure to evaluate the rehabilitative function of the CSO. Some studies take the approach of comparing reoffending rates between prison and community service as a means of assessing rehabilitation. For example, a number of studies have found slightly lower rates of reconviction for community service when compared to other sentences (O'Donnell, 2020). The problem with this approach is that absent sufficient controls it is difficult to conclude what impact, if any, the sanction had on whether or not the person sentenced reoffended. Few controlled studies have been conducted and, of those that have been, a Campbell Collaboration systematic review found that although a majority of the selected studies showed non-custodial sanctions to be more beneficial in terms of reoffending than custodial sanctions, no significant difference was found in the meta-analysis based on four controlled and one natural experiments (Villettaz et al., 2015).

Another problem with using reoffending rates as the sole measure of rehabilitation and desistance, is that it does not take into account the incremental nature of progress towards desistance from crime, for example, by accounting for other benefits that a person might have gained from undertaking community service rather than being imprisoned. In an effort to address this gap, a Swiss study utilised reconvictions in combination with self-reported criminal behaviour and other indicators of social integration, including marriage, earnings, and financial debts when analysing the outcomes of community service and other sentences (Killias et al., 2010a, 2010b). Further, a South Australian study aimed to learn how community service rehabilitates individuals by developing a theoretical model as to how this might be achieved (Oxley, 1984). This model incorporated and focused on three stages of community services and the outcomes produced at each stage: community service components (immediate outcome) can be converted into changes in the individual's attitudes or skills (intermediate outcomes) which can eventually reduce the risk of recidivism (ultimate outcome) (Turner and Trotter, 2013). These studies demonstrate the importance of supplementing reoffending rates with additional progress measures to track a more comprehensive understanding of rehabilitation as a function of the CSO.

Measuring desistance in the CSO

As discussed in Chapter 2, there is consensus in the literature that desistance is a process as opposed to a single event. Therefore, the use of static responses, like recidivism rates alone, are limited in terms of capturing progress towards desistance from crime. Rocque's (2021) analysis reinforces the point that a mixed methods approach tends to support a deeper understanding of the desistance process. Appropriate methods might include: surveys, official records, quantitative and qualitative methods, and various modeling techniques. For example, qualitative approaches provide an effective means of understanding desistance through behavioral reform (Veysey, Martinez, and Christian, 2013), and quantitative approaches reveal more about structural factors relating to the operation of particular sanctions (Bersani and Doherty, 2018).

While an extensive evaluation of the CSO may not be feasible on an annual basis owing to resource constraints, the Service is in a position to develop formalised and targeted programmes of research and evaluation, underpinned by a mixed-methods approach. In this way, the Service can accumulate a strong knowledge-base regarding the use, operation and impact of the CSO that can guide policy developments and reforms to the CSO. See section 2.6 for examples of key research priorities.

It is recommended that a range of key measures needed to evaluate the CSO against its stated aims are identified, systems are put in place to collect and analyse the data needed and that such evaluations are conducted on a regular basis. These evaluations and the data used should, where possible, be publicly available. [Recommendation 3.13]

As well as conducting regular evaluations of the effectiveness of the CSO, **it is recommended that the Service also periodically conduct or commission in-depth evaluations of the current operation of the CSO or particular aspects of it. [Recommendation 3.14]** This is vital in order to identify

aspects of the sanction that are working well as well as aspects of the sanction that may not be operating as intended or in line with best available research evidence. For example, Integrated CSOs have been operational for close to 5 years, yet there is little understanding as to how the sanction operates throughout the country, or whether it is operating as intended and/or to its full potential.

3.5 Summary of recommendations

Site sourcing

Recommendation 3.1 - It is recommended that the Service explore how responsibility for identifying, securing and managing placements can be shared more extensively within existing community based structures, such as Local Community Development Committees, Strategic Policy Committees, and the Local Government Management Agency (LGMA)

Recommendation 3.2 - It is recommended that the Service explore how it could use Community Safety Partnerships, provided for in the Policing, Security and Community Safety Bill 2021, to promote community service, build links with local communities/community organisations and source community service projects.

Recommendation 3.3 - It is recommended that the Service explore the possibility of increasing its use of individual placements. These could be identified and agreed locally (through existing community based structures or through Community Safety Partnerships, if established) or at a national level with organisations that have a reach in local communities throughout the country.

Problems specific to rural areas

Recommendation 3.4 - As a result of the pandemic, the Service (in partnership with IASIO, NIACRO, and the Irish Red Cross (Prisons to Community) Initiative) successfully developed and integrated online learning initiatives into the Integrated CSO (Probation Service, 2020). It is recommended that this practice is evaluated and expanded, where appropriate, as a means of enhancing placement opportunities for those in isolated areas and/or with other access issues.

Recommendation 3.5 - It is recommended that the Service explore how it might tap into and use existing rural networks (e.g. LCDs, Irish Local Development Network, Rural Development Offices) to promote community service and to source work sites/placements in rural areas.

Recommendation 3.6 - It is recommended that individual work placements are utilised to a greater extent than is currently the case.

Recommendation 3.7 - It is recommended that the Service should consider, under certain circumstances, paying the cost of travel for a client to attend a supervised project.

Communicating with the judiciary

Recommendation 3.8 - It is recommended that the Service develop a communication strategy, part of which includes a plan to communicate with judges. In developing the communication strategy the Service could explore the following options:

- A national level agreement between the Service and the judiciary which sets out procedures and broad guidance for national and local level communication between Probation Service staff and judges.
- An annual or biannual newsletter specifically targeted at judges (which includes local information).
- To allow for feedback from judges, to periodically run a survey of sentencers.
- Engaging with the newly formed Judicial Studies Committee about the possibility of running an annual training event for judges.
- Engaging with the Law Society and Criminal Bar Association to enhance criminal defence solicitors' and barristers' awareness of community service and the integrated model of community service. Criminal defence practitioners can play an important role in informing judges about community service and the types of programmes available in their area.

Communicating with the public

Recommendation 3.9 - It is recommended that the Service develop a communication strategy that seeks to enhance the public's understanding of community service and to raise awareness of community service amongst community organisations. In developing a communication strategy the Service could consider the following options:

- The Judicial Council Act 2019 established the Sentencing Guidelines and Information Committee in Ireland. One of its duties is to collect, analyse and publish information about sentencing. There may be an opportunity for the Service to work with the Committee on initiatives to enhance the public's knowledge and understanding of community sanctions.
- Participating in or with Local Community Safety Partnerships to raise awareness about community service amongst other statutory and community organisations.

Integrated community service

Recommendation 3.10 - It is recommended that an evaluation of integrated community service is undertaken to assess if the concept is operating as intended and to its full potential.

Recommendation 3.11 - It is recommended that probation officers should have a greater role in the operation of CSOs. A central aspect of their role should be to assist clients in identifying, accessing and arranging the personal development aspect of their CSO. Probation officers should also act as a link to services and resources as well as supporting clients in overcoming barriers to desistance that may arise while completing their CSO.

Recommendation 3.12 - It is recommended that restorative justice interventions and restorative justice practices should be incorporated into CSO to a greater extent.

Performance indicators for the assessment of CSOs

Recommendation 3.13 - It is recommended that a range of key measures needed to evaluate the CSO against its stated aims are identified, systems are put in place to collect and analyse the data needed and that such evaluations are conducted on a regular basis. These evaluations and the data used should, where possible, be publicly available.

Recommendation 3.14 - As well as conducting regular evaluations of the effectiveness of the CSO, it is recommended that the Service also periodically conduct or commission in depth evaluations of the current operation of the CSO or particular aspects of it.

4. Legal framework

4.1 Introduction

This chapter outlines and assesses the current legal framework of the CSO in Ireland. It addresses key issues with the structure and the recent legislative efforts to increase the use of the CSO. The chapter then briefly identifies and evaluates a range of possible reform options that have been introduced in other jurisdictions or advocated for in academic literature. It sets out the benefits and risks of each option and reaches tentative conclusions regarding their suitability for Ireland, bearing in mind their alignment with the tripartite strategy outlined in Chapter 2, which relies on the principles of desistance, restorative justice and social justice, in addition to operational observations and recommendations from Chapter 3.

4.2 Current legal framework

The CSO is governed by the Criminal Justice (Community Service) Act 1983 (the '1983 Act'), as amended by the Criminal Justice (Community Service) (Amendment) Act 2011 (the '2011 Act'). The CSO is an alternative to imprisonment and not a sanction in its own right. Therefore, a judge can only impose a CSO once the custody threshold has been passed (1983 Act, s.2). The 2011 Act amended the original legislation to make it a requirement for the judge to 'consider' imposing a CSO in all cases where they would otherwise have imposed a prison sentence of 12 months or less, and a judge may impose a CSO as an alternative to a prison sentence of more than 12 months. Though this amendment was made with a view to increasing the judicial use of the CSO, in reality, the provision simply requires a judge to *consider* imposing a sanction that already existed. It might be assumed, given the scope of their discretion and the principles of parsimony and proportionality underpinning Irish sentencing principles, that judges consider all of the options available to them when sentencing, as a matter of course. In the absence of formalised sentencing guidelines,¹⁸ however, judges ultimately choose the option that they believe to be most suitable based on the circumstances of the case, the circumstances of the individual who has offended, and their own personal views on and experiences of the sentencing options available to them (Maguire, 2010).

The person being sentenced to a CSO must be over the age of 16, and the court has to be satisfied that they are suitable to perform work in the community and that arrangements can be made for such work to be carried out (1983 Act, s.4). Before a CSO can be imposed, the legislation requires that the individual must be assessed by the Service, and a written report addressing these two issues in particular must be submitted to the court. The legislation does not provide any further guidance as to what information would be relevant to the individual's 'suitability' or how much

¹⁸ Note that sentencing guidance has emerged from appellate case law in respect of certain offences (e.g. rape). However, this position is set to evolve in light of the recently formed Sentencing Guidelines and Information Committee established by the Judicial Council Act 2019.

detail should be included about what 'arrangements' can be made (Walsh and Sexton, 1999:74). The Act also states that a judge can only impose a CSO where the individual gives their consent to the imposition of the sanction, but it does not stipulate how or when this consent has to be given (1983 Act, s.4). The length of the CSO must be between 40 and 240 hours and, in general, has to be completed within one year (1983 Act, s.2, s.7).

Where an individual is convicted of multiple offences, the court can impose more than one CSO to run consecutively or concurrently, but the aggregate total cannot exceed 240 hours (1983 Act, s.5). The Act does not allow for CSOs to be combined with any other primary punishment, although secondary sanctions such as revocation of a licence, forfeiture, confiscation, seizure of property, compensation or an order of costs can be made in addition to a CSO (1983 Act, s.3). The legislation does not provide guidance to judges on how community service should be valued in comparison to a prison sentence (for example, x amount of community service hours is equivalent to y months in prison). Judges are given absolute discretion in this regard. The legislation is also silent on the type of work that should be carried out under a CSO, other than that it has to be unpaid. However, the regulations made pursuant to the 1983 Act provide that the relevant probation officer must: 'ensure, as far as practicable, that work to be performed by an individual under a community service order is of benefit to the community or to an individual or group of individuals in need'.¹⁹ While this requirement places some conditions on the type of work that can be performed as part of a CSO, Walsh and Sexton (1999) observe that the Irish sanction is far less restrictive than many other jurisdictions. For instance, the CSO appears to allow for work to be done for any public or private organisation or individual. The Probation Service is given the responsibility of choosing the type of work to be performed, in addition to supervising the operation of the sanction. The legislation requires that clients perform the CSO as directed by the relevant probation officer. However, when giving these directions, the probation officer must not, in so far as it is possible, interfere with the person's work or education (1983 Act, s.7).

The legislation allows for a CSO to be reviewed on application from a client or probation officer. When a court is reviewing a CSO, they can consider all circumstances that have arisen since the CSO was first imposed (1983 Act, s.11). The court then has three options, it can: fully revoke the CSO; revoke the CSO and deal with the individual in some other way for the offence in respect of which the CSO was made, or; make no change and require the individual to continue to perform the original CSO. Though the legislation stipulates that this decision should be based on what is in the interest of justice, it does not provide any further guidance, for example, in relation to the circumstances that might justify a revocation of the original order.

Non-compliance with a CSO is an offence punishable on summary conviction by a fine, without prejudice to the continuance of the CSO (1983 Act, s.7). The court also has the option to revoke the original CSO and deal with the individual in any other way for the offence for which the initial order was made. Under the supplementary regulations, the Service is given the role of identifying and prosecuting breaches of the CSO. Finally, it is the responsibility of the Service to certify that

¹⁹ Regulation 4b of the Criminal Justice (Community Service) Regulation 1984.

clients have completed the CSO imposed upon them and to inform the relevant court when this has occurred.²⁰

4.2.1 Community service for non-payment of a fine

The Fines (Payment and Recovery) Act 2014 (the '2014 Act') made a number of amendments to the laws which govern the setting of fines, the payment and recovery of fines, and how people are dealt with once they are found to be in default. Judges must take a person's financial circumstances and their ability to pay into account when deciding upon the level of fine to be imposed. It introduces a system whereby fines over €100 could be paid by instalment, and provides judges with additional options to impose a recovery or attachment order to recover unpaid fines. If these orders were unsuccessful or were deemed unsuitable, the 2014 Act gives judges the power to impose a CSO on the fine defaulter provided they were considered suitable to perform community service, there is suitable work available, and the fine defaulter consented. Under the 2014 Act, a judge can impose a prison sentence of up to 12 months or, as an alternative, a CSO of up to 240 hours where a person has defaulted on a fine imposed on indictment. When dealing with a person who has defaulted on a fine imposed summarily in the District Court, the 2014 Act allows a judge to impose a prison sentence not exceeding 30 days or, as an alternative, a CSO of up to 100 hours (2014 Act, s.19(C)(ii)).

4.3 Knowledge gap

Further information is needed in order to assess whether or not the current legal framework adequately supports the use of the CSO as an alternative to custody, and/or to evaluate the changes (if any) that are needed to support the development of the CSO in line with the tripartite strategy proposed in Chapter 2.

4.3.1 Judicial insight

Judicial reluctance to impose the CSO endures, notwithstanding the obligation placed on judges to consider imposing the sanction as an alternative to prison sentences of 12 months or less under the 2011 reforms. It is unclear if the current legal framework acts as a barrier to judges imposing the sanction, or if the low level of uptake is instead due to issues relating to a lack of knowledge of local initiatives, a lack of confidence in the rehabilitative function of the sanction, or a judge's personal sentencing philosophy and preference (see further, sections 3.4.3 and 4.2). Consequently, **prior to pursuing legislative reform, it is recommended that the Service conduct a comprehensive evaluation of the use of the CSO by the judiciary, to include a detailed survey relating to judicial decision-making about the imposition of the CSO in its present form.**

²⁰ Regulation 11 of the Criminal Justice (Community Service) Regulation 1984.

4.3.2 The target cohort of the CSO

When the sanction was introduced in the early 1980s, the target cohort largely comprised those given short-term prison sentences. This group mostly included young males, many of whom would have been suited to carrying out unpaid work in the community (Dáil Debates, Vol. 341, Col. 1331, 1345, 1358, 1380, 20th of April 1983). At the time, drug use was not as prevalent as it is today, and there was not the same level of awareness and understanding around mental health issues. In 2011, in an attempt to increase the use of the CSO, policy-makers increased efforts to target individuals who were being sentenced to short-term custodial sanctions, as outlined above. However, this attempt was carried out in the absence of an empirical evaluation of the characteristics of the target group, and without any assessment of how this group may have altered since the introduction of the 1983 Act. There continues to be a significant dearth of data relating to individuals who are being sentenced to short-term prison sentences. However, the limited information available indicates that there are now high levels of drug and alcohol addiction, mental health issues, and instability within the target group (Kennedy et al., 2005; O'Donnell, et al., 2009; O'Hara, 2016).²¹ The lack of information in relation to the characteristics and needs of those on whom a CSO is imposed makes it difficult to assess whether or not the current legal framework is fit for purpose. Consequently, **prior to pursuing legislative reform, it is recommended that the Service conduct empirical research in order to gain a greater understanding of the characteristics and criminogenic needs of the target cohort of the CSO.**

4.4 Legislative reform options

Subject to the need to conduct further research as outlined in section 4.3, this section identifies and discusses legislative reform options that have been introduced in other jurisdictions, or have been suggested in academic literature, with a view to increasing the use of community sanctions in a way that promotes decarceration, particularly in relation to short-term prison sentences. An extensive analysis of each option is beyond the scope of this report, and so the aim of this section is to highlight the benefits and risks of each option in light of the findings from this review, and to reach tentative conclusions regarding their suitability for Ireland.

4.4.1 Keep the CSO as a direct alternative to imprisonment, introduce a presumption against short-term prison sentences, and introduce a legislative requirement that judges must justify their decision not to impose a CSO when considering a prison sentence of 12 months or less.

As mentioned above, the CSO is a direct alternative to prison, so before imposing a CSO, a judge must first be satisfied that the custody threshold has been passed. The purpose of this requirement

²¹ Michael Donnallen, Director General of the Prison Service, speaking to the Public Accounts Committee on the 2nd of February 2017 said that 70% of Irish prisoners have addiction issues. Reported in the Irish Time. Available at: <http://www.irishtimes.com/news/crime-and-law/more-than-70-of-prisoners-have-addiction-issues-1.2961144> .

is to ensure that the CSO is only used on individuals who would otherwise have received a prison sentence, and to enhance the ability of the sanction to divert people away from short-term prison sentences. It is likely that CSOs are, in some cases, being imposed on individuals who might not otherwise have received a prison sentence (O'Hara, 2016). However, it is noteworthy that Ireland has not experienced the same level of net-widening and penal expansion as many other jurisdictions (Carr, 2016; Healy, 2016; Maguire, 2018). It is also of note that some jurisdictions, such as Spain and the Netherlands, experienced significant net-widening when the requirement that CSOs could only be used as a direct alternative to prison was removed (Blay, 2008; Boone, 2010). Due to a lack of research on this topic in Ireland, it is difficult to ascertain what impact, if any, the legislative requirement that CSOs can only be used as a direct alternative to imprisonment has had on limiting net-widening and penal expansion. Absent this understanding, Ireland should be very cautious about removing the 'direct alternative' requirement. Before introducing fundamental structural reforms, it is important that we first understand how existing structures are impacting the use of the sanction, and the penal system more broadly. Identifying and understanding positive features of the CSO in its current form is vital in order to ensure that reforms build on existing strengths and avoid unintended negative outcomes. Based on what we currently know, there is at least some risk that removing the 'direct alternative' requirement would result in CSOs being used more for lower tariff offences, and as an alternative to other lesser non-custodial sanctions, rather than increasing its use as an alternative to prison. As a result, the use of the CSO might expand, but in the wrong direction.

If the 'direct alternative' requirement is maintained, there are other reforms that could be introduced to try to increase the use of the CSO for those currently being sentenced to imprisonment. One such option would be to introduce a presumption against short-term prison sentences, combined with a requirement that judges must justify their decision not to impose a CSO or other non-custodial sanction in cases where a prison sentence of 12 months or less is handed down. In 2012, Scotland introduced a presumption against prison sentences of 3 months or less, and a requirement that judges give reasons for why they did not impose a non-custodial sanction and instead imposed a prison sentence of 3 months or less.²² Research from Scotland showed that the reform had little or no impact on the use of non-custodial sanctions and the number of people sentenced to short-term prison sentences (Scottish Government, 2015b). Nonetheless, in 2019, the measure was extended to prison sentences of 12 months or less. There are signs that the extension to 12 months is having some positive impact on reducing the use of prison sentences of 12 months or less (Scottish Government, 2021). However, it is difficult to reach definitive conclusions at this point due to the recency of the reform, and the fact that much of the time period since the introduction of the reform has been heavily impacted by the COVID-19 pandemic.

²²Criminal Justice and Licensing (Scotland) Act 2010.

A presumption against prison sentences of 12 months or less and a requirement to give reasons has the potential to result in some increase in the use of the CSO as an alternative to prison in Ireland. The increase, however, will likely be limited. Judges are already required to consider imposing a CSO in all cases where they would otherwise have imposed a prison sentence of 12 months or less. It is difficult to see how a legislative presumption against prison sentences of 12 months or less, and a requirement to give reasons, would significantly alter judicial sentencing practice. As argued by Tata (2019: 34), a requirement to give reasons can be easily satisfied by judges simply noting that a non-custodial sanction was 'not appropriate'.

Tata (2019) also highlights some risks and criticisms with this reform option, and argues that it can lead to sentence inflation. Writing about the Scottish experience of introducing a presumption against prison sentences of 3 months or less, he notes that while there was a slight decrease in the number of people imprisoned for less than 3 months, there was an increase in the use of prison sentences of 3 months to less than 6 months, and an increase in prison sentences of 6 months to less than 2 years (Scottish Government, 2015b). A plausible explanation for this situation is that some judges may be slightly increasing prison sentences to avoid the requirements of the legislation. Tata (2019:35) is also critical of this reform option on the basis that it maintains the status quo of prison as the default option. He writes:

'When "alternatives to prison" don't seem to work or seem credible, there is always prison. All other options have to prove themselves. Prison never has to prove itself. While non-custodial sentences and social services seem so stretched, imprisonment, on the other hand, appears as the credible fail-safe.'

Tata (2019:35) further argues that the focus in Scotland on prison as a last resort and the default option has let successive governments off the hook:

'[t]hey are not required to provide the community justice and community services that are necessary, while prison numbers have continued to rise partly as a consequence. Instead, responsibility for the consequences of chronic needs and relatively minor offending is delegated to individual professionals who are presented with impossible choices. It is not their fault that they feel obliged to resort to prison when nothing else seems to be adequately resourced.'

In our view, Ireland should be very cautious about removing the 'direct alternative' requirement without first understanding the impact it has had on limiting net-widening and penal expansion in Ireland. If the 'direct alternative' requirement is maintained, then introducing a presumption against short-term prison sentences could be explored. There is some evidence to suggest that this could result in some increase in the use of CSOs as an alternative to prison, but Tata's criticisms are also valid. This approach maintains the status quo of prison as a default, and therefore is unlikely to result in significant changes in the use of the CSO and the number of people sentenced to imprisonment.

4.4.2 CSO as a sanction in its own right

In many jurisdictions, including England and Wales, Scotland and Northern Ireland, the CSO equivalent is a sanction in its own right. The sanction can be imposed even if the custody threshold has not been passed. The only requirement is that the offence for which the person is being sentenced is 'punishable by imprisonment' i.e. legislation allows for a sentence of imprisonment to be imposed for that offence.²³ The risks of Ireland adopting a similar approach, and removing the requirement that the CSO only be imposed as a direct alternative to prison, have already been discussed above. The primary risks are net-widening and penal expansion. However, it was also noted above that keeping the CSO as a direct alternative to prison is unlikely to result in significant change to current sentencing practice, even if a presumption against imprisonment is introduced. The reason being that it maintains the status quo of prison as the default option.

Tata (2019) argues that in order to achieve significant reductions in the use of prison, community sanctions must become the default sentencing option. To achieve this in Ireland, the CSO would need to become a sanction in its own right. However, if this were to be done, it would be vital that it would be alongside a series of other fundamental reforms, and not in isolation. Not only would it require legislation that sets community sanctions as the default option, and removes prison as an option for individuals whose offending does not require it, but it would also require a significant change in the use of resources. Tata (2019:36) proposes a two-part public principle to be used to achieve fundamental change:

1. Imprisonment should be used specifically only where warranted by the seriousness of offending; and
2. Rehabilitation, self-improvement, and other forms of personal help intended to address an individual's personal and social needs, should be expressly excluded as grounds for recommending, suggesting and passing a custodial sentence.

We agree with Tata's assertion that in order to achieve significant reductions in the use of short-term prison sentences, it is necessary to move away from framing prison as the default option/last resort. Non-custodial sanctions need to become the default option. As part of this reshaping of sentencing practice, the CSO would likely need to become a sanction in its own right so that it does not have to justify itself as an alternative to prison. If the CSO was to become a sanction in its own right, then it is vital that this change is introduced alongside other fundamental reforms. We would caution against introducing it in isolation in order to avoid potential net-widening effect which would run counter to the tripartite strategy proposed in Chapter 2.

²³ Criminal Justice Act 2003 (England and Wales); Criminal Justice and Licensing (Scotland) Act 2010; Criminal Justice (Northern Ireland) Order 1996

4.4.3 Tiered tariff approach

The tiered tariff approach involves creating two tiers of CSOs, one targeted at lower tariff offences/offending and one at higher tariff offences/offending. This approach is used in Spain. When the Spanish equivalent to the CSO, the Work for the Benefit of the Community Order (WBCO), was first introduced it could only be used as an alternative to imprisonment. Various legal reforms throughout the 2000s expanded the WBCO to create two systems of unpaid work: one a completely independent sanction, and the second a substitute for a prison sentence up to two years (Blay, 2010). These reforms resulted in a significant increase in the use of the sanction. Within a few years it went from a sanction that was barely used to one which constituted around 25% of all penalties imposed (in 2008), with 45% of the individuals sentenced in Spain receiving a WBCO (Blay, 2010). Road safety offences accounted for 76% of the orders imposed (Blay, 2010). The soaring numbers of orders forced the body responsible for operating the sanction to revise implementation practices in order to make them more 'efficient' as the high numbers did not allow for 'time consuming interventionist styles of supervision' (Blay, 2010:77). The increase in the use of the WBCO has not, however, led to a reduction in the use of prison sentences; on the contrary, the prison population is growing. According to Blay, individuals who would previously have avoided a criminal sanction are now being sentenced to a WBCO, and this expansion and devaluation of the WBCO has ultimately 'legitimated the possibility of imposing prison sentences for previously non imprisonable behaviours' (Blay, 2008: 250). Blay's analysis not only shows evidence of net-widening since the tiered tariff approach was introduced in Spain, but it also suggests that there has been an expansion of the entire penal system.

Scotland also has a tiered tariff system, although it is less relevant to Ireland and to our analysis here, as the Scottish Community Payback Order (CPO) is very different to the Irish CSO. The CPO was introduced in Scotland in 2010 and replaced the Community Service Order, Probation Order and Supervised Attendance Order. The all-encompassing sanction allows judges to impose one or more of a wide range of requirements when sentencing an individual to a CPO. Requirements can include unpaid work or other activity requirement (Level 1 = 20-100 hours to be completed within 3 months; Level 2 = 101-300 hours to be completed within 6 months); offender supervision requirement (maximum 3 years; must be imposed in addition to all other requirements with the exception of the unpaid work requirement); compensation requirement; programme requirement (attend programme arranged by a social worker); mental health treatment requirement; drug treatment requirement; alcohol treatment requirement; residence requirement (order to live at a certain address); conduct requirement (ordered to do certain things or not do certain things for a maximum 3 years).²⁴

The CPO is only to be used where an individual has committed an offence that is punishable by imprisonment. However, a modified limited version of the sanction can be imposed as an alternative to a fine or where an imprisonable offence has been committed but the court is of the view that it would not be appropriate to impose a prison sentence or a standard CPO. The

²⁴ Criminal Justice and Licensing (Scotland) Act 2010.

restricted version only allows for a Level 1 unpaid work requirement (between 20 and 100 hours), a conduct requirement, and/or an offender supervision requirement to be imposed as part of the CPO.

There is greater justification for a tiered approach when there is just one main non-custodial option available other than a fine. For, having a lower tariff and restricted version of the sanction will reduce the likelihood of individuals being sentenced to long periods of unpaid work and excessive requirements being attached to orders when they are being sentenced for low level offending. While it may not be directly comparable with Ireland, there are some aspects of the Scottish experience worth noting. In Scotland, when a person is sentenced to unpaid work (Level 1 or 2), the criminal justice social worker can grant permission for up to one third of their hours to be spent doing some other personal development activity. This is very similar to integrated community service in Ireland. In Scotland, however, finding suitable personal development activities (education/rehabilitation) for individuals sentenced to Level 1 orders has been highlighted as a significant challenge. This is due in part to the requirement that orders are to be completed within 3 months (Scottish Government 2015b). As a result, Level 1 orders will often have no personal development/rehabilitative aspect to them, and will simply involve unpaid work. So individuals whose sentence would previously have been restricted to a fine or a supervision order, are now, under the tiered approach, being sentenced to unpaid work (which under the legislation can have a development aspect to it, but in practice often does not).

While the experiences of two jurisdictions should not ultimately determine whether a tiered approach is introduced in Ireland, they do highlight some real risks and concerns. In our view, the benefits of a tiered approach are minimal. This approach provides judges with an additional sentencing option and some additional flexibility when sentencing individuals for lower tariff offences. The risks, however, are significant. It can lead to net-widening, where individuals who previously would have received a fine or probation are instead sentenced to a more punitive sanction, and it can also lead to an expansion of the penal system, due to individuals who previously would have avoided a criminal sanction instead being sentenced to a CSO.

As discussed in Chapter 2, the aim of legislative reform should align with the principle of decarceration, particularly in terms of reducing the use of short-term prison sentences. The CSO can play a role in achieving this aim, but only if the use of the sanction is increased for those currently being sentenced to imprisonment. There is little evidence to suggest that a tiered approach would achieve this outcome. It would likely result in an increase in the use of the CSO, but as an alternative to other non-custodial sanctions and not as an alternative to prison.

4.4.4 Progress reviews

Progress reviews would allow judges, when imposing a CSO, to set specific dates for the individual sentenced to return to court to have their progress reviewed. Progress reviews would not be attached to every CSO. They would only be used in borderline cases where the sentencing judge is unsure whether or not the individual will fully comply with the requirements of the CSO. The

review process would operate as follows: a judge, when imposing a CSO, would set a date (for example two months after the sentencing hearing) for the client to return to court for his/her progress to be reviewed. A probation officer would be required to submit a report outlining the individual's progress and co-operation to date. The judge would then use this report and any submissions made on behalf of the individual to decide whether the order should continue or be revoked. The standard would be, based on the evidence before the judge on the date of the review, whether they think that the individual is likely to successfully complete their CSO within the required 12-month timeframe. If the judge concludes that the answer is yes, then the CSO would continue as normal. If the judge concludes that the answer is no, then they would be able to revoke the order and re-sentence the individual. The legislation would need to state clearly that if a judge is re-sentencing an individual, they must take into account the number of community service hours completed prior to the order being revoked. It would also need to state that when re-sentencing an individual, the sentence that is imposed must not be greater than the sentence the judge would have originally imposed had they not decided to sentence the person to a CSO.

Progress reviews were introduced in Scotland in 2010 and appear to be working well. They are considered useful by both criminal justice social workers (CJSW) and Sheriffs (Scottish Government, 2015b). In a 2015 evaluation, sentencers reported that reviews were particularly useful when they were doubtful about whether an individual was appropriate for a CPO and they suspected that breach would follow. According to one Sheriff, it avoids the delay and hassle of a convoluted breach procedure (Scottish Government, 2015b). Sheriffs also highlighted that they found them useful in acknowledging successful progress. Concerns were raised regarding court workloads, with some Sheriffs saying they were reluctant to use progress reviews for this reason. In advance of their introduction in Scotland, some concern was also raised about the impact of reviews on CJSWs' workload, however, the evaluation found that they did not appear to have had a major impact on CJSW workloads. Overall, it found that the additional time spent writing a (short, in most areas) progress report was balanced out by the positive impact of the reviews (Scottish Government, 2015b).

The benefits of progress reviews are that judges can, if they so wish, maintain a degree of control over the sanction which they imposed. By providing judges with the option to conduct progress reviews, it may enhance judges' confidence in the sanction and increase the likelihood of CSOs being used in borderline cases. Judges can impose a CSO knowing that they can review the case at a set date, and if the individual sentenced is not complying with the requirements of the sanction, they can immediately revoke the sanction and resentence the individual.

It is not clear how much of an appetite there would be for progress reviews amongst members of the Irish judiciary. It could well be that judges, particularly District Court judges, would view progress reviews as adding to their already high workload and court lists, and as a result would be reluctant to use them. Conversely, and of greater concern, would be if progress reviews were overused. If progress reviews were attached to too many orders, it would infringe on probation officers' discretion and flexibility in managing CSOs. The high degree of discretion afforded to probation officers, particularly around breach procedures, is a positive feature of the Irish system

and one that is beneficial when incorporating principles of desistance, restorative justice and social justice into the operation of the CSO. Any reform that has the potential to impact this discretion should be approached with some caution.

With that said, progress reviews have the potential to increase the use of the CSO for those currently being sentenced to imprisonment. While there are some risks, most notably, the overuse of progress reviews by judges, the Scottish experience would suggest this risk is relatively low. In our view, there is some merit in progress reviews and it is a reform option that is worth exploring in greater detail.

4.5 Concluding thoughts

We would caution against simply removing the requirement that CSOs can only be imposed as a direct alternative to prison, and in making the CSO a sanction in its own right. To take this step in isolation would risk net-widening and an expansion of the penal system.

Proceeding on this basis, we think there are two reform options worth considering further. The first option would be to keep the direct alternative requirement, introduce an additional legislative presumption against prison sentences of 12 months or less, and a requirement that judges justify their decision not use a CSO when imposing a prison sentence of 12 months or less. This option has the potential to result in some increases in the use of the CSO for those currently being sentenced to imprisonment, although, in our view, the increase would likely be limited. The second option would be to remove the 'direct alternative' requirement, but only alongside a series of other fundamental reforms in line with the two-part public principle outlined by Tata (section 4.4.2), in addition to the implementation of wider strategic and operational recommendations made in the previous chapters. Further efforts in this regard might include making non-custodial sanctions the default sentencing option for many offences, and a significant reallocation of resources within the criminal justice system.

We do not think introducing a tiered approach would be beneficial. There is little evidence to suggest it would increase the use of the CSO for those currently being sentenced to imprisonment. There is, however, evidence to suggest that it would result in an increase in the use of the CSO as an alternative to other lesser non-custodial sanctions. This outcome does not accord with the strategy proposed under this review.

Progress reviews are worth exploring in more detail. They have the potential to increase judges' use of the CSO in borderline cases, and as a result increase the use of the CSO as an alternative to prison.

5. Conclusion

This report comprises a desk-based review of national and international policy materials, reports, and publications relevant to community service, as well as findings and knowledge from academic studies. The purpose of the report is to inform policy and practice developments; support the advancement of innovative approaches and initiatives; enhance efficiency and effectiveness in the delivery of community service; and strengthen the evidence base for stakeholders.

Chapter 1 sets out the overarching approach used and the methodology and research procedures followed. It notes some of the limitations of the review, in particular, our inability, as part of this review, to undertake a comprehensive knowledge transfer analysis of initiatives operating in other jurisdictions. The review focuses on three main areas: policies and principles (Chapter 2), operational structure and practice (Chapter 3), and legal framework (Chapter 4). Each chapter sets out the current position in Ireland, reviews relevant literature, research evidence and approaches taken in other jurisdictions, and makes recommendations. Due to the breadth of the review and the short timeframe within which it was conducted, it was not possible to provide detailed and comprehensive recommendations to address every issue identified in this review. Further, there are some areas where a lack of data and research evidence hinders our ability to reach conclusions and make recommendations. The recommendations contained in this report are intended to provide broad guidance to the Probation Service and to highlight key areas that require further investigation.

5.1 Future research

A common issue noted throughout the review is the lack of Irish research relating to the CSO, resulting in significant gaps in our knowledge and understanding of its current operation and true potential. For example, the concept of integrated community service has the potential to give rise to positive outcomes but its use is at a low level and it is inconsistently applied throughout the country. Due to the lack of a formal evaluation, there is limited understanding of how it operates in practice, and therefore very little information available to guide the policy developments needed to increase its use and optimise its potential.

Research is also needed to identify and understand aspects of the sanction that are working well. This information is important in order to ensure that reforms do not negatively impact features of the sanction that currently promote positive outcomes, inadvertently creating negative consequences. An example of where this may be an issue is in considering whether the requirement that the CSO can only operate as a direct alternative to prison should be removed, and whether instead the CSO should become a sanction in its own right. A lack of research on this issue means that we do not know the present role the direct alternative requirement plays in limiting net-widening and penal expansion in Ireland, and therefore what the likely impact would be of removing it.

Areas that require further research are highlighted throughout the review and key research priorities are set out in section 2.6. This report should be read as the starting point for the development of an in-depth and on-going programme of research to enhance our knowledge and understanding of the use, operation and impact of the CSO in Ireland, and to ensure that future decisions regarding policy, practice and legislative developments are informed by the best available evidence in the field.

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