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Evaluation of
Community Payback Orders,
Criminal Justice Social Work Reports
and the
Presumption Against Short Sentences

Crime and Justice



Evaluation of Community Payback Orders, Criminal Justice Social Work Reports and the Presumption Against Short Sentences

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These reports – and all opinions expressed herein – are the sole responsibility of the authors.

EXECUTIVE SUMMARY

Background

- 1 As part of the Scottish Government's commitment to 'a coherent penal policy that uses prison for serious and dangerous offenders but deals with lower-risk offenders in the community' (Scottish Government, 2007, p.1), three related reforms were introduced in early 2011: Community Payback Orders (CPOs), the Presumption Against Short Sentences (PASS) and Criminal Justice Social Work Reports (CJSWRs). Together, these were intended to contribute to a more effective and publicly acceptable system of community disposals, to provide a credible alternative to short sentences and, in turn, to contribute to a reduction in 'churn' in the prison population.
- 2 CPOs effectively replaced many of the existing community penalties (including Community Service Orders, Supervised Attendance Orders and Probation Orders) with a new single disposal with a range of requirements, capable of being imposed either singly or in a variety of combinations. Specifically, CPOs were aimed at ensuring that community penalties were high quality, effective, immediate, visible, flexible and relevant and, as such, acceptable to members of the public and sentencers alike. PASS placed a legislative onus on sentencers to avoid the use of short prison sentences (of less than three months) in all but exceptional cases and, in the latter, to record formally the reasons for the use of such a disposal. The introduction of CJSWRs complemented these other legislative changes by creating a national template for social work court reports, with the aim of ensuring that sentencers have access to consistent and high quality information and analysis in order to inform decision-making about the appropriateness of particular disposals.

The evaluation

- 3 Following a competitive tendering exercise, a team based around ScotCen Social Research was commissioned to evaluate the reforms. The evaluation was loosely structured around a logic model showing the relationship between the three main elements and highlighting the 'theory of change' through which specific inputs and activities were expected to lead to particular short, medium and long-term outcomes. The overall aim of the evaluation was to examine whether the reforms were implemented as intended; consider the extent to which the short and medium term outcomes were realised; and to identify potential obstacles to realising those and longer-term goals.
- 4 The evaluation drew on a variety of quantitative and qualitative methods including:
 - Analysis of national monitoring data relating to the use and outcomes of CPOs
 - National surveys of the judiciary and criminal justice social work managers
 - Qualitative interviews in each of four case study areas

- A 'participative audit' of Criminal Justice Social Work reports in the four case study areas, which collated both factual information and subjective assessments of the quality of analysis and recommendations contained within the reports.

Criminal Justice Social Work Reports

- 5 In a number of key respects, the new template appears to be delivering on its original objectives. Despite the fact that many criminal justice social work (CJSW) staff believe that the new template is more time consuming than previous court reports to complete, the vast majority of CJSWRs are being delivered on time. The standardisation of reports, within and across local authority areas, has been welcomed by Sheriffs and CJSW staff. And it is widely felt that the template has improved navigability and increased the focus on offending.
- 6 There is, however, a widespread concern among Sheriffs that the new format has contributed to long and overly detailed reports. CJSW staff and managers also express concern about 'writing to the template' and highlight the risk that the quality of analysis suffers as a result.
- 7 Sheriffs appear to find much of what they receive in CJSWRs helpful, but are especially positive about the information about individuals' current and previous offending, personal and social circumstances and suitability for a community disposal. They are more ambivalent about the analysis of risk provided by report writers and markedly less positive about social workers' reviews of relevant sentencing options and conclusions about preferred sentencing options.
- 8 The participative audit suggests that reports are drawing on a broad and appropriate range of sources but also raises questions about the quality of analysis contained within reports, especially in relation to risk of reoffending and risk of harm. Overall, there is room for improvement in the quality of reports, with around one in six being given a negative rating by auditors.
- 9 There are issues here relating to the availability of training for new starters, and the extent to which training and support around CJSWRs in general moves beyond the transactional to focus on report writers' analytical skills. It also appears that the new template is more time consuming to complete than the previous court reports. While this has been partly offset by a reduction in the number of reports requested – and is seen by many CJSW staff as worthwhile if it leads to better quality – there are potential resource implications here.
- 10 Procedures for quality assurance and retrospective audit are inconsistent across and within areas. Although there is a solid base of peer support and line management, formal or systematic processes of assurance and review are often absent. This makes it harder to identify the minority of below-standard reports and also means that a potentially 'virtuous loop' of skills improvement is not completed.

- 11 Given the central role that offenders' accounts play in the preparation of CJSWRs, it is important that they understand the process and feel able and willing to contribute to it openly and honestly. For the most part, this seems to be the case, although some offenders are still unprepared for the depth of questioning in the preparation of the report or do not fully grasp its purpose. The skills and experience of report writers – and the nature of their relationship with the offender – are clearly critical here. Most of the offenders interviewed for the evaluation acknowledged the role that the report had played in securing a community disposal; a few felt that it had played a major role in tailoring the sentence to their needs; and others were simply grateful for the way that it helped prepare them for the sentencing process.

An overview of CPOs imposed

- 12 By 2012-13, CPOs accounted for more than 80% of all social work orders imposed, increasing by roughly 5,500 in absolute terms over the previous year. There is no sign, however, that their introduction has led to a marked or immediate upturn in the total number of social work orders imposed.
- 13 Two of the nine requirements, Unpaid Work or Other Activity (UPWOA) and Supervision, were used with far greater frequency than any other – not surprisingly as all orders must contain one or both such elements. The use of UPWOA is especially common and became even more pronounced in 2012-13.
- 14 None of the remaining requirements was imposed in more than one in ten orders and, with the exception of Compensation, all were used relatively less frequently in 2012-13 than in the year before. While the sharp reduction in the use of the Conduct requirement can be directly attributed to an appeal court ruling, the contraction in the use of some of the 'treatment' requirements – especially Drug Treatment Requirements (DTRs) and Alcohol Treatment Requirements (ATRs) – needs to be more fully understood.
- 15 Multiple requirements are not the norm. Roughly half of all orders (55%) in 2012-13 involved a single requirement – usually UPWOA – up from 43% the year before. The fall in the average number of requirements over the same period (from 1.82 to 1.59) should also be noted. This raises questions about the willingness of CJSW staff to recommend, and of Sheriffs to impose, multiple requirements and the implications for the expected tailored and flexible character of the order.
- 16 There is wide variation in the use of different requirements across local authority areas. While this will reflect, to some extent, differences in the characteristics of these areas and the nature of the cases coming before the courts in each, it is also likely to signal a degree of local variation in interpretation and/or practice.
- 17 This variation is especially clear in relation to the use of Drug Treatment and Testing Orders (DTTOs) and DTRs. Although the legislation and practice guidance signal a relatively clear distinction between these two options, across local authorities, it is clear that higher use of one tends to be associated with lower use of the other, suggesting a more blurred interpretation on the ground.

- 18 Gender is strongly related to the type of CPO requirements imposed. Women – and young women in particular – were relatively less likely to receive an UPWOA requirement, but more likely to receive a CPO with a DTR, Mental Health Treatment Requirement (MHTR) or Residence requirement.

Use of the Unpaid Work or Other Activity requirement (UPWOA)

- 19 There appears to be a reasonably wide range of Unpaid Work (UPW) placement types available. All four case study areas were making similar use of group placements (in the form of both workshops and project groups). There was greater variation, however, in the availability and use of female only and individual placements.
- 20 Although CJSW staff in most areas indicated that they had struggled to cope with the initial increase in UPW placements following the introduction of the reforms, the situation now seems to have eased somewhat – in part, because of an expansion in the availability or use of individual placements. However, the ‘supply’ of such placements remains somewhat patchy and ad hoc.
- 21 Key challenges in terms of overall provision include competition for individual placement opportunities from other sources (such as large employers offering their staff the opportunity to volunteer); variation in the number and range of local organisations potentially able to offer placements; and funding constraints limiting the use of workshops or other resources.
- 22 Flexibility of provision is both a desirable and a necessary characteristic of UPW provision – desirable because of the aspiration to tailor disposals to individual needs and circumstances; necessary because of the often highly unstructured character of individual offenders’ lives. Consequently, across the case study areas, UPW provision allowed offenders a degree of flexibility about when and how to complete their hours.
- 23 CJSW staff face a number of challenges in trying to assess suitability and match offenders to particular UPW opportunities. For example, it can be difficult to match the skills of an offender to the placements available; to find appropriate placements for those for whom English is not the first language or who have complex needs. Other challenges include the difficulty of finding suitable community placements for sex offenders.
- 24 There are also significant issues around the imposition of Level 1 orders in the absence of a CJSWR, in terms of the potential for both needs and risks to be missed and the potential for offenders to be given unsuitable placements. There was some evidence of the emergence of informal local arrangements to address these.
- 25 There is a widespread perception that UPW placements are commencing faster than in the past and that a large majority are certainly meeting the target of commencement within seven days of the CPO being imposed. Around one in five, however, are not meeting this target. There is also evidence that the emphasis on speed of commencement may be shaping the type of initial

placements available, and that matching to a more suitable placement to complete the rest of the order may sometimes be delayed.

- 26 In terms of speed of completion, the timescale for Level 1 orders (three months for up to 100 hours of UPW) is seen as unrealistic by many CJSW and UPW staff, although some feel that this relatively compressed time frame could actually be useful in keeping momentum going from the start to the finish and motivating staff to stay vigilant to ensure offenders got through their order.
- 27 The 'Other Activity' (OA) element was slow to develop following the introduction of the reforms. CJSW and UPW staff needed time to adjust to the new reforms as a whole, and to manage increased numbers of offenders with UPW orders, leaving little scope for a clear focus on OA. A lack of local guidance also means that some CJSW and UPW staff still lack a clear understanding about what OA consists of or how it might be used.
- 28 While there are increasing signs of OA being used creatively and effectively, the flexibility that allows it to be closely tailored to individual need also leads to variations in use. In combination with differing views and interpretations of how and when it should be used, this has meant that OA is used inconsistently within and across local authorities.

Use of the remaining CPO requirements

- 29 The three 'treatment' requirements – Alcohol Treatment Requirements (ATRs), Drug Treatment Requirements (DTRs) and Mental Health Treatment Requirements (MHTRs) – are being used relatively rarely but also inconsistently across different areas. There are issues here around differences in understanding of the exact target group for each and of what constitutes treatment.
- 30 From a CJSW point of view, however, the most significant obstacle to proposing an ATR or MHTR is the apparent necessity to obtain a medical assessment in advance of sentencing, although, in a few areas, it appears that some of these requirements are being imposed without a formal medical assessment. While there are some indications that this latter approach may lead to a higher level of use, some participants feel it may also run the risk of such orders being returned to court.
- 31 Even if the relevant assessments can be obtained, an ATR or MHTR (or indeed a Programme requirement) all need the treatment to be specified in detail at the point of sentence. This can again be difficult within the timeframes for preparation of the CJSWR.
- 32 For all three treatment requirements, waiting times for certain types of treatment (for example, residential detox and psychological interventions) are often lengthy – indeed, waiting times to begin such treatment are often longer than the length of the CPO itself. This also has the effect of limiting their use.

- 33 Although most CJSW staff are more content with the scope and wording of the DTR than they are with that of the other 'treatment' requirements, some remain uncertain about exactly when a DTR should be used instead of a DTTO. CJSW interviewees also gave examples of Sheriffs imposing a DTR when they felt a DTTO would have been more appropriate, and vice versa.
- 34 It is clear that many CJSW staff have a concern about the 'layering on' of multiple requirements and this, too, may be a factor in limiting the use of the treatment requirements.
- 35 In the context of the various issues described above, it is perhaps not surprising that alcohol, drug or mental health issues are commonly addressed under the Supervision requirement. While this may often be entirely appropriate, there was also some evidence of concern about its use as a potential 'catch all' and about the effectiveness and transparency of work conducted under Supervision by comparison with that which might occur under one of the more structured requirements.
- 36 While interviewees suggest that the needs of offenders with drug, alcohol or mental health issues are generally being met, there is considerable variation in exactly how this is happening. Moreover, the lack of transparency around these issues has potential implications for effective service planning and provision.

Engagement, compliance and breach

- 37 CPOs with a single requirement are more likely to be completed than those with more than one, though an increase in the number of requirements beyond two does not raise the risk of non-completion further. The *combination* of requirements does appear to influence chances of successful completion.
- 38 More than half of CPOs completed in 2012-13 had UPWOA as their only requirement - and it was these orders that had the highest rate of successful completion and the lowest rate of being revoked due to breach.
- 39 Those with just a Supervision requirement had the next highest rate of successful completion and next lowest rate of revocation due to breach. CPOs containing a Programme requirement (alongside a Supervision requirement) had the lowest levels of successful completion.
- 40 CPOs containing an ATR had high levels of successful completion when there was no additional UPWOA requirement. The same pattern can be seen for CPOs containing a Compensation requirement.
- 41 Although progress reviews were previously available for DTTOs and probation orders there was a perception that their use has increased under CPOs. The flexibility with which reviews could be used was welcomed by CJSW staff and Sheriffs, though inevitably leads to variation in use.

- 42 There were still some issues around who has responsibility for issuing warnings/breaches in joint orders with supervision and UPWOA – specifically around first and final warnings.
- 43 Sheriffs appear to have broad confidence in CPOs in terms of monitoring of progress and appropriate use of breach. However there are still some areas in which it is felt the processes could be improved – especially in relation to the length of time it takes to declare a breach and the number of warnings given. Some Sheriffs were also unhappy that further offences do not constitute a breach of a CPO. CJSW interviewees, by contrast, were more likely to appreciate the flexibility that this provides in allowing them to continue to work with offenders following a subsequent offence.
- 44 Most offenders felt their CPO had been clearly explained to them; that they knew what was expected of them and that they understood what would happen if they breached the order. Signing the order, or an agreement, seemed to help this understanding.
- 45 Offenders were usually very positive about the relationship they have (or had) with their case manager, citing this relationship as being of key importance for engagement and compliance.
- 46 Engagement and compliance was most likely when a CPO was tailored to an offender's needs and interests. Other factors that offenders responded positively to included the fact they were paying back to the community, and the sociable element of UPW.

Judicial decision-making in relation to community penalties

- 47 The two years following the introduction of the reforms saw both an increase in the use of community penalties and a fall in the use of short prison sentences in Scotland – two key long-term objectives for the reforms. Caution is warranted in the interpretation of these figures, however, and it would certainly be unwise to draw a direct line to the reforms. The increase in the use of community penalties is consistent with a much longer-term trend, while the fall in the use of sentences of three months or less has been accompanied by an increase in the number of sentences of three to less than six months and six months to less than two years – a trend which also predates the introduction of the reforms.
- 48 Nevertheless, on balance, there is evidence that CPOs are seen by Sheriffs as an improvement on previous community penalties, have contributed to a greater willingness to use such disposals, and are viewed with a reasonable degree of confidence by most Sheriffs. While many Sheriffs see little change in the balance of their use of community and custodial disposals, there is a minority who say they are using community penalties more since the introduction of CPOs and there are almost none who say they are using them less.
- 49 Those Sheriffs who were strongly positive about the reforms typically welcomed the range and flexibility of the options on offer to them, the simplification of the

overall framework and evidence of swifter implementation and more rigorous enforcement.

- 50 A minority of Sheriffs indicated that they would like to make still greater use of the UPWOA requirement, reflecting concern about the resourcing of UPW and provision for offenders with particular needs. There was also evidence that Sheriffs would like to be able to make greater use of the treatment requirements and other, more highly structured, programmes and interventions.
- 51 One of the aspects of the reforms that Sheriffs are most positive about is the introduction of Level 1 orders, especially for lower tariff, young male offenders and those on benefits, for whom it is seen as a more constructive option than a fine.
- 52 There was little sign from the qualitative interviews of PASS figuring prominently or explicitly in decision-making in relation to specific cases – in part because Sheriffs indicated that they already used short prison sentences very rarely, but also because sometimes such a disposal was the only option left to them. That said, the survey found that some Sheriffs felt that PASS had contributed both to an increase in their use of community penalties *and* to the use of slightly longer sentences.
- 53 Apart from the seriousness of the offence, the clearest marker of the ‘inevitability’ of a short sentence is not repeat offending, but *serial non-compliance* – particularly in the light of clear and repeated warnings about the consequences of flouting existing orders. In the case of wilful non-compliance, this can have an explicitly punitive aspect; for others, whose lives are simply too complex and chaotic to break the cycle of offending, a short prison sentence is sometimes viewed as offering the chance to dry out or to ‘wipe clean the slate’ of accumulated penalties.
- 54 There is considerable variation in the attitude of Sheriffs towards the preferred sentencing options (or recommendations) contained in CJSWRs. Most Sheriffs say they are happy to receive ‘a steer’ on the most suitable disposal. While some like to see these couched in relatively cautious terms – avoiding any sense of encroachment on the independence of the bench – others called for social workers to be more creative and directive. Differences in Sheriffs’ attitudes towards this issue are likely to be a reasonable proxy for their wider attitudes towards the respective roles of social workers and the judiciary.
- 55 There was some scepticism among Sheriffs about the seriousness with which CPOs would be viewed by offenders and, especially, the acceptability of such disposals to the general public – although some interviewees were at pains to emphasise that they had little access to reliable evidence about either issue.
- 56 There was a sense that elements of CPOs such as unpaid work were still insufficiently visible to communities, and that it would be helpful for members of the public to understand more about the reparative aspects of such programmes.

Overview: Were the reforms implemented as intended?

- 57 The introduction of CPOs and the new CJSWR represented a major practical challenge for CJSW and the Scottish criminal justice system more generally. This initially slowed down implementation of some elements and meant that some of the more visible and familiar elements of the reforms tended to be foregrounded. As a result, some of the processes and requirements were established relatively quickly – for example, UPW and Supervision, which directly mirrored work previously undertaken under CSOs and Probation. Other less familiar and more complex elements (such as OA), by contrast, received less in the way of immediate focus and attention. Other requirements – such as DTRs, ATRs and MHTRs – presented similar challenges.
- 58 In relation to CJSWRs, the scope for staff engagement was again limited by the range of other simultaneous developments and, in particular, the introduction of Level of Service/Case Management Inventory (LS/CMI). However, the basic template was up and running in time and there was no evidence of any major disruption to the availability of reports when needed by the courts. The introduction of PASS had little in the way of immediate practical consequences for Sheriffs or court staff, though it did introduce a requirement for reasons to be formally recorded for any short sentences passed by the court.

Overview: What evidence is there that the short and medium term outcomes have been realised?

- 59 The introduction of the new CJSWR template does not appear to have had an adverse impact on the timeliness of reports, and it is generally recognised that it has led to greater consistency in the form and content of reports. This has been welcomed by some Sheriffs, who find the reports easier to navigate, and by some CJSW staff, who feel that the process is more structured and focused on offending than previously. The concerns about length and duplication, however, suggest that the aspiration of more concise reports is not yet being met. And there is evidence (from both Sheriffs and CJSW staff) of room for further improvements in the overall quality of analysis and recommendations contained within the reports.
- 60 There are signs that, on balance, the introduction of CPOs has improved (and certainly not harmed) judicial confidence in community penalties, but that overall attitudes have not been radically transformed.
- 61 There was also widespread evidence of a commitment to use community penalties wherever possible – and even in the face of serial offending or non-compliance – if there was any indication from the CJSWR of scope for constructive engagement. Whether this approach can be directly attributed to the introduction of CPOs (or to other aspects of the reforms) is less clear.
- 62 Sheriffs remain sceptical about the seriousness with which CPOs will be regarded by offenders and their acceptability to the general public. Both factors are potentially important background influences on their own confidence in the appropriateness of the disposal.

- 63 There is relatively little sign of PASS figuring prominently or explicitly in judicial decision-making; although some Sheriffs did suggest it had been a background factor in avoiding a short prison sentence in a small number of cases. Most, however, considered the presumption to be of little practical consequence both because of an existing commitment to use community penalties wherever possible and because of the ‘inevitability’ of a short custodial sentence in a small number of cases.
- 64 A full set of CPO requirements is technically available and all are being used to some extent. However, the evaluation raises some important questions about whether some specific requirements are being used appropriately and with sufficient frequency. There are particular issues around the level of use of the three ‘treatment’ requirements (ATRs, DTRs and MHTRs). Differences in interpretation of the National Outcomes and Standards (NOS) Practice Guidance and other factors (for instance, relating to service availability) may be creating inappropriate diversity in the extent to which these are being deployed across Scotland.
- 65 Most offenders interviewed for the evaluation seemed to have a good understanding of what was expected of them as part of their CPO, and of what might happen should they fail to comply. There was positive feedback about the nature and extent of social work support received under Supervision and evidence of the importance of relationships with individual CJSW staff.
- 66 Around two-thirds of CPOs in 2012-13 were completed – a figure broadly consistent with that achieved under the previous framework for community penalties. Despite this, there is a widespread perception among both CJSW staff and Sheriffs that the arrangements for the monitoring of compliance and enforcement of breach are more robust as a result of the reforms.

Where now?: Potential next steps suggested by the results of the evaluation

- 67 There would be benefit in incorporating feedback from Sheriffs about the length and relevance of reports into training for CJSWR writers. Previous exercises involving the piloting of summary reports should be revisited, along with the scope for making greater use of oral reports in certain types of less complex cases.
- 68 Opportunities for additional joint work involving Sheriffs and CJSWR report writers should be identified in order to develop shared language and understanding around risk, and agreement about the types of cases in which a more or less thorough assessment is warranted. This would also allow for greater mutual understanding of roles and priorities, sharing of concerns and improvement of the fit between what Sheriffs feel they require and what CJSWR writers provide. The scope to increase CJSW access to prosecution summaries should also be revisited and the results of previous pilot exercises re-examined.
- 69 The Scottish Government should provide regular national oversight of the training provided to CJSWR report writers within individual local authority areas; and that training should explicitly aim to improve the quality of analysis and

recommendations, as well as covering the technical requirements of the template.

- 70 Estimates of the time required per report need to be reviewed and cannot be assumed to be consistent over time. The balance of staff time spent on report-writing and other aspects of casework should also be monitored.
- 71 Local authorities should have access to clear best practice guidance about the use of quality assurance as part of routine working practices. Consideration should also be given to regular intra- and inter-local authority audit of samples of reports. The findings of such exercises should be fed back into training and practice.
- 72 The Scottish Government should seek to improve understanding of the current use of OA – perhaps through a review of its use in each area and the identification of examples of good practice. Insights from such work should be incorporated into any further training on CPOs and taken into account in consideration of funding requirements.
- 73 The wording of the NOS Guidance – and, if necessary, the legislation – should be reviewed in order to identify, on a requirement by requirement basis, issues that seem to be creating uncertainty or misunderstanding.
- 74 There is scope for greater clarity around the role and responsibility of partner agencies (especially within the NHS) to provide rapid access to assessment and services in relation to the ‘treatment requirements’. If such involvement cannot be provided or resourced, the implications of this need to be reflected in the wording and guidance for the relevant CPO requirements.
- 75 The Scottish Government should seek to develop a fuller understanding of how the treatment requirements are being used – for example, by undertaking a review of cases in which a DTR, ATR or MHTR has been imposed, and an audit of such cases returned to court. Local authorities should perhaps be asked – as part of the annual CPO returns or a bespoke exercise – to provide numbers of offenders subject to a CPO who are in receipt of support or treatment for drug, alcohol or mental health issues via another requirement.
- 76 Published guidance could provide greater clarity about the circumstances in which the use of Supervision, in particular, is appropriate; and there could be improved monitoring of the extent and outcomes of work conducted under these more flexible provisions.
- 77 There is a need to build on and extend emerging good practice in relation to the use of Level 1 orders – for example, encouraging Sheriffs to make enquiries at sentencing about individuals’ suitability for UPW and making greater use of oral reports where appropriate.
- 78 Sheriffs might benefit from regular briefings about local and national use of the various requirements, and easy access to research and statistical evidence about outcomes and effectiveness. There needs to be discussion about how such information might be made available, and by whom.

- 79 Court user groups and other cross-professional fora might also be encouraged to look specifically at expectations and experiences of the various aspects of the reforms.
- 80 Local authorities should be required to provide clear plans for the prospective management of community consultation, rather than just retrospective examples. Opportunities should be explored for providing Sheriffs with summaries of research evidence about public attitudes in this area.
- 81 In conclusion, the reforms have provided a framework that has helped to move community penalties in the right direction. However, the key long-term outcomes – around reducing reoffending, increasing reintegration and reducing ‘churn’ in the prison population – will only be realised if all three elements are subjected to ongoing scrutiny and analysis and there is a system-wide commitment to partnership working and continuous improvement.

1 INTRODUCTION

- 1.1 Research has consistently shown that community penalties are more effective than short prison sentences in reducing offending, and that they can play an important role in addressing some of the individual and social harms associated with crime¹. Nevertheless, in Scotland – as elsewhere – attempts to maximise the potential of such disposals have faced two significant, and inter-related, challenges. The first has been the practical challenge of developing a coherent, flexible and effective framework for the imposition and delivery of community penalties. The second has been to persuade members of the public and sentencers alike that such disposals represent an appropriate, meaningful and, again, effective response to the problems of lower level offenders and offending.
- 1.2 This report examines the implementation and early impacts of three related reforms intended to help address these issues. Two of those – **Community Payback Orders** (CPOs) and the **Presumption Against Short Sentences** (PASS) – were the result of legislative change (specifically, the Criminal Justice and Licensing (Scotland) Act 2010). The third was the introduction of a new template for reports provided to the courts by criminal justice social workers in support of the sentencing process. Previously known as Social Enquiry Reports (SERs), from February 2011, these were replaced by a new template – the **Criminal Justice Social Work Report** (CJSWR).
- 1.3 This evaluation was conducted by ScotGen Social Research, working in with two external consultants, Simon Noble of Noble Openshaw Limited and Professor Neil Hutton of Strathclyde University. It involved a wide range of data collection activities (detailed later in the report) and was carried out between December 2012 and June 2014.

Policy background

- 1.4 As part of the Scottish Government's strategic objective of a 'safer and stronger Scotland', there has been a concerted focus in recent years on the problems of crime and offending and a commitment to what has been described by the Cabinet Secretary for Justice as 'a coherent penal policy that uses prison for serious and dangerous offenders but deals with lower-risk offenders in the community' (Scottish Government, 2007, p.1).
- 1.5 Community penalties have actually been a longstanding feature of the criminal justice system in Scotland, and by the middle part of the last decade were being used by the courts more frequently than prison. This development was consistent with a body of research evidence suggesting that such disposals are more effective than short prison sentences in terms of discouraging reoffending. Nevertheless, the use of imprisonment remains higher in Scotland than in similar jurisdictions elsewhere, and a relatively high

¹ See, for example, Armstrong, S. and McNeill, F. (2012).

proportion of the prison population is accounted for by short-term prisoners, with whom there is limited scope to undertake effective rehabilitative work.

- 1.6 Against this backdrop, recent years have seen an extended process of policy review and development, marked by several significant staging posts. In November 2007, the Scottish Government published *Reforming and Revitalising: Report of the Review of Community Penalties* which argued that there is 'scope to make greater use of community penalties in appropriate cases' (2007, p.7) on the basis not only that such disposals are more effective than prison at reducing reoffending, but that they offer greater scope for 'payback' to the community, allow offenders to maintain important links to employment, family and community, and mean that resources within prisons can be concentrated on meaningful rehabilitative work with serious offenders. Nevertheless, the Review suggested that there were a number of issues relating not only to the effectiveness of the existing framework for community penalties in Scotland, but also the credibility and acceptability of such penalties in the eyes of the public and sentencers.
- 1.7 In terms of effectiveness, the Review argued that community penalties should be high quality, effective, immediate, visible, flexible and relevant. In particular, it was argued that, in order to deliver effective practice, the criminal justice system needed to 'focus its efforts on the core, high volume community penalties, ensuring that these work effectively across the country' (2007, p.9). It also noted that the existing range of community sentencing options was unnecessarily complex and that a more coherent packaging and 'branding' of such measures would improve understanding among sentencers and the public.
- 1.8 On that theme, research conducted specifically for the Review suggested that members of the public generally had a limited understanding of what community penalties might involve; saw them as appropriate only for low-level and non-violent offenders (and hence not as an alternative to prison); and viewed them as a 'soft option which is perceived to accomplish little in the way of punishing or deterring offenders' (TNS, 2007, p.11). That said, the research also pointed to scepticism about the effectiveness of prison and to greater potential support for community penalties, subject to such penalties retaining a punitive element, and yielding tangible (and visible) benefits to victims and communities.
- 1.9 In response to this, the Review concluded that a programme of positive change was needed in order to demonstrate that community penalties could be tough, effective (in terms of reducing reoffending) and involve 'meaningful payback' to the community. While acknowledging the importance of public engagement and education, the Review argued that the key to making community penalties more acceptable and credible would be effective delivery: 'The public and sentencers will have confidence in community penalties if they see them working effectively in their communities' (*ibid*, p.9).
- 1.10 The plan of action proposed by the Review was centred around four main themes – Reparation and Payback; Rehabilitation and Reintegration; Quality

and Enforcement; and Community Engagement. These themes were subsequently developed in the course of two further policy reviews.

- 1.11 In June 2008, the Scottish Prisons Commission (SPC) published its report on Scotland's penal system, *Scotland's Choice*. This exercise arrived at the following overarching conclusion:

'The evidence that we have reviewed leads us to the conclusion that to use imprisonment wisely is to target it where it can be most effective - in punishing serious crime and protecting the public.

1. To better target imprisonment and make it more effective, the Commission recommends that imprisonment should be reserved for people whose offences are so serious that no other form of punishment will do and for those who pose a significant threat of serious harm to the public.
2. To move beyond our reliance on imprisonment as a means of punishing offenders, the Commission recommends that paying back in the community should become the default position in dealing with less serious offenders' (Scottish Prisons Commission, 2008, p.3)

- 1.12 The SPC Report also made 23 specific recommendations, including a number relating to the use of community sentences in place of short prison sentences. It suggested a single community sentence which would allow offenders to pay back to communities – through unpaid work, engaging in rehabilitative work or a combination of both. It also recommended that the Scottish Government legislate for a ban on short prison sentences of six months or less, except in particular circumstances.

- 1.13 It is worth noting that this report consciously defined 'payback' as being more than simply forcing offenders to contribute through unpaid work or financial compensation, but as encompassing work to rehabilitate offenders. As such, and as McNeill (2010, p.3) has noted, this signalled a clear attempt to move beyond the way in which the term has been used in England & Wales, where it has been specifically associated with the rebranding of community service as more visible and demanding.

'In essence, payback means finding constructive ways to compensate or repair harms caused by crime. It involves making good to the victim and/or the community. This might be through financial payment, unpaid work, engaging in rehabilitative work or some combination of these and other approaches. Ultimately, one of the best ways for offenders to pay back is by turning their lives around.' (Scottish Prisons Commission, 2008, para. 3.28).

- 1.14 In December 2008, the Scottish Government published *Protecting Scotland's Communities: Fast, Fair and Flexible Justice*, setting out its response to the review of community penalties and the SPC's work on the penal system as a whole. The overarching framework for this was the commitment, first articulated in *Reforming and Revitalising*, to the delivery of justice that is 'immediate, visible, effective, high quality, flexible and relevant'. The report

also contained the clearest expression to date of the overall thrust of Scottish Government policy in relation to community penalties:

‘There are too many short prison sentences, which achieve nothing beyond warehousing the offender. We need a more effective and publicly acceptable system of community sentences. And the key for broader support for community sentences is to show that they are not only served **in** the community, but that they are **for** the community. That means they must be **speedy** – so victims see action being taken immediately after the court makes an order. And they need to be **relevant**, making communities safer, either through direct reinvestment by the offender, or by the offender seriously tackling his offending behaviour, or both. And they must be **visible** to communities.’ (Scottish Government, 2008, p.10. Emphasis in original.)

The reforms

- 1.15 The ideas contained and developed in and across these three policy documents eventually found legislative expression in the Criminal Justice and Licensing (Scotland) Act 2010. This was a wide-ranging and complex piece of legislation which was subject to extended scrutiny by the Scottish Parliament.² In relation to community penalties, it contained two central provisions.

Community Payback Orders

- 1.16 The first was the introduction of a single community disposal – the CPO – in place of Probation, Community Service and Supervised Attendance Orders. The intention behind this change was summarised in the Policy Memorandum which accompanied the original Bill as follows.

'In bringing together the options for judges, we are highlighting the scope for courts to punish offenders in a way in which also addresses the areas of their lives which need change. Setting out the options in this way also enables us to underline the fact that a community sentence is a punishment and not merely a supportive intervention.'

- 1.17 Specifically, the CPO was intended to serve the following main objectives:
- Achieve a positive impact on individuals.
 - Require individuals to make payback to the community.
 - Replace an unnecessarily complex range of community sentences and increase public understanding.
 - Ensure the level of intervention matches the level of assessed risk.
 - Create a robust and consistently delivered community sentence, which enjoys public confidence and credibility.

² The final Bill contained over 200 sections, with almost 700 proposed amendments at Stage 2 and a further 200 at Stage 3.

1.18 The Act gave courts the scope to impose a CPO with up to a maximum of nine requirements. These were:

- Unpaid Work or Other Activity Requirement (UPWOA)
- Supervision Requirement
- Conduct Requirement
- Programme Requirement
- Residence Requirement
- Drug Treatment Requirement (DTR)
- Alcohol Treatment Requirement (ATR)
- Mental Health Treatment Requirement (MHTR)
- Compensation Requirement

1.19 The CPO retained many of the features of the existing orders such as unpaid work (Community Service Order), supervision, mental health, drug and alcohol treatment and compensation (all Probation Order) and the concept of making reparation to the community (the former Community Reparation Order). But it also introduced some new elements, which echoed some of the core themes of *Protecting Scotland's Communities*. For example, it introduced an 'other activity' element as part of the Unpaid Work Requirement, with the intention of helping offenders to address their behaviour through educative and rehabilitative work alongside unpaid work – resonating with the notion of 'relevant' punishments. The Act introduced a new Level 1 order, allowing an order of up to 100 hours of unpaid work or other activity to be imposed without a report from social work which, along with shorter timescales for the commencement of orders, could be seen as improving the immediacy of community punishment. It also gave sentencers the ability to set review hearings during the course of the order and put in place more robust sanctions for breaching an order.

1.20 The introduction of CPOs was accompanied by revised practice guidance for social workers as part of the National Outcomes and Standards for Social Work Services in the Criminal Justice System (NOS).

The Presumption Against Short Sentences

1.21 The second significant element contained within the 2010 Act was the introduction of a presumption against prison sentences of three months or less. In its original form, this would have applied to sentences of six months or less but, following opposition from Labour and Conservative MSPs, an amendment during the passage of the Bill lowered the sentence length from six to three months.

1.22 It should be emphasised that PASS represented a presumption against, and not the abolition of, short prison sentences. Following the legislation, Sheriffs remain free to impose such a sanction where they feel it is justified and appropriate. They are, however, required to state their reasons for doing so and to have those formally recorded by the court.

Criminal Justice Social Work Reports

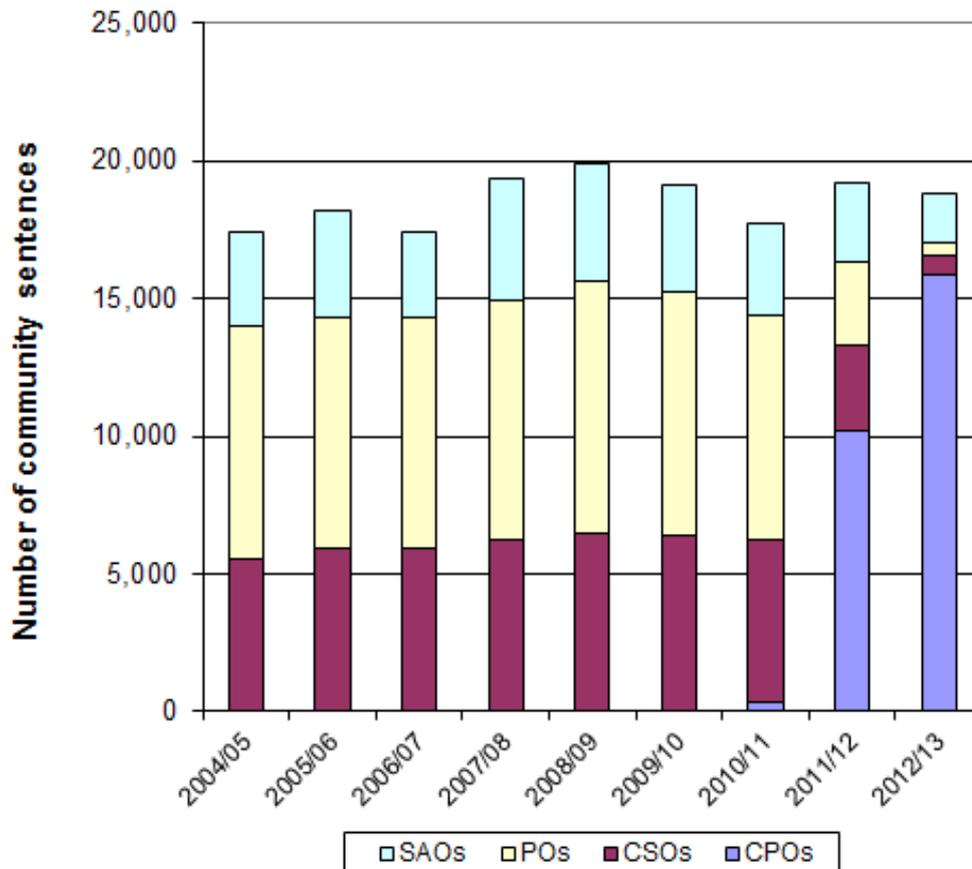
- 1.23 The introduction of CJSWRs was closely bound up with that of CPOs, both in terms of timing (both initiatives went live in early 2011) and the need to provide sentencers with improved information in order to make informed decisions about the appropriate use of community penalties. The overarching aim of CJSWRs was to combine traditional social work assessment skills with a structured approach to presenting sentencing options for dealing with offending behaviour and risk management and to steer report writers towards a more analytical style based on evidence and reasoned argument. A national template provided the means to deliver this more consistently across the country and simultaneously, the Level of Service/Case Management Inventory (LS/CMI) assessment tool (a full review of which was outside the scope of this evaluation) was intended to provide more robust and consistent additional assessment evidence.
- 1.24 In addition to planned training for all report writers, the introduction of CJSWRs was supported by new practice guidance³, which, as well as explaining the format and content of the new template, emphasised the 'change in style of report writing, to a briefer, focused and more concise report' (Scottish Government, 2011b, p.5).

The phasing in of the new penalties

- 1.25 Because CPOs can only be imposed for any offence(s) committed on or after 1 February 2011, or in default in payment of a fine imposed for an offence committed on or after 1 February 2011, CSOs, POs and SAOs did not disappear overnight. As Figure 1.1 indicates, in the first full year of operation (2011/12), approximately 10,000 CPOs were imposed, rising to more than 15,000 in the following year (2012/13). There was a corresponding reduction in the number of 'legacy' orders over the same period. Further detail about the number and type of CPOs imposed since introduction can be found in Chapter 3 (para 3.2).

³ Accessible at <http://www.scotland.gov.uk/Topics/archive/law-order/offender-management/offender/community/16910/Standards/GuidanceCJSWR>

Figure 1.1: Use of community penalties in Scotland, 2004-2013



The evaluation

Overall aims

- 1.26 The evaluation was loosely structured around a logic model showing the relationship between the three reforms and highlighting the ‘theory of change’ through which specific inputs and activities were expected to lead to particular short, medium and long-term outcomes. This is shown in Figure 1.2.
- 1.27 The overall aim of the evaluation was to examine whether the reforms have been implemented as intended (and outlined as ‘activities’ in the logic model); the extent to which the short and medium term outcomes have been realised; and the potential obstacles to realising those and longer-term goals.

Figure 1.2: The logic model for the reforms

Inputs	Outputs		Outcomes		
	Activities	Participation	Short term	Medium term	Long term
Evidence	Implementation of CPOs: <ul style="list-style-type: none"> ➤ Full range of requirements ➤ Full range of CJSW & Judicial powers 	Judiciary	Judiciary have more confidence in community sentences	Judiciary make more use of community sentences	Reduced reoffending
Funding		Introduction of CJSWRs: <ul style="list-style-type: none"> ➤ Use of templates ➤ Standardised, consistent reports ➤ Contain analysis & recommendations 	CJSW	Judiciary have confidence in reports from CJSW	Judiciary tailor community sentences to address specific offender circumstances
Training	Introduction of presumption against short term sentences			Offenders	Judiciary have sufficient information about the offender and available CPO components
Legislation and policy		CJSW/other have capacity to provide components of CPOs	Offenders take CPOs seriously		Judiciary intend to reduce/stop short sentences
Practitioners	Offenders understand what is expected of them			Offenders become motivated to change	CJSW/other have capacity to provide components of CPOs
		Offenders engage with components of CPOs	Offenders change their behaviour		

- 1.28 Among the specific research questions flowing from this and highlighted in the original specification for the evaluation were the following:
- Whether and how the introduction of CJSWRs has led to overall quality and consistency; the inclusion of specific and bespoke sentencing recommendations; and to Sheriffs having confidence in the reports and using them to tailor sentences to individual need.
 - Whether and how the use of the various CPO requirements has varied over time and across Scotland, and the possible reasons for – and potential impacts of – this.
 - Perceived and actual levels of compliance with CPOs and the different kinds of requirements and the possible reasons for any variation.
 - Potential barriers to the realisation of short- and medium-term outcomes, the source and impact of these, and how they might be addressed.
 - The impact, if any, of PASS on sentencing practice.
- 1.29 It is worth noting, however, that some of the themes that were prominent in the original policy documents – e.g. in relation to the clarity, relevance, immediacy and visibility of community punishments – are less explicit within the logic model and in the specification for the evaluation. In practice, however, these too have formed part of the framework of expectations against which the reforms have been assessed and the question of the relationship between them and the original logic model is returned to in the conclusions.

Methods

- 1.30 In recognition of the complex and multi-faceted character of the reforms and the research aims, the evaluation involved a wide range of methods. At the heart of the study was a series of **qualitative interviews with key actors** – including criminal justice social workers and other service providers, Sheriffs and court staff, and offenders – in four case study areas. These were selected on the basis of geographic location and included two ‘city’ authorities, one ‘other urban’/small town authority and one predominantly rural area; but the choice of areas also drew on quantitative data relating to the implementation of the reforms, and information gathered from orientation interviews with stakeholders about local criminal justice relationships and culture.
- 1.31 This was complemented by **analysis of existing monitoring data and bespoke surveys of Sheriffs and criminal justice social work managers**, allowing the evaluation to examine the implementation and operation of the reforms across Scotland as a whole, and to balance the more detailed picture emerging at a local level from the qualitative work.

- 1.32 More specifically, the main elements of the evaluation were as follows. (A fuller account of the evaluation methods can be found in Appendix A.)
- 1.33 **Analysis of national monitoring data.** CPO completions and terminations for the whole of Scotland were explored using unit level data from the Scottish Government. This included an investigation of variation by demographics and area.
- 1.34 **National surveys of the Judiciary and criminal justice social work managers.** All 32 Local Authorities were contacted to take part in the survey of Criminal Justice Social Work Managers and 30 took part. All 141 permanent and floating Sheriffs then in post in Scotland were also asked to fill out a short survey – just over half (n=72) completed and returned it. Results from both of these survey exercises are presented as raw numbers only, because of the relatively small total sample sizes. Some open text responses to particular questions are also drawn on in parts of the report. For reasons of confidentiality, these are not attributed to individuals or particular local authority areas.
- 1.35 **Qualitative interviews in each of the four case study areas.** A more detailed picture of the implementation and operation of the reforms was provided by qualitative interviews in four case study areas, conducted over two periods of fieldwork (in late 2013 and early summer 2014). Across the four areas as a whole, interviews were conducted with the following types of interviewee:
- Criminal Justice Social Work Managers (n=13)
 - Criminal Justice Social Work and Unpaid Work Staff (n=25)
 - Other practitioners (e.g. Addictions workers, Mental Health professionals, professionals from third sector Drug and Alcohol Services, Sheriff Clerks, Managers of charity shops where some individual unpaid work placements take place) (n=23)
 - Sheriffs (n=21)
 - Offenders (n=15)
- 1.36 It was agreed by the Research Advisory Group that protecting the anonymity of the research participants was of greater importance than a detailed exploration of geographical differences in the presentation of findings. Throughout the report, therefore, extracts from these interviews are referenced by interviewee type and by a sequential interviewee number - for instance, as CJSW interview 2 – but not by reference to case study area.
- 1.37 A **participative audit** of CJSWRs was also conducted within the four case study areas. This involved the small teams of CJSW staff from each area auditing a sample of CJSWRs from another area, using an agreed quality assessment instrument. This involved some factual information (e.g. about timings, or sources cited in the report) but also some more subjective assessments by auditors of the quality of the reports. In total, 144 reports were examined as part of this exercise. Results from this exercise are presented as both raw numbers and percentages.

- 1.38 Towards the end of the evaluation, a **validation event** was held, bringing together practitioners from a range of professional backgrounds and geographic locations. The principal aim of this was to provide an opportunity for sharing and 'sense-checking' emerging findings – and, in particular, to explore the extent to which experiences within the four case study areas appear to have been common to other areas. However, it also provided an opportunity for practitioners to suggest additional topics or questions for the final report and to contribute to a discussion about possible next steps. The discussions at this event have, therefore, helped to shape the final report and are reflected at various points in the text.

Limitations

- 1.39 A case study approach has important advantages when no single perspective can provide a full account or explanation of the effectiveness of an intervention or reform, and where understanding of implementation and operation needs to be holistic, comprehensive and contextualised. Nevertheless, it also has limitations – not least, that it carries a risk of unwarranted generalisation. While the case study areas were selected to provide a range of characteristics and experiences in relation to the implementation of CPOs and the related reforms, some of the features and experiences that were evident in those four areas were not necessarily shared across Scotland as a whole. The validation event allowed such divergence to be identified to some extent, although the scope of the project did not allow these to be explored in detail.
- 1.40 The long-term outcomes identified in the logic model were determined at the outset to be outside the scope of the evaluation for two main reasons. The first relates to timescales and the impossibility of determining long-term impacts within a couple of years of the implementation of an intervention. The second is methodological: put simply, identifying and attributing long-term changes in individual behaviour is extremely complex and would require a bespoke research project, capable of controlling for other potential influences. Such studies have been implemented in other jurisdictions and should (as we argue in the conclusion) potentially form part of the long-term evidence base in Scotland, though it should be noted that they are very costly to implement and often generate results that are equivocal.
- 1.41 There are particular challenges in trying to understand judicial decision-making. Like many such processes, this cannot be observed directly and the research was, therefore, dependent on retrospective accounts which may, of course, have contained elements of post-hoc rationalisation, faulty recall or socially acceptable responses. We had limited access to Sheriffs in order to conduct the research, as a result of other demands on their time, and it is also possible that those who chose to participate will – because of the focus of the research – have been more positively disposed to the use of community penalties in general.
- 1.42 Accessing the views and experiences of offenders is difficult. Such individuals are often reluctant to participate in research, viewing it as an extension of the

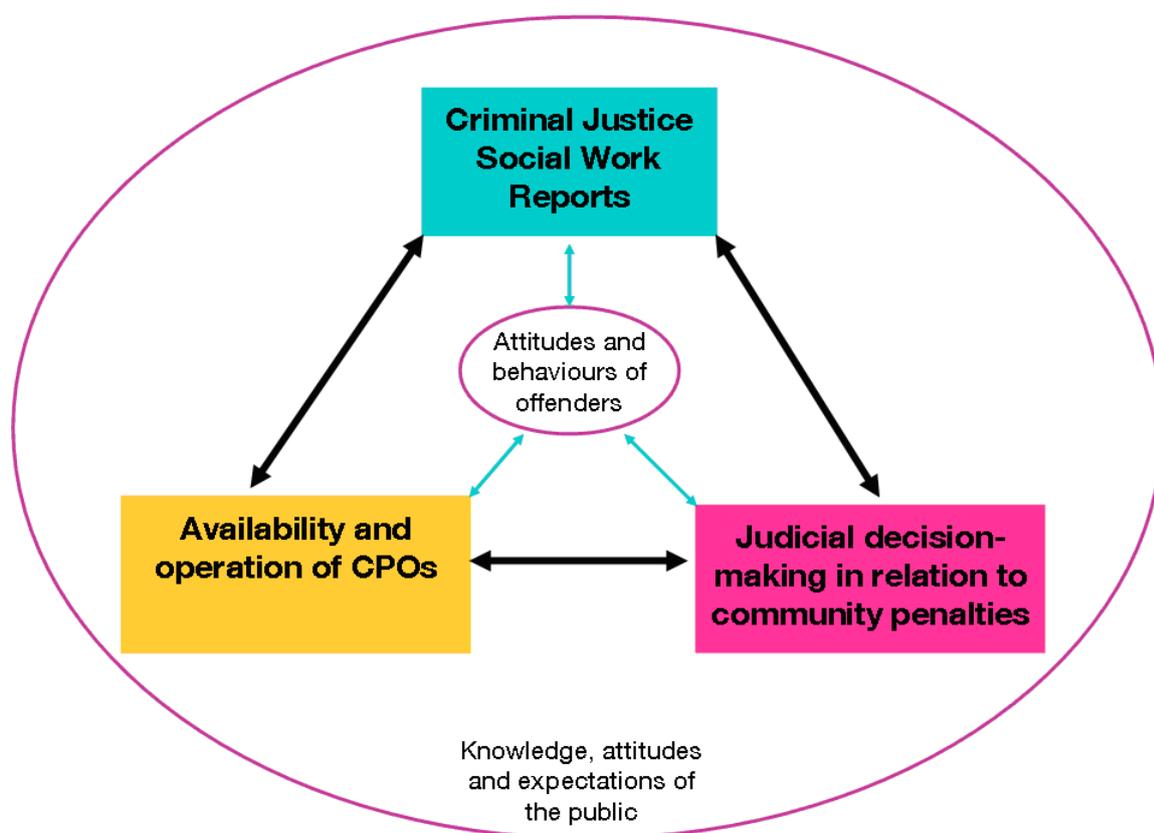
contact they have with criminal justice social work and other agencies. They can also be difficult to contact and liaise with about practical arrangements because of the often complex nature of their day to day lives. As a result, there is a long-recognised problem in research involving offenders that those who are willing to engage with researchers are also likely to exhibit a greater degree of cooperation with the criminal justice system (Taxman and Belenko, 2012, p.215). The voices of the hard to reach and those with negative attitudes towards the criminal justice service, therefore, are often muted or missing. This evaluation is also subject to that limitation. Although significant efforts were made to ensure that the views of a wide range of offenders were included, this was within the context of limited resources and an already complex and wide-ranging study. To address this issue, views about the extent and other reasons for non-compliance were also sought from offenders who had complied with their orders and from CJSW staff and other professionals working closely with relevant groups. Nevertheless, it has been difficult to address the offender-related short- and medium-term outcomes as fully as some others.

The report

- 1.43 The report is broadly structured around the three reforms examined as part of the evaluation. It begins by looking at the introduction of CJSWRs (**Chapter 2**). It is worth noting, however, that what might be considered the ‘core’ reform – the introduction of CPOs – accounts for the bulk of the analysis (contained in **Chapters 3 to 6**). This reflects not only the importance of this element of the work, but also its sheer complexity. As the research progressed – and even at the validation event towards its conclusion – it was clear that there were many important issues at play and that the process of mapping and unravelling these would be time (and page) consuming.
- 1.44 By contrast, and despite the debate that surrounded its introduction, the Presumption Against Short Sentences (PASS) proved relatively straightforward to examine. Consequently, this has been embedded in a broader discussion about judicial decision-making in relation to community penalties in general and CPOs in particular. This can be found in **Chapter 7**. Conclusions are presented in **Chapter 8**.
- 1.45 Despite this apparently discrete discussion of the different reforms, it is worth noting the degree of overlap between them. The introduction of CPOs, for example, has been critically dependent on the availability of timely, high quality and accessible reports to sentencers, and on the willingness and ability of sentencers to use such disposals. These three broad domains have acted back upon each other in a range of other ways, too. The views of Sheriffs (and, indeed, the *perceived* views of Sheriffs) have had, for example, a potential influence on the style and content of CJSWRs; and both CJSWRs and judicial decision-making play a key role in determining the actual form and use of CPOs on the ground (see Figure 1.3).
- 1.46 As a result of these overlaps, we have had to make some relatively arbitrary decisions about where some specific issues (such as judicial views of the

preferred sentencing options presented by social workers) are reported. These are, however, signposted and cross-referenced within the text.

Figure 1.3: Relationship between the three main elements of the reforms



1.47 It is worth noting that there are also two other important themes here which cut across the three main parts of the report and are illustrated in the above diagram. The first, of course, is the way that offenders are *perceived* to respond to CPOs (by sentencers, CJSW staff and others) and the way that they *actually* do. These topics are explored at various points in the report, but especially within Chapter 6 which examines the issues of engagement, compliance and breach – in part from the offender’s perspective – and Chapter 7, which explores the views of sentencers. The second is the broad arena of public opinion, knowledge and expectation – again, perceived and actual – within which criminal justice operates. While a direct examination of the latter issues lies outside the scope of the evaluation, the views of the public cannot be wholly ignored, given the implicit and explicit references to notions of community. Indeed, the wider public is ever present in discussions of community penalties as the entity which has experienced harm and to which offenders are required to ‘pay back’; the community is the setting within which such reparation is intended to occur; and the ‘public acceptability’ of particular disposals is a critical factor in the long-term viability of any sentencing framework, and particularly one that consciously departs from the ‘populist punitiveness’ (Bottoms, 1995) that has characterised much public debate in Scotland and elsewhere in the UK in recent decades. This issue is also touched on in the context of sentencers’ views in Chapter 7, and returned to in the concluding chapter.

1.48 Across the three sets of reforms, but particularly within the context of the implementation and effectiveness of CPOs, the evaluation has had to grapple with a wide range of issues and sources of data – many of which could have been the subject of separate studies and reports in their own right. As a result, for reasons of space and scope, the analysis contained within the report is necessarily at a fairly high level and differences between case study areas are highlighted where especially illuminating rather than explored systematically in relation to each issue. Moreover, data from the various sources are drawn on judiciously to illustrate arguments rather than presented in full. Some additional depth is provided by the report's appendices, which include a more detailed description of the study methods and supporting data for some of the quantitative analyses in Chapters 3 and 6; any remaining questions should be addressed to the authors.

2 CRIMINAL JUSTICE SOCIAL WORK REPORTS

- 2.1 The purpose of the Criminal Justice Social Work Report (CJSWR) is to assist in the sentencing process and to complement other information available to sentencers (Scottish Government, 2011b, p.19), in particular, by providing information about social work interventions and how those may impact on offending behaviour. The CJSWR acts, then, as a focus for dialogue between the sentencer and social work, and also allows for engagement with the offender to help determine his or her attitude towards potential disposals. As such, it has a potentially critical role to play in enabling the effective and appropriate use of community penalties.
- 2.2 The introduction of a new process and template for CJSWRs in February 2011 (replacing the existing Social Enquiry Reports (SERs)) was intended to achieve greater consistency in terms of the presentation, content and style of information available to sentencers in Scotland. However, it was also intended that CJSWRs would be briefer and more focused and concise than the SERs they replaced, and that they would contain better quality analysis. There was also, of course, an expectation that CJSWRs would be submitted according to agreed timescales (and therefore be available to sentencers at the point at which they are needed).
- 2.3 This chapter, then, examines the extent to which those aspirations have been met. Specific issues addressed within the chapter include the timeliness with which CJSWRs are submitted to court; the degree to which the new template has led to consistent and standardised reports; the range of information sources drawn on; and the quality and usefulness of the information, analysis and conclusions contained within the reports. The chapter also examines the degree to which CJSW staff appear to have the time, training and support needed to produce high quality reports. In addressing these themes, we draw on a wide range of sources, including the survey of CJSW managers and qualitative interviews with both CJSW managers and staff; the survey of and qualitative interviews with Sheriffs; qualitative interviews with offenders; and the 'participative audit' of a sample of CJSWRs.
- 2.4 Over the course of the chapter, it will be argued that CJSWRs represent a significant improvement in a number of important respects and, in particular, in terms of the format and consistency of information presented. It will also be argued, however, that the highly structured character of the new template has had some disadvantages and that there remains scope for improvement in the overall quality of analysis provided.

Background

- 2.5 A CJSWR must be requested:
- before imposing a custodial sentence for the first time or where the offender is under 21,

- when imposing a CPO with a Supervision Requirement or Level 2 UPWOA Requirement (over 100 hours), Community Service Order (CSO) or Probation Order (PO) with Unpaid Work,⁴
 - when imposing a Drug Treatment and Testing Order (DTTO).
- 2.6 Recent years have seen a downward trend in the number of criminal justice social work reports requested by the courts – a trend which pre-dates the introduction of CJSWRs. In 2006-7, for example, the number of reports requested across Scotland as a whole was 50,698; in the first full year following the introduction of CJSWRs in 2011-12, there were 42,054 reports, while in 2012-13, the figure fell again to 37,184. (This is likely to reflect a general downward trend in reported crimes and offences in Scotland, and in the number of young offenders in particular - though the introduction of Level 1 orders, for which a report is not required, may also have been a factor in the last couple of years.)

Timeliness

- 2.7 Evidence from different sources within the evaluation suggests that the vast majority of CJSWRs are being delivered to court within the agreed timescales. For example, this was true of 90% of reports examined during the audit; and 28 of the 30 respondents to the survey of CJSW managers indicated that between 91 and 100% of reports in their area were being delivered to court on time.
- 2.8 Sheriffs, too, felt that timeliness was not a concern: 55 of the 72 who responded to the Sheriffs' survey 'agreed' or 'strongly agreed' that reports are delivered to court in sufficient time for sentencing.⁵
- 2.9 That said, there are still some minor pressures and delays which – while not preventing the timely submission of reports – may reduce the time available for CJSW staff to complete reports. The research found isolated examples of delays in the transfer of requests for reports from the courts to CJSW. More significantly, however, it appeared that allocation to report writers within CJSW was sometimes time-consuming. For those cases examined as part of the audit, it took an average of three days for reports to be allocated – and in a fifth of cases, it took five days or more. In combination with other factors – discussed below – this may have implications for the overall quality of analysis contained in reports.

⁴ Although CSOs and POs were replaced by CPOs for any offences committed after February 2011, a small number of such offences continue to reach the courts and the disposals remain, therefore, as potential outcomes.

⁵ All data from the Sheriffs' survey are presented as absolute numbers rather than percentages because of the small total sample size.

Standardisation, structure and overall focus

- 2.10 Across different professional groups, there was a broad – but not universal – view that the structure and focus of the new template represented an improvement on SERs. It was seen by many CJSW staff, for example, as reducing variation across reports, report-writers and local authority areas – something often considered to have been an undesirable feature of SERs.

“I think previously the problem with SERs [was] they were open to interpretation and ...there was some guidance, but when you read a report, sometimes you wouldn't find things where you thought they should be and, I think that was difficult for sentencers.” (Interview 37, CJSW)

- 2.11 The template was also felt to provide a structure and focus on offending that is helpful in ensuring not only that the information is provided in a consistent format but that consistent questions are asked of offenders in the first place.

“I actually like the new template. I think it's very structured. I think it's more offence focused and that because of the structure of it, it guides you what to basically ask ...the perpetrator and also it means that there is the same format for everybody so it doesn't matter what social worker is doing your report, you should still be asked the same type of questions, still be assessed in the same manner. Whereas beforehand the reports varied significantly depending on the worker.” (Interview 3, CJSW)

“It helps to break down the analysis; it makes you think about the questions you're asking and the information you're getting [...] It doesn't help your decision but what does it do? It kind of provides a framework for it.” (Interview 55, CJSW)

- 2.12 UPW staff also suggested that CJSWRs were more helpful than SERs in providing a full picture of individual offenders' needs, risks and circumstances:

“I think it's been a huge improvement. You get a better idea about the person, you know, why they've ended up in that situation.” (Interview 47, UPW staff)

“I mean it's a definite change, a departure; it's far less narrative and I was guilty along with many other people of maybe being too narrative. Sheriffs would complain about reports being overly long. But they now are definitely more focused and there's a much clearer risk assessment [that] now goes with them.” (Interview 2, UPW staff)

- 2.13 The more structured and consistent character of the reports was also welcomed by Sheriffs, who commented on the benefits in terms of being able to find key information quickly – an important feature in the context of demanding workloads.

“I think they're better because they're standardised – you know exactly where things are going to be and under what heading they're going to be.” (Interview 63, Sheriff)

2.14 Overall, then, the structured and consistent character of the CJSWR template was widely seen as an improvement on SERs – or, at the very least, as a step in the right direction. That is not to say, however, that views of CJSWRs were universally positive or that there is no room for improvement. Some key issues in that respect are discussed below.

Range of sources drawn on

2.15 The NOS Practice Guidance on CJSWRs makes clear the importance of drawing on a wide range of sources in preparing CJSWRs: ‘The more detail of the individual's self-report which can be verified as accurate from other sources, the more credible the report/assessment is likely to be considered.’ (Scottish Government, 2011b, p.24)

2.16 The participative audit suggests that this is largely happening. On average, the audited reports cited 6.35 different sources (with a minimum of 2 and a maximum of 10). As Table 2.1 shows, the offender interview, criminal history information, and complaint/indictment were explicitly cited as sources in almost all (90%+) reports audited, while the LS/CMI, consultation with colleagues and reference to departmental/service records were cited in around 80% of reports.

Table 2.1: Sources CJSWR author has quoted as the basis for the report (n and %)

Offender interview	140 (97%)	Home visit / family interview	6 (4%)
Consultation with colleagues	118 (82%)	Telephone consultation with family/ partner	8 (6%)
Complaint / indictment	134 (93%)	Consultation with other agency	55 (38%)
Full criminal history information	135 (94%)	Prosecution summary of evidence	8 (6%)
LS/CMI assessment	113 (78%)	Dept. information / service records	114 (79%)
Medical services	25 (17%)	Any other risk assessment tool	58 (40%)
		<i>Base</i>	144

Note: Percentages have been rounded to the nearest whole number.

Source: Participative audit.

2.17 There was, however, relatively little (40%) quoted use of risk assessment tools other than the LS/CMI – of particular relevance in cases involving domestic abuse or serious violence, where the use of tools such as the Spousal Assault Risk Assessment (SARA) might be expected.

An over-reliance on offender accounts?

- 2.18 From the findings of the audit reported above, very little reference is made to prosecution summaries of evidence (cited by report authors in just 6% of cases). While such summaries are usually provided in cases involving sexual offending – and despite pilot initiatives in some areas – they are not routinely available to CJSW staff for other offences. Interestingly, not all audited cases involving sexual offending made reference to prosecution summaries, while some other types of cases did.
- 2.19 In interviews (and at the validation event), many social workers argued that this left them overly-reliant on offenders' accounts and that their ability to assess the risks the offender continues to pose, identify the appropriate method of intervention and provide appropriate advice to the court would be improved by access to prosecution statements or other trial evidence. Those with experience of working in (or with) courts in England & Wales, where such information is routinely provided, were perhaps especially likely to express such a view, although the dangers of 'information overload' were also acknowledged, as was the difficulty of determining the status of summaries prepared in advance of trial (and which might subsequently be challenged).
- 2.20 There is little doubt, however, that there is a significant body of opinion within CJSW that fuller access to prosecution information would improve the quality of assessment and recommendations, contribute more effectively to public safety and reduce the likelihood of a significant gap between social workers' recommendations and sentencers' final decisions.

"[W]hen they're writing...the Probation Service [in England & Wales] they get every bit of the witness statements, they get the police information, they get everything and actually that's overkill, I don't need that for every report I write. But...there are some things where the disposal was so far on the other side of what you think, there must have been something that I didn't know here! That can make you feel a bit disempowered at times and a bit kind of 'oh, have I made a really bad judgment call then?'" (Interview 57, CJSW)

"Most of the time, they come back [...] as we recommend but I think going back to that point of not having the full information, as we'd have in England, sometimes we are arguing for something and then we see it afterwards or even we read about it in the paper. You think, 'Maybe that was more serious than I thought it was.'" (Interview 37, CJSW)

- 2.21 Some Sheriffs also acknowledged the difficulty for report writers in having to work with only 'the offender's version of events'. Most, however, saw this as reason for CJSW staff to exercise caution in relation to analysis of harm, risk and preferred sentencing options, rather than as a strong argument for granting them access to prosecution summaries. Both Sheriffs and court staff expressed concern about the status of such information as well as doubts about the practicality of managing such large information flows.

"Well, the trouble with getting the Crown narrative is [...] Ideally, yes, but the trouble with that is I've seen the Crown narrative might be three or four pages,

but what the person pleads or is found guilty of might be two of those pages.”
(Interview 19, Sheriff)

‘Writing to the template?’: Length, relevance and duplication

2.22 Despite a broadly positive view of the CJSWR template as a whole, around two-thirds of Sheriffs responding to the survey (44 out of 68) either agreed or agreed strongly that reports are too long or contain unnecessary duplication. In combination with the views of CJSW staff (see para 2.23), this raises questions about whether the template, as currently used, is meeting the original requirement for concise and focused analysis.⁶ Indeed, there is a suggestion that overly detailed reports may actually inhibit sentencer engagement with key messages, simply because of pressure of workload.

‘In my view CJSWRs are very helpful but could be much more focused and concise, focusing only on information which could conceivably bear upon risk and sentencing options and providing detail about family background etc. ONLY where relevant to those issues.’

‘It’s important... to have concise reports, but obviously informative. It’s not helpful to have over-long reports... in any event, from a practical point of view, it’s difficult to find the time to read, especially if you have a remand court with 60 or 70 cases in it.’

(Open-ended responses to Sheriffs’ survey)

2.23 Many CJSW staff and the participants in the audit acknowledged that reports were often unnecessarily long. Some CJSW interviewees attributed this to individual writing styles and to a lack of discipline on the part of individual members of staff, while others saw it as a by-product of the structured character of the template and an inevitable tendency to ‘write to the boxes’.

“If you provide a template with a whole load of headings, then people will write to the template; they’ll write a whole load of stuff under each heading.”
(Interview 65, CJSW)

“I think the template can maybe push sort of... I wouldn’t say ‘indecisive’, but maybe less experienced staff, into writing quite a comprehensive report.”
(Interview 36, UPW staff)

2.24 The tendency to provide excessive detail was felt to be exacerbated by a degree of overlap between some sections of the template – for example, between ‘insight into offending’ and ‘awareness of impact on the victim/community’.

⁶ The NOS Practice Guidance on CJSWRs suggests that reports should contain: ‘only information which is necessary, appropriate and unique to the person in question’ (Scottish Government, 2011b, p.19).

“I've heard workers saying, 'I'm not really sure where to put it,' so end up putting it in both boxes, and it's kind of [...] if they could merge a couple of those sections it might be good, but keeping that overall focus of what the report's actually about.” (Interview 13, CJSW)

“You quite often say, ‘oh this feels like it should be in both, but I don't want to put it in both when they're right beside each other, so which should I put it into?’.” (Interview 56, CJSW)

- 2.25 While both Sheriffs and CJSW staff expressed concerns about the consequences of the length of reports, the nature of that concern was arguably different. For Sheriffs, the main problem with overly detailed reports is one of finding the information that they consider relevant to their decision-making. For CJSW staff, the concern is more that report writers may be expending time and energy fulfilling the demands of the template, rather than generating analysis and conclusions of the highest quality. (As we shall see below, the participative audit reported a substantial minority of cases in which there was clear scope for improvement in these areas.)
- 2.26 Implicit in discussion about the length of reports is the question of the *relevance* of the information contained within them. The new reports certainly address a wide range of issues relating to individuals' personal and social circumstances. For example, accommodation, family relationships, education and employment, financial circumstances, and use of alcohol/drugs were specifically addressed in almost all of the reports examined as part of the participative audit.
- 2.27 In many cases, however, these were not considered by auditors to be relevant to the individual's offending and/or a proposed intervention or sentence. (In this context, it is worth noting that the guidance tells report writers to include only needs information relevant to the individual's offending behaviour). Those most likely to be identified as relevant to a proposed intervention or sentence were alcohol/drug use and family relationships. An example of a topic which is addressed in the vast majority of reports but rarely mentioned as relevant to offending or proposed intervention/sentence is education and employment – this was addressed in 97% of all reports audited, but mentioned as relevant to offending in 32% and to sentence in just 29%.
- 2.28 It is worth noting that not all CJSW staff accepted the suggestion that reports contain unnecessary duplication or irrelevant material. Some, for example, considered it important on occasion to demonstrate that certain factors were *not* relevant to the offending; while others used repetition to highlight an important point:
- “If I'm putting [in] a point that I feel needs to be raised to the Sheriff so that he really understands, sometimes I would do – as I would do in the old SERs – I would labour that point two or three times to get it over” (Interview 66, CJSW)
- 2.29 Overall, it appears that CJSWRs have not yet achieved the degree of focus, relevance and conciseness that was hoped for. The question of whether this

points to a more general trade-off between structure/consistency and analytical quality is returned to below.

Quality and usefulness of information, analysis and conclusions

2.30 We have seen that the overall structure and content of the template is widely seen as an improvement on SERs in terms of consistency, navigability and structure of argument, even though there are some concerns about duplication, relevance and length. We turn now to the related question of the quality of the information, analysis and conclusions contained within the reports.

Judicial perspectives

2.31 A useful starting point for this is to consider Sheriffs' views (as captured by the survey) of how useful they find the various elements of the report. As Table 2.2 shows, Sheriffs were most likely to say that they found useful the information about current and previous offending (64 out of 68 doing so) and the personal and social circumstances of the offender (65 out of 69), and social workers' assessment of suitability for a community disposal (61 out of 70).

Table 2.2: Sheriffs' views of usefulness of individual elements of CJSWR (n)

	Very useful/ Fairly useful	Not very useful/ Not at all useful	Question not answered
Information about current and previous offending	64	4	4
Information about the personal and social circumstances of the offender	65	4	3
Social workers' assessment of suitability for community disposal	61	9	2
Social workers' review of relevant sentencing option and potential disposals	51	18	3
Social workers' analysis of the risk posed by the offender	46	24	2
Social workers' conclusions about preferred sentencing options	33	36	3
<i>Base</i>			72

Source: Sheriffs' survey.

2.32 However, some analytical elements of the CJSWR were markedly less likely to be considered useful by Sheriffs. This was especially true in relation to the analysis of the risk posed by the offender, social workers' review of sentencing options and their conclusions about preferred sentencing options.

2.33 For example, 46 Sheriffs (out of 70 who answered the question) found social workers' analysis of the risk posed by the offender to be very or fairly useful and 24 thought it not very or not at all useful (Table 2.2). Responses to the open-ended questions suggested that some Sheriffs considered this element to be less reliable than other indicators of risk or to be simply restating a risk that was obvious anyway. There was also an acknowledgement of the difficulty that CJSW staff face in assessing risk when largely reliant on offender accounts. Similar views were evident in the qualitative interviews, along with a degree of scepticism about the 'science of risk'. This had various aspects to it, including a view that it fails to recognise sentencers' own knowledge and expertise in recognising risk, and that a complex assessment is sometimes unnecessary or adds little to overall understanding – especially in relatively straightforward cases or where there is simply a lack of available information.

“I'm troubled by the whole idea of risk management, but that... really is a personal view. I'm quite sceptical about that. I know it's all enshrined [...] but we seem to have so many different matrices and approaches, and it's all very academic. And I'm sorry. I think that's what I bring to the game: an understanding of where the risk may lie from this particular individual. Sometimes the... assessment of risk is just a statement of the [...] obvious. And then when perhaps it's an assessment of low-risk, that's just simply because there's not enough material for anyone to reach a definite view on the matter.” (Interview 19, Sheriff)

2.34 Sheriffs were broadly positive about social workers' review of relevant sentencing options and potential disposals – 51 found this to be very or fairly useful – but a sizeable minority (18) also thought it was not very or not at all useful (Table 2.2). Qualitative comment on the limitations of this element of the CJSWR suggested that Sheriffs sometimes felt such material to be one-sided (overly relying on the offender's account of events) or that the sentencing options proposed were unrealistic (particularly when custody was considered to be inevitable because of the seriousness of the current offence or the risk of further non-compliance or offending).

2.35 Perhaps most strikingly, only 33 Sheriffs considered social workers' conclusions about preferred sentencing options to be very or fairly useful, compared with 36 who thought these were not very or not at all useful. This issue is returned to in detail in Chapter 7.

CJSW perspectives on analysis of offending, risk and harm

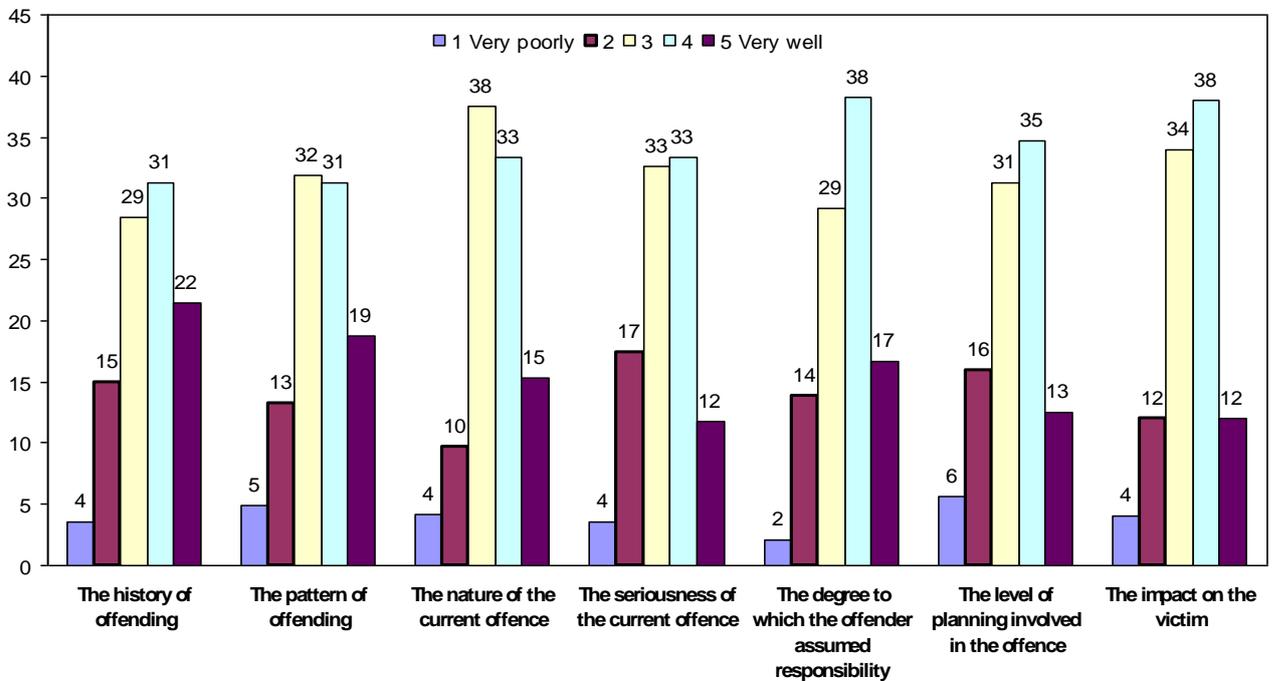
2.36 The participative audit also examined reports in terms of how well each of a range of offending-related analytical issues was addressed. Figure 2.1 shows how well auditors felt that reports addressed a range of issues including the history and pattern of previous offending, the nature and seriousness of the current offence, the degree to which the offender assumed responsibility, the level of planning involved and the impact on the victim. Across all of these, around half of audited reports were rated positively – i.e. given a rating of 4 or

5 on a scale from 1 to 5 where 1 represents 'very poorly' and 5 represents 'very well'.

2.37 The analysis of the 'degree to which the offender assumed responsibility' was most likely to attract a rating of either 4 or 5 (with 55% of reports doing so), although analysis of the 'history of offending' was most likely to attract the maximum score of 5 (22% of reports, compared with figures of 12% to 19% for other aspects of offending analysis).

2.38 In relation to most of the issues covered, auditors gave around a fifth of reports a score of just 1 or 2. The items most likely to attract a low score were 'the level of planning involved in the offence' (22% scoring either 1 or 2), 'the seriousness of the offence' (21%), 'the history of offending' (19%) and 'the pattern of offending' (18%).

Figure 2.1: How poorly or well reports addressed various aspects of offending (%)



Source: Participative audit.

2.39 In terms of the assessment of future risk of reoffending or of harm (see Table 2.3), the picture from the participative audit was also somewhat mixed. Fewer than half the reports (46%) were rated towards the higher end of the scale in relation to the analysis of the risk of re-offending (4 or 5 out of 5), and only 15% rated 5 (risk analysed 'very well'). Around three in ten (28%) were rated poorly (a score of 1 or 2).

- 2.40 In relation to the analysis of the risk of harm⁷, over a third of reports (35%) were given a score of 1 or 2 (out of 5), including 8% given a score of 1 ('very poorly'). Auditors marked 38% of reports towards the higher end of the scale, but just 13% were given the highest rating.
- 2.41 In reflecting on the results of the participative audit, auditors expressed the view that there was an absence of a shared language of risk – both between CJSW and the judiciary and within CJSW itself.

Table 2.3 – Auditor views on quality of Risk Assessment

	Very poorly 1	2	3	4	Very well 5	Not answered 6
How well is risk of reoffending analysed?	6 (4%)	35 (24%)	38 (26%)	44 (31%)	21 (15%)	0 0%
How well is risk of harm analysed?	11 (8%)	39 (27%)	40 (28%)	35 (24%)	19 (13%)	0 0
<i>Base</i>						<i>144</i>

Note: Percentages have been rounded to the nearest whole number and so may not add up to 100.
Source: Participative audit.

- 2.42 In qualitative interviews, too, CJSW managers and staff also indicated some lack of confidence that CJSWRs were consistently delivering the required quality of analysis. Again, the highly structured character of the template was seen as a factor here, both because it is time-consuming to complete (leaving less 'thinking' time), but also because it can lead to an emphasis on the descriptive rather than the analytical. Although one interviewee suggested that the template "forces you to be more analytical – I think it's harder to hide from that", others took the opposite view, arguing that the structure of the template makes it difficult to build a clear picture and argument.

"If you give people a template with headings then they'll write to the headings. And the headings maybe sometimes aren't as helpful [...] in terms of getting a coherent flow about who this individual is. What are the significant things in their background that actually impact on their thinking and their offending behaviour? And what are the things that need specifically to be addressed and how it is we're going to do that?" (Interview 76, CJSW).

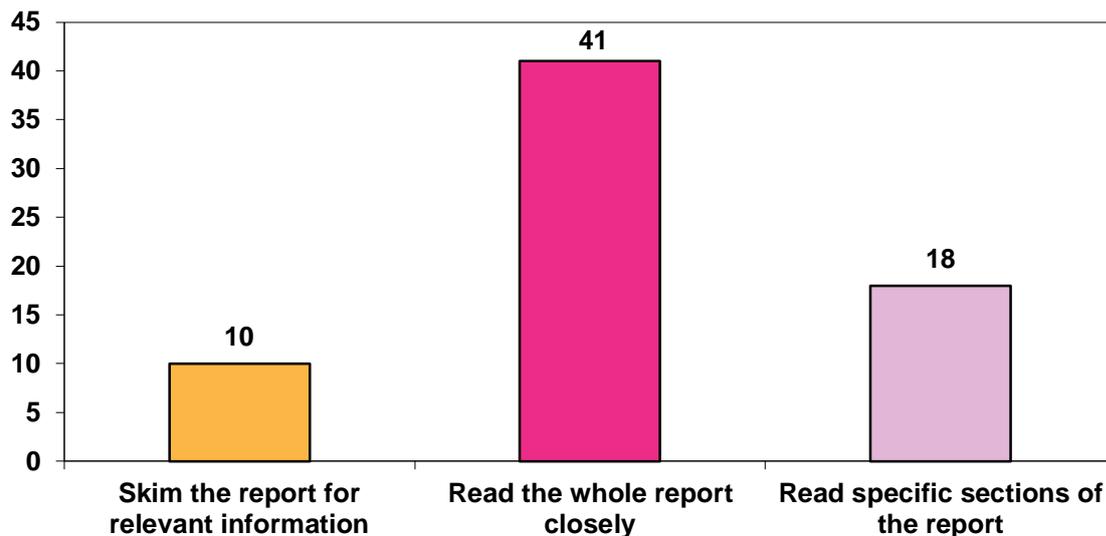
- 2.43 In this context, it is especially important that CJSW staff have the time, the skills and the confidence to move beyond the purely descriptive. The extent to which this seems to be the case is returned to below.

⁷ As a general point, Risk of Harm can relate to self, those near to us, figures of authority, the general public or situational. It is a potentially complex issue, hence auditors' comments about the need for more comprehensive guidance (see below).

How are CJSWRs used by Sheriffs?

2.44 Both in qualitative interviews and the survey of the judiciary, Sheriffs were asked about how they actually use CJSWRs. Perhaps not surprisingly, there was a wide range of responses here. Some Sheriffs make a point of reading each report in full, sometimes carefully marking key passages or making notes, others tend to skim or to read reports selectively for particular types of information.

Figure 2.2: How Sheriffs typically use CJSWRs (n)



Source: Sheriffs' survey. N=69. Missing responses (n=3) excluded.

2.45 As Figure 2.2 shows, around two-thirds of Sheriffs who responded to the survey indicated that they typically read the whole report closely. From the qualitative interviews, there was a sense among this group that they would otherwise lack the full picture needed to make effective sentencing decisions, although some simply attributed such diligence to personality traits.

“I read them! I read everything! It’s just the way I am – I can’t help it!”
(Interview 20, Sheriff)

2.46 Those more likely to skim, or to refer to specific sections, sometimes attributed this to the length of reports – and to what they saw as the inclusion of unnecessary detail – or to the demands on their time. Others simply suggested that, for certain straightforward cases, it is relatively easy to arrive at a sentencing decision – and in such cases the report is read to confirm that decision rather than in great depth. Some were at pains to contrast this, however, with the attention they would give to a report in a more complex case.

“You’re going through [the report] and you know that when you get somebody – a lad who has too much to drink, and fights with another young lad who likes too much to drink – that you’re probably just going to give them some unpaid [work] hours to do, rather than send them to the jail. You get a reasonable idea where you’re going with it. [...] The more complicated the sentencing

exercise, the more attention you have to pay to every part of the report.”
(Interview 69, Sheriff)

2.47 In this context, it is worth noting that there is variation not only in how Sheriffs read reports, but also *when*. Some of those interviewed made a point of working through all reports in advance, while others indicated that they would read reports on the bench on the day of the hearing, in order to avoid spending time preparing for cases which did not proceed.

Sheriffs’ overall views of CJSWRs by comparison with SERs

2.48 Despite concerns about length, and ambivalence about some of the analysis contained within the reports, overall, Sheriffs appear to be broadly positive about the new template. As can be seen from Table 2.4, while most saw CJSWRs as about the same as SERs in terms of various measures of quality, consistency and confidence, around a fifth thought they were better and almost none that they were worse.

Table 2.4 Sheriffs’ views of how the CJSWR compares with SERs (n)

Compared to SERs, how would you rate CJSWRs in terms of...	Much better/ Better than SERs	About the same as SERs	Worse/ Much worse than SERs	Question not answered
...the quality and completeness of the information they contain	14	48	1	1
...the quality of the analysis they contain	17	44	2	1
...the degree of consistency across different reports	15	46	1	2
...your overall confidence in the reports	13	49	1	1
<i>Base</i>				<i>64</i>

Source: Sheriffs’ survey. Question asked only of Sheriffs appointed before introduction of CJSWRs in February 2011.

2.49 Overall, there is a sense from Sheriffs that the reports are indeed more focused and consistent, and that they play an important role in the decision-making process – not just in tailoring community penalties to particular offenders, but in identifying those for whom such a disposal will simply not work.

“I’ve been very impressed... particularly the modern criminal justice reports are very, very good at identifying the people who won’t cooperate. They’re much better than the old Social Enquiry Reports. They seem now to be able to focus on folk who you’d be setting up to fail if you were to make the order, and that’s actually quite encouraging.” (Interview 50, Sheriff)

2.50 It is clear, however, that while confidence in the reports is partly a function of the template, it is also sometimes simply a marker of confidence in the report writer. Particularly in smaller courts, individual CJSW staff are known to the bench, and Sheriffs know from experience whether they are likely to be able to trust the analysis and recommendations provided.

“My confidence is pretty high [...] I know a lot of the people who do these reports – there’s maybe about half a dozen names that I know. If I look at a report and look who the author is, I can have a high degree of confidence that it’s been well done and well thought-out, and [...] we’re thinking along the same lines.” (Interview 44, Sheriff)

2.51 This simple observation – that it is the skills and experience of the report writer that do most to determine the overall quality and credibility of the report – serves to highlight the importance of issues around training, support and continuous improvement. It is to these that we now turn.

Do CJSW staff have the time, skills and confidence to produce high quality reports?

Training

2.52 At the time of the survey of CJSW managers (in late 2013), 29 of the 30 local authorities who responded were either ‘very’ (23) or ‘quite confident’ (6) that all the relevant staff in their area had been trained in the use of the new template (and all 30 were confident that their staff were now using it).⁸ This picture of relatively systematic training was backed up by interviews with Social Workers in three of the four case study areas. In the fourth, the feedback on the guidance and training received was more qualified.

2.53 In general, then, the initial training seemed to have been well received, although social workers also emphasised the importance of peer support, good supervision and career experience in giving them the confidence to prepare effective reports, including analysis and recommendations.

2.54 In this context, it is worth noting that in some of the interviews conducted with CJSW staff towards the end of the project, there was more of a sense that the initial training had perhaps been overly transactional – largely focused on the format and use of the new template – rather than contributing sufficiently to a ‘culture shift’ or the development of individuals’ analytical and writing abilities. In other words, once issues to do with basic familiarisation and use had been addressed – even if this had been done effectively and systematically as seemed to be the case in three of the four case study areas – some CJSW staff began to reflect on the extent to which the training had helped to deliver *all* of the original objectives of the new report.

⁸ All data from the survey of CJSW managers are presented as absolute numbers rather than percentages because of the small total sample size.

“Well, when the template was introduced there was some training around familiarisation with the template. But it wasn't what I would say was training around report-writing skills so I think there's a need for that kind of training and, and how [...] to make best use of the template, because the template really should be at the end of the process, you know? You should be gathering your information from all of the various sources, and analysing it, and trying to structure in a coherent way what it is that you want to say about this individual.” (Interview 76, CJSW)

“My personal opinion is that the template was launched with the hope that it would [...] lead people to be more analytical, but I don't think a template alone will do that. I think there needed to be more thought and more consultation in changing the culture of how we produce reports. And, we went from producing reports that talked about low/medium/high risk, to being asked about pattern, nature, seriousness and likelihood. And [...] probably it took a good two years, and we're still on that journey... for people to start to get their heads round what actually is pattern, nature, likelihood and seriousness.” (Interview 65, CJSW)

- 2.55 And, as with training in relation to CPOs more generally, there was also a concern that the comprehensive initial training had not been followed up systematically and that new staff were being trained ‘on the job’ rather than receiving consistent and structured input. This is illustrated by comments from two of the respondents to the survey of CJSW managers:

‘As with all national/regional training, the merits of common training are diluted by impact of staff turnover and consequent reliance on experiential training.’

‘[The main gap is] ensuring new workers get the same structured training that was rolled out initially. It's not so much training about the reforms that is needed but improving the report writing skills of SWs.’

(Open-ended responses to survey of CJSW managers)

- 2.56 In this context, it is also worth noting that CJSW staff from the four study areas who took part in the participative audit suggested that a process of regular, embedded audit could potentially make a valuable contribution to skills development and quality improvement. This issue is returned to below.

Impact on workloads

- 2.57 There is little question that the near simultaneous introduction of the LS/CMI, CPOs and the new report template placed significant demands on CJSW staff – both in terms of finding time for briefing and training and simply absorbing a great deal of new information.

“There was like a year or so of training that staff were required to engage with. And new ways of working. And I think it became a bit of an overload at that time.” (Interview 76, CJSW)

- 2.58 Following the introduction and initial 'bedding in' period, however, most staff seem to have become broadly familiar with and proficient in using the new template, and there was not a widespread suggestion that, in itself, it was associated with a significant increase in workloads. That said, the total number of reports requested by courts is declining. It is, therefore, possible that this trend is offsetting the fact that individual reports now take longer to complete. One interviewee certainly indicated that this was the case and that its implications were not being appropriately reflected in resourcing formulae, which they suggested draw on the total number of reports but continue to use the same assumptions about the time required *per report*.

"The difficulty now is that, especially with the formula that's been used by Scottish Government for allocation [...] there's a significant drop in reports that are being requested and presented to court. [...] So when it comes to the allocation of funds, we're actually seeing that formula impacting on the monies coming to us. The reality being, though, is that nobody changed the equation in respect of the amount of time it takes to generate a criminal justice social work report now, in comparison to days gone by." (Interview 65, CJSW)

- 2.59 The suggestion that CJSWRs are more time consuming to produce seems to have two main aspects to it. The first is the link to LS/CMI, the completion of which forms the basis of the subsequent CJSWR and is seen as laborious and complicated, in some areas, by an inflexible software interface. Secondly, there is a view that the new reports are themselves more complex, involve additional liaison with other agencies and that overall expectations of quality are higher.

"[T]he quality of the reports are much better than they used to be, and quality requires time. [...] So we consult more widely with other agencies. We gather a wider amount of information. And even the process of analysing requires workers to take time to reflect, maybe to consult with a senior on a more complex case. [...] And I think what workers are doing as well is - what I'm seeing is them honing their skills and having to be much better at not just being able to analyse but to then form a cohesive argument in the report. So actually the quality of what they are, and the expectation of what they're having to deliver has increased." (Interview 65, CJSW)

- 2.60 As the above quotation indicates, most of the CJSW staff interviewed saw the improvements in the quality of reports as outweighing these additional time demands.

"I mean there's no doubt [about] it, it's a more involved process. I think the days of somebody sitting down and bashing out a social enquiry report are long gone. It does take longer to write. But it's taking not so much time as it did in the initial stages ...when people were getting used to it. But I think it's a much more professional approach than it used to be." (Interview 55, CJSW)

- 2.61 Nevertheless, some interviewees also suggested that additional desk-based activity might impact on the time available for direct work with clients and

highlighted the need to monitor the balance between various aspects of staff workload and practice.

Quality assurance and retrospective audit

- 2.62 In the four case study areas, there was a variety of practice in relation to the quality assurance of reports prior to submission to the court and the retrospective audit of reports with a view to identifying opportunities for continuous improvement.
- 2.63 To achieve a consistently high standard of reporting, one might expect to see ongoing training and staff development through individual supervision, supported by a formal process of gatekeeping, where some kind of systematic attempt is made to check the quality of reports before they get to the court. In the four case study areas, the evaluation team only heard evidence of this being done systematically with students and newly appointed staff. Otherwise, staff would sometimes consult with colleagues or a manager, especially if the case was controversial or especially serious. Resource constraints were often mentioned as the reason for the lack a more systematic arrangement.
- 2.64 One might also expect to see audit (i.e. retrospective review) of reports as both a quality check and an aspect of staff mentoring and development and an important supplement to more formal training. Interviews with CJSW staff in the case study areas suggested that this would typically involve the random selection of a single report to be reviewed by the manager in supervision with the staff member (on a roughly monthly basis). However, we also heard from CJSW interviewees, and from some members of the audit panels, that regular systems of audit of this kind were not currently operational in all areas. It is not clear what lies behind such variation in practice, but it suggests that opportunities for continuous improvement are being lost. This issue is returned to in para 8.51.
- 2.65 There were reports of more formal audit exercises across an area or with particular groups of staff, but these tended to be ad hoc and infrequent and focused more on the generation of statistics than explicit quality improvement.
- 2.66 The CJSW staff who took part in the participative audit conducted for the evaluation indicated that they had found it a very useful exercise – not only quantifying the standard of the reports sampled but contributing to their own understanding of what makes a good report and, hopefully, improvements in their own practice. Their view was that this kind of exercise could be a very useful way of integrating audit of systematically sampled reports into routine staff meetings.

Offender views and experiences of the CJSWR process

- 2.67 The main purpose of the CJSWR is to provide the sentencer with full and accurate information about the offender and the offending – about personal and social circumstances of relevance to the offence; the potential for future offending; the individual’s attitude towards their victim and willingness to engage constructively with services, and so on. As we have seen, the report writer may need to draw on a variety of sources in developing such a picture. Invariably, however, they need to be able to talk directly and openly with the offender in order to prepare the report. Offender views and experiences of this process are, then, highly relevant to the quality of reports submitted, especially in the absence of other sources of information such as prosecution summaries.
- 2.68 So how much did offenders understand about the process of report writing, how did they feel about it, and to what extent did they provide full and accurate accounts to CJSW report writers? Again, it should be emphasised that those offenders interviewed as part of the evaluation were likely to be at the more compliant end of the spectrum. Nevertheless, their experiences shed some important light on factors that appear to enable and to hinder the report writing process. While these will perhaps not come as a surprise to many of those working or researching in the area, they serve as a useful reminder that offenders are critically important actors in this process and that if their needs are not met, the quality of report-writing (and sentencing) will suffer.
- 2.69 In terms of awareness and understanding of the report writing process, most of the offenders interviewed for the evaluation seemed to have had a reasonable grasp of what was being asked of them and why. In some cases, of course, this came from prior experience (of SERs or previous CJSWRs); in other cases, however, individuals had been told what to expect by friends or family, their lawyer or social worker. This generally prepared them for the likely content of the interview to inform the preparation of the CJSWR, though there was some variation in understanding of exactly *why* such information was required.
- “Basically [I’d be told] just that you... get an interview. It only takes about half an hour. They ask you numerous questions about how you feel about what you’ve done. Would you be willing to do community service if that’s what the Sheriff requests. I know some people would probably turn round and say, ‘No. Just gie me the jail. I’m no daein’ that!’, but it’s for them to see what your attitude is, and how you’re prepared to – you know? – what kinda punishment you’re prepared to accept.” (Interview 33, Offender)
- 2.70 There were examples of individuals only fully understanding the purpose of the interview after the event and suggesting that this lack of understanding might have led them to be less open in their responses. And, regardless of understanding, some offenders consciously managed the sharing of information about aspects of their past. One female offender, for example, said that she had been less than open about her previous drug use, explaining that:

“I didn’t see it was that relevant, because I hadn’t done it for a few years, and maybe ‘cause I thought it would make me look bad.” (Interview 82, Offender)

- 2.71 It was also clear that several offenders were unprepared for the highly personal nature of the interview and found it challenging or upsetting to be asked about their upbringing or domestic circumstances. In this context, the skills and sensitivity of CJSW staff are obviously critical, especially in the context of contact with offenders they have not previously had dealings with. Some offenders felt that the process failed to generate an accurate picture of their life and needs, while others simply felt that the focus on their background was irrelevant to the offence they were being sentenced for.

“Well, it was a person... [with] a social worker that I’d never met before, and I went in and, for that hour, to get my whole life history and to decide on a sentence wasnae... She didnae get to know me in that hour, and I don’t feel that I was able to come across in the way that I wanted to in that short space o’ time.” (Interview 72, Offender)

“I didnae like them asking they kinda questions. Nuh. [...] Because it’s nothing to dae wi’ your background. It’s how you are *now*.” (Interview 32, Offender)

- 2.72 However, most of the offenders interviewed seemed to feel that the process, although difficult, had been fair and even helpful. There was also a sense that this was part of the deal with the court: that cooperation was part of the price of getting the best disposal.

“I felt uncomfortable, embarrassed, and maybe it was probing into things that they didn’t really have to know but since then I’ve realised that everything they were asking me was for a reason so...yeah it makes sense now but at the time I was a wee bit confused [about] why they were needing all that information!” (Interview 12, Offender)

“The way I seen it was it was something...they had to do, it was just something that the judge asked me to do so to keep my side of the bargain I had to do it whether I liked it or no” (Interview 9, Offender)

- 2.73 One thing that was a source of resentment, even among those who otherwise understood the need for the report, was having to repeat information that had already been given to another social worker (for example, in relation to the preparation of a previous CJSWR).

“I remember coming out the meeting expecting to see [name of CJSW staff], and seeing this other lassie, and she was like that, ‘Right. We’re gonna do your report’, and I said, ‘My report’s already done. Do we have to go through all this again?’. I didn’t want an hour o’ sitting crying, explaining how I felt when I was 14 when [significant family event happened]. I didn’t need to be doing that all over again. It’s just emotionally... it’s horrible. [...] And then having to do it again when the reports are sitting on your colleague’s desk!, you know?” (Interview 82, Offender)

- 2.74 Some of the offenders interviewed for the evaluation said that they had been given a chance to read the report in advance of submission; others that their lawyer had given it to them or read out the main conclusions. Those who had seen the report were generally broadly content with – or at least unsurprised by – the content and conclusions.
- 2.75 Although some offenders simply saw the CJSWR process as ‘something that had to be done’, others saw it as having tangible benefits. Sometimes that simply reflected a recognition of the part that the report had played in avoiding a custodial sentence. In a handful of cases, however, there was also an acknowledgement of the fact that the resulting sentence had been directly tailored to their needs and circumstances.

Offender: “I don't know how much you know the court system, but if I hadn't had the report, and I'd o' went off and pleaded guilty, the Sheriff wouldn't o' known if I'd o' just done it out o' spite or malice, or whether there was underlying health ...mental problems or ...things like that, without the report, so I think that the reports are an invaluable part of the system.”

Interviewer: “So to what extent do you think that the sentence was well-matched to your needs at the time?”

Offender: “Oh, it was absolutely fantastically matched. I mean I think the... big thing was getting put on the Antabuse. That was the turning point.” (Interview 82, Offender)

- 2.76 A final benefit mentioned by offenders was the way that the report-writing process helped to inform and prepare them for the sentence itself. This was contrasted with the situation prior to the introduction of the reforms by some offenders who had experience of the criminal justice system.

Key points

- 2.77 The CJSWR plays an absolutely critical role in the sentencing process, in providing Sheriffs with the information needed to arrive at a sentence that meets the needs of both the community and the offender, but also in gauging the attitude of offenders towards specific disposals.
- 2.78 In some respects, the new template appears to be delivering on its original objectives. Despite the fact that the report itself is widely considered to be more time consuming to produce (see para 2.42), the vast majority of reports are being delivered on time. The standardisation of reports, within and across local authority areas, has been welcomed by Sheriffs and CJSW staff. And it is widely felt that the template has improved navigability and the focus on offending.
- 2.79 There is also, however, a widespread concern among Sheriffs that the new format has led to longer and overly detailed reports – something that is seen as especially problematic in the context of demanding caseloads. CJSW staff

and managers also express concern about 'writing to the template' and highlight the risk that the quality of analysis suffers as a result.

- 2.80 Sheriffs appear to find much of what they receive in CJSWRs helpful, but are especially positive about the information about individuals' current and previous offending, personal and social circumstances and suitability for a community disposal. They are more ambivalent about the analysis of risk provided by report writers and markedly less positive about social workers' reviews of relevant sentencing options and conclusions about preferred sentencing options.
- 2.81 The participative audit also suggests that reports are drawing on a broad and appropriate range of sources, although prosecution summaries are absent for most cases (an issue that CJSW staff and managers – and some Sheriffs – have consistently raised). The audit also raises questions about the quality of analysis contained within reports, especially in relation to risk of reoffending and risk of harm. Overall, there is clear scope for improvement in the quality of reports, with around one in six being given a negative rating by auditors.
- 2.82 There are issues here relating to the availability of training for new starters, and the extent to which training and support around CJSWRs in general moves beyond the transactional to focus on report writers' analytical skills. It is also evident that the new template is more time consuming to complete than the previous SERs. While this has been partly offset by a reduction in the number of reports requested – and is seen by many as worthwhile if it leads to better quality – there are potential resource implications, both in terms of overall CJSW staffing and the amount of time available for direct work with clients.
- 2.83 Procedures for quality assurance and retrospective audit are inconsistent across and within areas. Although there is a solid base of peer support and line management, formal or systematic processes of assurance and review are often absent. This makes it harder to identify the minority of below-standard reports and also means that a potentially 'virtuous loop' of skills improvement is not completed.
- 2.84 Given the central role that offenders' accounts play in the preparation of CJSWRs, it is important that they understand the process and feel able and willing to contribute to it openly and honestly. For the most part, this seems to be the case, although some are still unprepared for the depth of questioning or do not fully grasp the purpose of the report. The skills and experience of report writers – and the nature of their relationship with the offender – are clearly critical here. Most of the offenders interviewed for the evaluation acknowledged the role that the report had played in securing a community disposal; a few felt that it had played a major role in tailoring the sentence to their needs; and others were simply grateful for the way that it helped prepare them for the sentencing process.

3 COMMUNITY PAYBACK ORDERS IMPOSED: A NUMERICAL OVERVIEW

3.1 In this first chapter focusing specifically on CPOs, we examine (in quantitative terms) the overall use of social work orders in the first two full years following the introduction of CPOs, the number of CPOs with different types of requirements, and patterns of variation across geographic areas. This analysis is based on annual figures published by the Scottish Government on the use of social work orders.⁹ These are collated from aggregate or unit level returns from local authority criminal justice social work departments to the Scottish Government and are also made available at local authority level.¹⁰ This section summarises a number of the key points from these data.

Trends in the overall use of social work orders

3.2 As noted in the introduction, CPOs had, in effect, a phased introduction as they could only be imposed in relation to crimes and offences committed on or after 1 February 2011. As a result, nearly 16,000 CPOs commenced in the year to 31 March 2013 – 5,600 more than in the previous 12 months. This rise was matched by a fall in the numbers of community service orders, probation orders and supervised attendance orders (see Table 3.1).

Table 3.1: Social work orders commenced 2006-07 to 2012-13¹¹

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
All social work orders	18,061	19,947	20,674	19,865	18,044	19,746	19,449
Community Payback Orders	n/a	n/a	n/a	n/a	..*	10,228	15,857
Community Service Orders	5,937	6,202	6,437	6,429	5,940	3,044	693
Probation Orders	8,404	8,706	9,179	8,838	8,136	3,040	514
Supervised Attendance Orders	3,047	4,438	4,306	3,859	3,307	2,877	1,752
Drug Treatment and Testing Orders	673	601	752	739	661	557	633

*Note: Information on community payback orders that commenced in February and March 2011 was not collected from local authorities, but figures from the Scottish Court Service suggest around 300 were imposed during that period.

3.3 Overall use of social work orders changed little between 2011-12 and 2012-13, although the longer-term trend since 2006-07 shows slightly more variation. Between approximately 18,000 and 20,700 orders were commenced in each of these years, with 19,449 commenced in 2012-13. If the overall use of social work orders were to remain at roughly the same level

⁹ The latest set of figures are published in the statistical bulletin (Scottish Government, 2014b)

¹⁰ <http://www.scotland.gov.uk/Topics/Statistics/Browse/Crime-Justice/Datasets/SocialWork>

¹¹ Adapted from Table 1 (Scottish Government, 2014b)

in future years, one would expect to see the total annual number of CPOs imposed to rise to around 18-19,000 as the number of 'legacy orders' continues to reduce.

- 3.4 There is no indication to date, then, that the introduction of CPOs has led to a marked increase in the absolute number of community disposals – although a more useful indicator in this respect may be the relative use of fines, social work orders and short prison sentences.
- 3.5 What is clear is that, by the end of 2012-13, CPOs were firmly embedded as the core social work order in use by the courts in Scotland. That said, a degree of geographic variation remained and this is explored below.

Geographic variation in use of social work orders

- 3.6 Across Scotland as a whole, 82% of social work orders commenced in 2012-13 were CPOs, but this figure ranged from 69% in Fife, to 96% in Shetland (and was between 76% and 93% in the other 30 local authorities).
- 3.7 Although most of the existing social work orders were replaced by CPOs, the Drug Treatment and Testing Order (DTTO) was retained as a separate disposal. In 2012-13, DTTOs accounted for just 3% of all social work orders, but there was, again, a high degree of variation across local authorities. For example, Edinburgh made the greatest use of these¹² (130 in 2012-13, representing 12% of all social work orders imposed in Edinburgh and 21% of all DTTOs imposed nationally), while in 11 other local authorities five or fewer DTTOs commenced in total during the same period. The question of the relationship between DTTOs and Drug Treatment Requirements (DTRs) is discussed in Chapter 5 (para 5.23).
- 3.8 The proportion of social work orders commencing in 2012-13 which were Community Service Orders (CSOs) or Probation Orders (POs), imposed in relation to crimes and offences committed before 1 February 2011, was 6% across Scotland as a whole. While this ranged from none at all in Shetland to 12% in East Dunbartonshire, a degree of variation is to be expected, given the now relatively small numbers involved.
- 3.9 Greater variation was seen in the number of Supervised Attendance Orders (SAOs) commenced. While 9% of all social work orders in Scotland were SAOs in 2012-13, this figure ranged from none at all in Midlothian, to 21% of orders in Fife.

Use of different CPO requirements

- 3.10 Turning to the types of requirements – rather than the overall volume of CPOs – it is immediately clear that two of the nine requirements account for the vast

¹² The Edinburgh figures include DTTO IIs.

majority of all those imposed. This is as expected, as the legislation stipulates every order must have Unpaid Work or Other Activity (UPWOA) or Supervision Requirements, or both.

- 3.11 UPWOA was by far the most frequently used requirement - 80% of CPOs were issued with such a requirement in 2012-13, up slightly on the proportion in 2011-12. Roughly half of these in 2012-13 were Level 1 orders (involving less than 100 hours), and these had an average length of 75 hours (similar to 2011-12). Level 2 orders had an average length of 175 hours (up from 164 in 2011-12). The total number of orders with an UPWOA Requirement in 2012-13 was 12,630 – compared with 6,000 or so Community Service Orders, 3,000 or so Probation Orders with an element of unpaid work and 3-4,500 Supervised Attendance Orders issued in each of the years leading up to the reforms.
- 3.12 The next most frequently imposed requirement was Supervision. Just over half (55%) of CPOs were issued with a Supervision Requirement in 2012-13, a slightly lower proportion than in the previous year.
- 3.13 In 2012-13, no more than 10% of CPOs were issued with any of the other requirements. It is noticeable, however, that there was a marked fall in the use of Conduct Requirements relative to the previous year, when these were imposed in around a quarter (23%) of cases. This followed an appeal court judgement that a CPO with a Conduct Requirement specifying that an offender refrain from committing any offence for a specified period is incompetent (*Kirk and Hunter v Procurator Fiscal Stirling* (2012) HCJAC 96).
- 3.14 The number of DTRs and Alcohol Treatment Requirements (ATRs) also fell in 2012-13 (in both absolute and relative terms). Indeed, both were used only around half as frequently as in 2011-12 (Table 3.2). Some of the possible reasons for this are explored in Chapter 5 (paras. 5.1-5.46).

Table 3.2: Number and percentage of CPOs issued with given requirement, 2011-12 & 2012-13¹³

	2011-12		2012-13	
	Number	%	Number	%
UPWOA	7,776	76.0	12,630	79.6
Supervision	6,382	62.4	8,696	54.8
Conduct	2,360	23.1	1,589	10.0
Programme	809	7.9	1,032	6.5
ATR	536	5.2	392	2.5
Compensation	350	3.4	599	3.8
DTR	236	2.3	183	1.2
Mental Health Treatment Requirement (MHTR)	74	0.7	95	0.6
Residence	51	0.5	37	0.2

¹³ Adapted from Table 10 (Scottish Government, 2014b)

Note: Percentage figures sum to more than 100%, due to the use of multiple requirements.

- 3.15 Overall, then, the figures for 2012-13 suggest a degree of further concentration around the use of UPWOA. All other requirements with the exception of Compensation were used relatively less frequently than in 2011-12.

The use of multiple requirements

- 3.16 Of course, a CPO may be imposed with more than one requirement; and, indeed, this is one of the features of the order that is intended to yield flexibility and tailoring of sentences to offender needs. In practice, more than half the CPOs issued in 2012-13 (56%) had just one requirement, generally UPWOA. A further 31% had two requirements, normally Supervision plus one other¹⁴; 11% had three requirements, and 2% four or more. (The issue of CJSW staff attitudes towards multiple requirements is returned to in para 5.32 of Chapter 5, along with a discussion of the NOS Practice Guidance on their use.)
- 3.17 These figures demonstrate a fall in the proportion of CPOs issued with multiple requirements. In 2011-12, 43% of CPOs were issued with just one requirement; 32% had two requirements, 21% three, and 4% four or more. The average number of requirements per order fell from 1.82 in 2011-12 to 1.59 in 2012-13. Figures obtained separately from the Scottish Court Service (Scottish Government, 2013) give further weight to this by showing that a higher proportion of orders in 2011-12 were issued with multiple requirements than in the subsequent year.

Geographic variation in use of different CPO requirements

- 3.18 Use of the different requirements varied by local authority. As we have seen, the average across Scotland as a whole was 1.59 requirements per order, but this figure ranged from 1.33 in Stirling to over 2 in Shetland and Eilean Siar.
- 3.19 Tables A3.2 and A3.3 in Appendix 3 show that UPWOA was the most commonly imposed requirement in all local authorities, its use ranging from 66% of orders in Clackmannanshire to 90% in Aberdeen City and East Renfrewshire. The average length of an UPWOA Requirement imposed in 2012-13 (at either Level 1 or Level 2) was 124 hours, ranging from 93 hours in Angus to 148 hours in West Dunbartonshire. The average length was slightly shorter in 2011-12 (at 120 hours).
- 3.20 The use of the Supervision Requirement has fallen as a proportion of all CPOs in most local authorities, partly due to the associated fall in the proportion issued with a Conduct Requirement, but has risen in a small

¹⁴ The unit level data include a small number of orders with two requirements, neither of which are Supervision. It is not clear whether these are data entry errors or orders which do not meet the guidelines.

number of areas. Use of Supervision Requirements ranged from 40% of orders in East Renfrewshire to 74% in Eilean Siar. The average length of Supervision Requirements was 15.2 months, ranging from 12.0 months in Shetland and Perth & Kinross, to 19.6 months in Eilean Siar.

- 3.21 The use of Conduct Requirements also fell in all but a few small authorities following the appeal court judgement in June 2012. In Midlothian, West Lothian and North Ayrshire it was as low as 1% in 2012-13. In Shetland, however, 46% of orders had such a requirement imposed, suggesting that the impact of the appeal court judgement may have been less in this area than elsewhere.
- 3.22 Despite the relatively low use of DTRs or ATRs across Scotland as a whole, there were some pockets of greater use – especially in some of the smaller local authorities. The use of ATRs, for example, was most common in Eilean Siar (17% of all CPOs) and Perth & Kinross (15%), compared with just 2% of orders nationally. DTRs were highest in Perth & Kinross at 7%, compared with 1% nationally.
- 3.23 It is worth noting that there was a negative correlation¹⁵ between use of DTTOs and use of DTRs across authorities. In general, those authorities which made the most use of DTTOs (Edinburgh, Midlothian, East Lothian and Eilean Siar) made relatively little use of DTRs. The reverse was also true, with those authorities that made the most use of DTRs (Falkirk, Stirling and Perth & Kinross) making relatively little use of DTTOs.
- 3.24 Overall, the degree of variation in the use of specific requirements by local authority area is perhaps greater than might be expected on the basis of the nature of court business or population characteristics. It is likely, therefore, to signal that there is also a degree of local variation in interpretation and/or CJSW or sentencing practice.

Key characteristics of those issued with CPOs

- 3.25 The 15,857 CPOs issued in 2012-13 involved 13,880 individual offenders. Consequently, 12% of CPOs were issued to someone who had already been given a CPO during the same year.¹⁶
- 3.26 At an aggregate level, the profile of offenders was very similar in 2012-13 to that in 2011-12: 15% of CPOs were issued to women. And 41% were issued to people aged 16-25. However, as Table A3.4¹⁷ in Appendix 3 shows, the age and sex profiles of those issued with different CPO requirements were quite different.

¹⁵ There is a negative correlation between the percentage of CPOs in each local authority that include a DTR, and the percentage of social work orders that are DTTOs, with a correlation coefficient, $R = -0.34$

¹⁶ A comparison with 2011-12 would not be valid, due to the decrease in the use of legacy orders and the lack of data on individuals receiving both a CPO and a legacy order during the period.

¹⁷ Based on analysis of the unit level dataset.

- 3.27 Female offenders are relatively more likely than men to be issued with certain types of requirements and less likely to be issued with others. For instance, around 30% of all CPOs with a Residence Requirement, a Mental Health Treatment Requirement (MHTR), or a DTR were issued to women. The same was true, by contrast, of only 10% of those with a Programme Requirement, and 12% of those with an UPWOA Requirement. Young women were especially unlikely to be issued with either of these requirements.
- 3.28 More than half of CPOs with a Compensation Requirement were issued to someone aged between 16 and 25. By contrast, nearly three quarters of those with a MHTR, DTR or ATR were issued to people aged 26 or over.

Key points

- 3.29 By 2012-13, CPOs accounted for more than 80% of all social work orders imposed, increasing by roughly 5,600 in absolute terms over the previous year. There is no sign, however, that their introduction has led to a marked or immediate upturn in the total number of social work orders imposed.
- 3.30 Two of the nine requirements – UPWOA and Supervision – were used with far greater frequency than any other, as expected, given that the legislation states that all orders should include at least one of these. The dominance of UPWOA is especially noticeable and, if anything, became even more pronounced in 2012-13.
- 3.31 None of the remaining requirements was imposed in more than one in ten orders and, with the exception of Compensation, all were used relatively less frequently in 2012-13 than in the year before. While the sharp reduction in the use of the Conduct Requirement can be directly attributed to an appeal court ruling, the contraction in the use of some of the rehabilitative orders (especially DTRs and ATRs) needs to be more fully understood – and is discussed in Chapter 5 (para 5.6).
- 3.32 Multiple requirements are not the norm. Roughly half of all orders (56%) in 2012-13 involved a single requirement – usually UPWOA. This raises questions about the willingness of CJSW staff to recommend, and of Sheriffs to impose, multiple requirements and the implications for the expected tailored and flexible character of the order. These issues are returned to Chapter 5 (para 5.32).
- 3.33 There is wide variation in the use of different requirements across local authority areas. While this will reflect, to some extent, differences in the characteristics of these areas and the nature of the cases coming before the courts in each, it is also likely to signal a degree of local variation in interpretation and/or practice. The implications of this are returned to in the concluding chapter.
- 3.34 This variation is especially clear in relation to the use of DTTOs and DTRs. Although the legislation and practice guidance signal a relatively clear distinction between these two options, there is a negative correlation in their

use across local authorities, suggesting a more blurred interpretation on the ground. This specific issue is discussed in Chapter 5 (para 5.23).

- 3.35 Age and sex are key predictors of the type of CPO requirements imposed. Women – and young women in particular – were relatively less likely to receive an UPWOA Requirement, but more likely to receive a CPO with a DTR, MHTR or Residence Requirement . This may be as much to do with age as sex, as female offenders are typically older and older offenders, in general, were more likely to receive orders with a rehabilitative element.

4 USE OF THE UNPAID WORK OR OTHER ACTIVITY REQUIREMENT

- 4.1 In this chapter, we examine the implementation and use of what is by far the most frequently used of the CPO requirements: Unpaid Work or Other Activity (UPWOA). In many ways, this is the cornerstone of CPOs as a whole. Certainly in numerical terms, as we saw in Chapter 3 (para 3.11), its use dwarfs that of any other requirement. In 2012-13, for example, some 80% of CPOs were issued with an UPWOA Requirement, an increase on the already high figure of 76% in the previous year. The current use of the requirement is also markedly higher than that of its equivalent disposals under the previous sentencing arrangements.
- 4.2 The UPWOA Requirement is also central, however, because of the way in which it reflects many of the core themes of the reforms as a whole. It is through the two elements of the requirement – and, critically, the relationship between them – that it was hoped to deliver community penalties that are simultaneously tough, involve a degree of reparation or payback, and help to rehabilitate or reintegrate offenders. In practical terms, that has meant a focus on delivering work placements and other opportunities that are flexible and tailored to the needs of individual offenders; improving the speed with which placements are commenced and completed; and ensuring that such work is completed *‘in and for’* the local community.
- 4.3 The Unpaid Work (UPW) element of the requirement has two categories:
- A Level 1 requirement specifies a period of between 20 and 100 hours of unpaid work,
 - A Level 2 requirement specifies a period of between 101 and 300 hours of unpaid work.
- 4.4 While a Level 2 requirement offers a direct alternative to custody, Level 1 (unlike any of the other CPO requirements) need not be, and can be used for those who might otherwise have been fined or who have defaulted on payment of an existing fine. In this respect, the disposal is more widely available than in the past, though its actual form is very close to the type of unpaid work previously delivered under Community Service Orders.
- 4.5 The Other Activity (OA) element of the requirement is, however, new and has an explicitly rehabilitative or reintegrative focus. This allows offenders to:
- ‘...undertake other activities which are designed to address identified deficits in the individual’s lifestyle which may improve a variety of areas of their life.’*
(Scottish Government, 2011a, p87)
- 4.6 While there are upper limits to the use of other activity - it must not exceed 30% of the specified hours of the requirement or 30 hours, whichever is lower - there is no minimum number of OA hours and, in fact, some orders may consist solely of unpaid work. Importantly, however, the exact number of ‘other activity’ hours is not specified as part of the sentence itself but is

determined by the case manager or unpaid work case manager. In principle, this allows for considerable flexibility in terms of the relative balance of broadly punitive, reparative and rehabilitative elements of the requirement and for a close tailoring of the disposal to the needs of individual offenders.

- 4.7 In the sections that follow, we examine how the requirement has worked in practice, focusing in particular on the ability of local authorities to offer UPW provision that is relevant, flexible and appropriate; the speed with which placements have commenced and been completed; and the nature and extent of engagement with the local community. We then turn to the use of the OA element of the requirement and look, in particular, at how its use is evolving and the factors shaping that.
- 4.8 The chapter draws mainly on material from the qualitative interviews with CJSW and UPW staff and on the survey of CJSW managers, though it also makes reference to Scottish Government statistics (Scottish Government, 2014b) on speed of commencement of UPW placements.

Relevant, flexible and appropriate provision of UPW

- 4.9 The National Outcomes and Standards (NOS) Practice Guidance on CPOs suggests that orders with an unpaid work requirement “should provide punishment and challenge to the individual and ensure that he or she pays back to the community through their work” (Scottish Government, 2011a, p73). Therefore, for that to happen, it could be said that UPW provision needs to be relevant, flexible and appropriate. It also simply needs to be available at a volume that is consistent with the use being made of the disposal.

Type and availability of UPW placements

- 4.10 The way in which UPW placements in Scotland are delivered have not changed as a result of the introduction of CPOs: UPW is typically completed either in project groups, supervised by community payback work supervisors, or in individual placements, often based in local businesses or third sector settings. Nevertheless, the evaluation suggests that the balance between these elements may be shifting in response to the need for a greater volume of placements overall. Moreover, all four case study areas face ongoing difficulties in ensuring an adequate level and range of provision.
- 4.11 The numbers and types of unpaid work projects has increased (Scottish Government, 2014a). In all four case study areas, the nature of the opportunities for group placements was broadly similar. Project groups, for example, tended to involve activities such as painting and decorating; litter-picking and general clean-up tasks; environmental work in forests and schools; home removals for vulnerable social work service users; snow and ice clearance; and construction projects, such as bicycle paths. There was also broadly similar provision in terms of workshop placements, which allow offenders to learn new skills and provide a safer environment for those who cannot be placed directly in the community. Workshop placements typically

focused on the production of items such as benches, picnic tables, sheds, signs, planters and fencing. Workshops were also typically where so-called 'light work' take place – for those who are constrained in what they can do physically.

- 4.12 There was more variation in terms of the availability of female-only group placements. In one area, a women's group has been established to allow female offenders to learn new skills to produce goods for donation to residential establishments, charity shops, and premature baby units. In some other areas, however, no such provision existed and female offenders therefore had the choice of either joining a predominantly male work group or undertaking an individual placement.
- 4.13 There was also significant variation in the nature and availability of individual placements across the four case study areas. Typical settings for these included charity shops (where individuals can assist 'front of house' or prepare merchandise for sale e.g. cleaning, ironing), lunch clubs, work in the grounds of residential establishments, animal sanctuaries, etc. However, the number and range of potential host organisations is highly variable, and such placements were much less widely available in the smaller and more rural case study areas.
- 4.14 CJSW and UPW staff in the case study areas were keen to increase the number and range of individual placements, as these were felt to offer individuals greater flexibility to complete their hours, and to take some of the pressure off the work groups. Indeed, their partial success in increasing the number of placements may explain why concern, from CJSW and UPW staff, about overall ability to resource individual placements seemed to lessen slightly between the first round of case study fieldwork (in late 2013) and the second (in early summer 2014).
- 4.15 The availability of individual placements is, however, still somewhat unpredictable. In interviews carried out towards the end of 2013, it was clear that many individual placements were the result of ad hoc arrangements involving word of mouth and self-referral by community organisations. By the time of the second round of interviews, there was some evidence of a more coordinated approach. In one area, for example, UPW had been centralised and community consultation along with it. It was hoped that this would lead to improvements in community engagement. This issue of community consultation is returned to later in this chapter.
- 4.16 Regardless of how such placements originate, they often rely on an ongoing relationship between the UPW officer and the host local business/charity and so tend to be vulnerable to changes in staffing or circumstances at either end.
- “We had a really good placement in the local charity shop, but then the manager changed and the new manager wasn't keen.” (Interview 67, UPW staff)
- 4.17 Discussion at the validation event also highlighted that UPW teams are facing a degree of competition for projects and individual placements from a range of

different sources. For example, businesses and other large organisations send staff to volunteer in community projects (e.g. building play parks); the Job Centre is able to provide funded places in a range of settings, including charity shops, as part of a 'returning to work' programme; and the Scottish Prison Service has expanded its outreach programme for people leaving prison and, in at least one area, is now engaged in a group work project previously delivered by offenders completing UPW hours.

- 4.18 In some areas, these developments were believed to have reduced the scope for unpaid work placements as part of a CPO, in part because it was felt that some organisations would prefer to have members of the public volunteering for them rather than offenders.

Resourcing issues

- 4.19 As we saw in Chapter 3, the number of community penalties with an UPWOA Requirement has risen sharply as a result of the introduction of CPOs, which according to CJSW staff has placed considerable pressure on local authorities. In this context, the ability of CJSW and UPW staff to identify appropriate placements has been shaped by resource considerations, such as staff shortages and a lack of funding.

- 4.20 In terms of staffing, there are issues to do with both overall capacity and the number and balance of staff across different roles – for example, UPW supervisors who have responsibility for directly managing group work placements and UPW case managers who are responsible for (amongst other things) the effective planning, management and monitoring of the UPWOA Requirement.

“... the biggest problem of the [...] whole introduction of CPOs was that we didn't get the resources at the time to meet the demand. There's been an increase in the number of supervisors. There hasn't in the number of Community Service Officers [now known as UPW case manager], which has its issues in terms of being able to develop 'other activities', for example.”
(Interview 67, UPW staff)

- 4.21 In relation to funding, some of the case study areas had been able to draw on the Scottish Government's project initiation and sports facilities funds, the Scottish Government's proceeds of crime funds, and on other agencies to help fund projects. Others had accessed grants from bodies like 'Cashback for Communities', Environmental Trusts or the Big Lottery.

- 4.22 But, despite receiving proceeds of crime funding from the Scottish Government, some staff in other areas still had concerns about the budget for UPW and felt constrained in the placements they could offer. One case study area, for example, had been unable to use its workshop as budget constraints had meant it was not possible to recruit the staff qualified to run it. In another, there was little money to invest in developing OA, the other element of the UPWOA Requirement, because of the high running costs of basic workshop premises.

“...we actually have been very lucky with what our Council did, by giving us the building. [But] it's very difficult because we also have the running costs. [...] Basically, my budget goes on running the building...” (Interview 77, CJSW)

- 4.23 This participant believed that one option would be to self-fund, for example by selling the 'products' made in the workshops to fund training or develop OA – currently they are only allowed to charge for the materials. However, this social worker understood that national guidance meant that it was not feasible to make profits from unpaid work. The evaluation team has been unable to verify whether this is a genuine constraint.

“I'm not allowed to... I mean we produce some really really good things. We produce picnic tables, benches, really good painting, but I'm not allowed to make money off them. You know? If I could self-fund... but, you know, I have to only charge for the materials...” (Interview 77, CJSW)

Flexibility of UPW provision

- 4.24 There is evidence in all the case study areas from offenders and CJSW staff that offenders are provided with clear information about what is expected of them in their unpaid work (e.g. in relation to where and when they should attend). In Chapter 6 (para 6.29), the necessary limits of flexibility (and the consequences in terms of enforcement and breach) are discussed; here the focus is on the extent to which UPW provision can and should be tailored to the needs of individual offenders within those broad limits.

- 4.25 A degree of flexibility in the provision of UPW is necessary because of the nature of the client group, which contains many individuals who are not used to working, who have addiction issues, or whose lives tend to be chaotic. For example, UPW staff in the case study areas reported that most groups needed to be oversubscribed in order to balance the level of absences, but that they also had to be able to accommodate people turning up on different days due to unforeseen circumstances.

- 4.26 Most areas also offer a degree of flexibility around when offenders can complete their hours. For example, work groups take place during the day or at the weekend, and in some areas in the evening.

- 4.27 This is especially useful for individuals in paid employment or with childcare commitments as it allows them to fit their unpaid work hours around these. It also enables offenders to complete their hours more quickly by attending multiple sessions within a week.

“So you could be doing unpaid work during the day and then go to a group in the evening. Or, you could be working during the day and go to a group at night and go to unpaid work at the weekend. It's quite flexible.” (Interview 56, CJSW)

“Someone who's perhaps in full-time work will come and approach us and they'll say, 'Look, I've got a week's leave, can I come out every day and get a lot of hours out of the way as quickly as I can?', and that's, yeah, if we can cope with that, then we will. But if the groups are oversubscribed, that's when it's a problem for us in that you don't like turning people away.” (Interview 24, UPW staff)

- 4.28 According to CJSW and UPW staff, one of the constraints around flexibility relates to placement opportunities targeted specifically at women. At present these are generally less flexible in terms of the times and days that they run. For example, while one area offers a drop in on various days of the week, they do not have any women only evening or weekend options. This is perhaps not surprising given the relatively small number of women who receive CPOs in general (Scottish Government, 2014b).

“...the services for women have a drop in, and are on lots of different days of the week. ...they're not in the evenings or the weekends, so they're slightly less flexible in terms of the programme...” (Interview 56, CJSW)

Assessing suitability and matching of needs

- 4.29 For UPW to meet its objectives, it needs to be used appropriately. That means there needs to be effective assessment of individuals' suitability for any kind of UPW and a close matching of capabilities and needs to specific placements. Again, there is little here that is specific to CPOs – both processes have been necessary features of previous unpaid work regimes. Overall, the evaluation suggests that the process for assessing suitability and matching offender needs appears to be working well. Nevertheless, the expansion of UPW under CPOs brings new challenges, especially in terms of the volume and range of offenders that need to be catered for, and the type of background information available.
- 4.30 Offenders' overall suitability for UPW work is initially assessed at the CJSWR stage (and using LS/CMI), and then again after sentencing by the UPW case manager (or by the CJSW case manager if the order also includes a Supervision Requirement).
- 4.31 According to CJSW and UPW staff, before the post sentencing interview, the UPW case manager looks at the CJSW report (where one was required), reviews the individual's offending history, and runs a criminal record check to see if it flags any risks. Then, in the post sentencing meeting with the offender, the UPW case manager will go through the 'post sentence assessment interview' form which looks at employment status, receipt of benefits, childcare issues, and prior involvement with other parts of the social work department. This assessment is not as thorough as the assessment which takes place at the CJSWR stage but acts as a starting point for UPW staff to determine the offender's fitness to work, whether it is safe for them to work in the community and what type of placement they would be best suited to – for instance, whether an individual placement would be appropriate or not and what sort of 'other activity' would be useful/appropriate.

- 4.32 The UPW case manager would also discuss the UPWOA Requirement with the offender, tell them how it works, how often they are expected to attend (discuss what days would suit them) and if there are any health issues that would prevent them carrying out their unpaid work or any other issues that could prevent them working at certain times e.g. picking up methadone prescriptions. This is also an opportunity for them to have a chat with the offender, possibly discuss 'other activity' options and go over any worries or questions they might have.
- 4.33 Sometimes CJSW staff will determine that an offender is suitable for unpaid work, but not in their present state of mind. This might be due to mental health or addiction issues (which will be reflected in the report). The perception of CJSW staff and UPW officers is that Sheriffs are generally accepting of this. They note that in situations in which Sheriffs determine that the only appropriate sentencing option for an individual is either "prison or supervision and unpaid work", in order to avoid a custodial sentence, the UPW element may have to be deferred for a few weeks until the offender is in a more stable position.

Offenders with particular characteristics

- 4.34 CJSW and UPW staff identified a range of challenges in trying to match offenders with particular characteristics to the most appropriate placements. Some of these relate simply to constraints around the options available. For example, some offenders have particular skills which they are keen to use but can prove difficult to deploy. This can have a detrimental effect on their overall motivation to work.

"If you've got a carpenter that comes in as a service user, we might think, 'Oh great, we'll put him in the workshop and make wooden things', but the carpenter may come in on a Tuesday and we haven't got the workshop open. We actually need weeding to be done at the ...garden. So, you know, that's one of these things that just has to happen." (Interview 35, CJSW)

- 4.35 There are, of course, a range of other issues around the needs and capabilities of offenders. For example, CJSW staff reported difficulties in finding appropriate work for individuals whose English is limited. Language difficulties can present challenges, too, in terms of ensuring that offenders fully understand what is required of them (e.g. in terms of appointment times, locations, etc.).
- 4.36 There was also a view among UPW staff that, as a result of the reforms, they were more likely to encounter offenders with additional problems such as addiction issues. From the interviews, however, it was not clear why they felt this to have been the case.

"I certainly perceive an increase in people with problems... [so it is] unsurprising when [their problems] get in the way of [...] compliance." (Interview 24, UPW staff)

- 4.37 The OA element of the requirement is clearly relevant here as a potential means of supporting individuals to complete their UPW placements. In one case study area, for example, this has been used to set up – in conjunction with a third sector agency – a course for individuals (and in particular young offenders) to complete prior to their UPW placement, focused on any additional needs (such as substance misuse, mental health issues, homelessness or lack of coping skills) they have which might otherwise prevent successful completion of the order.
- 4.38 Finally, there is the challenge of managing risk, especially in relation to individuals convicted of sexual offences. CJSW staff reported that when deciding on an appropriate UPW placement, they have to balance the fact that the Sheriff (after making an assessment of risk) has chosen to leave such offenders in the community while ensuring that any risk is managed through appropriate supervision, either in the workshop or another set location. In this context, it should be noted that almost all registered sex offenders on a CPO would have a Supervision Requirement in addition to any UPWOA Requirement and that this would involve a risk management plan addressing more than just attendance at UPW.

“So you’ve got to say, ‘Well, he’s here, so he’s obviously safe enough to be in the community.’ We just manage it to see fit, and also just double check yourself. At the end o’ the day, at four o’clock, they’re going out the gates. They can do whatever they want. Get up to whatever they want. We only manage their safety and the safety o’ the public between 9 and 4pm, so you’ve just got to use a bit o’ common sense about how you allocate work.”
(Interview 36, UPW staff)

The availability of ‘light work’

- 4.39 While not a requirement, the NOS Practice Guidance on CPOs states, that consideration should be given, where numbers allow, to providing ‘light work’ parties for individuals whose health or other circumstances make that necessary, or providing individual work placements. (Scottish Government, 2011a).
- 4.40 Three of the case study areas had a ‘light work’ option – typically, this was workshop-based where individuals could be seated, targeted at people with poor physical health, or who were otherwise not fit enough to complete more strenuous work. In some locations, however, this was referred to as a ‘half day group’ in recognition of the fact that some offenders are not able to carry out a full day’s work, regardless of its physical demands, for other reasons – such as inability to concentrate for an extended period. Offenders participating in this group would generally complete two half days a week.
- 4.41 These options make it possible for those who might otherwise have been deemed unsuitable for unpaid work to carry out meaningful work in a more controlled environment and to split their work over multiple days where necessary.

“...there's some folk we've had with ADHD and you know that six and a half hours is not going to be something that they can retain their attention span for, but three hours is a lot more manageable. So ...while we'll always say we have to meet the needs of the service in terms of what we're delivering in terms of national standards - for me it's about, ...how can each bit of it all marry up so that you get the best possible experience for everyone.”
(Interview 67, UPW staff)

- 4.42 One of the case study areas had yet to implement a more formal 'light work' option and, as a result, staff felt limited in their ability to find appropriate placements for individuals with health limitations.

Issues relating to the use of Level 1 orders

- 4.43 In Chapter 7 (para 7.18), some of the positive aspects of Level 1 orders are discussed; here the focus is on the impact of Level 1 orders on the assessment of suitability for UPW. The evaluation suggests that Level 1 orders are posing particular challenges in relation to this, simply because they can be imposed without a CJSWR. The absence of a CJSWR was seen as potentially problematic by many of the CJSW staff interviewed as it can lead to offenders being given unsuitable placements, which have the potential to increase both the likelihood of breach and risk to the public.

- 4.44 Of course, the UPW team carry out a post-sentence assessment at which they will identify any barriers to the offender carrying out unpaid work and it is often at this stage, particularly with Level 1 orders, that it becomes clear if individuals are not fit for unpaid work. For example, in one case study area, it was reported that vulnerable adults on Adult Support and Protection were being given UPW because their fitness for work had not been assessed. Similarly, Level 1 orders have been given to individuals with serious alcohol or drug problems, requiring the order to be returned to court.

“The sort of, unknown quantities around these Level 1 orders where they haven't asked us for an opinion and we're getting people who sometimes we've never seen before. So we don't know about their background and their history and everything else. And then once we've assessed them, we're maybe having to start backtracking because they may not be fit to do the work. Nobody's provided that information to the court 'cause they've [not] been asked for it...” (Interview 76, CJSW)

“[...] one of the big issues for us with the Level 1 orders is we just simply don't know what people's issues are.” (Interview 67, UPW staff)

- 4.45 The lack of an accompanying report means not only that there is a lack of information about offender needs but also that risks may also potentially be missed. CJSW interviewees highlighted, for example, a small number of instances in which registered sex offenders were sentenced to Level 1 unpaid work for defaulting on a fine, for example, without their offending history being known to the local team.

- 4.46 Because this issue with Level 1 orders are now widely recognised by CJSW/UPW staff and Sheriffs in the case study areas, a variety of responses are emerging at a local level. In one case study area, for example, after CJSW staff raised the issue, Sheriffs have begun to seek relevant information about the offender in court - for example, asking the solicitor if the offender has any health issues or any other reason they may not be fit for unpaid work. While the results of this appear to be mixed – as offenders may not be willing to admit to some needs (particularly around substance misuse) in open court – it has had the effect of raising awareness among Sheriffs of some of the issues around Level 1 orders.
- 4.47 Another response to the lack of a CJSWR in the case of Level 1 orders has been to make greater use of ‘stand down’ reports. These are generally requested on the day of sentencing and involve a brief assessment of offender circumstances, needs and risks. Typically, this would involve a criminal records check and phoning around for information on the offender to assess whether they are suitable to undertake unpaid work. An oral report would then be given to the Sheriff later that day. There are of course time and cost implications associated with this approach, in order to carry out the assessment and in terms of the court’s time if sentence is to be deferred. However, these need to be set against the cost of bringing orders back to court at a later date because placements have been deemed unsuitable.

Offenders in receipt of Employment Support Allowance

- 4.48 According to the NOS Practice Guidance on CPOs, an individual who is entitled to Employment and Support Allowance (ESA), reflecting the fact that he or she is not fit for paid employment, would normally be deemed unsuitable for unpaid work and this would require to be reflected in the CJSWR. Where a CPO with a requirement of UPW is imposed despite an individual being in receipt of ESA – as may happen in the case of a Level 1 order because of the absence of a CJSWR – the guidance indicates that:

‘[I]t will be the responsibility of the unpaid work case manager to evaluate whether there is any unpaid work the individual can carry out which would fulfil the purposes set out in section 22.4 above. If the unpaid work case manager concludes that there is not, he or she should apply to the court for variation, revocation or discharge of the order, as appropriate, on the basis that the order as it stands is unworkable.’

(Scottish Government, 2011a, p75)

- 4.49 Two main issues were identified by staff in the case study areas in relation to this. The first was the need to try to check with the GP of an offender receiving ESA whether the individual is actually fit for work or not – a task that was perceived to make the whole assessment process more complicated. A second issue relates to the requirement for people in receipt of ESA to be ‘available for work’ while carrying out their UPW hours. There was a perception among some CJSW staff (which may not be rooted in reality) that UPW could potentially negatively impact on this and jeopardise an individual’s benefits.

“DWP are getting more and more difficult with people and [offenders have] got to be careful they don’t end up getting sanctioned. So I think we just have to be very careful around that area.” (Interview 55, CJSW)

Swift justice?: Speed of commencement and completion of UPW

‘For CPOs to have credibility with the wider public and, in particular, the victims of the offence and their supporters, who may be in court to hear sentence being passed, it is important that justice be seen to be carried out swiftly.’ (Scottish Government, 2011a, p.73)

4.50 As seen in this extract from the NOS Practice Guidance on CPOs, the need for immediacy has been a central theme in the introduction of CPOs, signalling that community penalties are not a soft option and helping to build credibility in the eyes of the public and the judiciary. That is partly about the time over which such penalties are served – and, as we will see below, that is intended to be significantly less for UPW placements than under the previous sentencing regime. But speed of *commencement* holds a particular symbolic value in this respect and is the main focus in the following discussion.

Measures and perceptions of commencement speed

4.51 The NOS Practice Guidance on CPOs establishes a number of principles of best practice in relation to speed of commencement:

- The **first direct contact** with the offender [and a member of the CJSW/UPW team] should take place on the same day the order is imposed, or the next working day.
- **Inductions** should take place within 5 working days of the imposition of the CPO.
- Unpaid work placements should **commence** as soon as possible after the CPO has been imposed, ideally on the same working day or within 24 hours and in any event should begin within seven working days of the imposition of the CPO.

4.52 Across interviews with Sheriffs, CJSW and UPW staff in the four case study areas, there was a widespread perception that UPW placements are being commenced faster than under the old Community Service Order (CSO) regime. A similar picture was evident from the national survey of CJSW managers, 19 (out of 30) of whom felt that the introduction of CPOs had led to faster commencement. This also drew positive comment from Sheriffs.

“I know that people are started on orders almost immediately now, which is excellent.” (Interview 6, Sheriff)

4.53 But despite this perception of improvement, not all UPW orders are meeting the intended timescales for first contact, induction or commencement. According to the national statistics for 2012-13 (Scottish Government, 2014b), in the majority (79%) of CPOs, the first direct contact took place within one

working day of the order being imposed. While this is a relatively high figure, it still means that around a fifth of CPOs (21%) were not meeting the timescale for first contact.

- 4.54 According to the national statistical bulletin (Scottish Government, 2014b), about a third of delays in first direct contact were due to offenders missing their appointment, while the unavailability of a social worker or other non-client-related reason accounted for a further third. Other client-based reasons included being subject to another sentence, employment or illness.
- 4.55 The first induction/case management meeting took place within five working days in 83% of CPOs while roughly a tenth (9%) took between six and ten working days (Scottish Government, 2014b). Therefore, 17% of CPOs with an UPWOA Requirement were not meeting this timescale.
- 4.56 A wide range of reasons was cited for delays for the induction/case management meeting: about 15% of cases involved the offender being subject to another sentence, employment or illness, another 15% were due to delays in first making contact or staff availability, and about half the cases involved other client-based reasons.
- 4.57 In terms of actual commencement, in 2012-13, just over 70% of unpaid work placements began within the seven day timescale; a further 18% began within three weeks, while four per cent took more than two months to commence. It was reported that just over a two-thirds of cases (68%) were due to 'client-based reasons' including the offender not turning up on the first day of the placement (Scottish Government, 2014b).
- 4.58 Findings from the qualitative interviews and survey of CJSW managers reinforce this picture. Twenty-one (out of 29) CJSW managers, for example, estimated that a large majority or almost all (71-100%) UPW placements in their local authority were being commenced within seven days of the order being imposed; and ten (out of 30) estimated that a similar proportion of UPW placements were being started on the same working day or within 24 hours of the CPO being imposed.

"...it works very very well, so we're meeting [...] our statutory time limits that it's got to be done within sort of seven days or 24 hours, so we're meeting the majority of them. It's working very well." (Interview 36, UPW staff)

"...nine times out of ten, unless there's a particular issues with the client themselves, then UPW is commencing within seven days." (Interview 14, CJSW)

- 4.59 However, it is also clear from the survey of CJSW managers that improvements in the speed of commencement were not necessarily evident across the country as a whole. CJSW managers from ten local authorities identified no difference in the speed of commencement (compared to the situation prior to the reforms), although this was generally seen as reflecting an existing emphasis on speed rather than a failure to adapt.

“Well, prior to CPOs, there was a couple of years' period where there was heavy pressure put on starting community service ...quickly. So, I think there was already [a] spotlight on getting things started before CPOs came in.”
(Interview 35, CJSW)

- 4.60 Overall, then, the picture seems positive in terms of speed of commencement. However, there are two slight caveats worth noting. The first is a suggestion that the requirement for speedy commencement has shaped the type of UPW on offer - in order to facilitate commencement within the first 24 hours, for example, most case study areas organise placements that almost anyone can do on the first day, such as litter picking. The second is that it is not clear that momentum is always maintained after the first day's work. In at least one area, it was suggested that there could then be a delay – sometimes of 7-10 days – in finding a more suitable placement for someone to complete the rest of their order:

“They tick that box but sometimes it could be ten days later before they're due back out again. [...] If it's designed to show, you know, we mean business here, we're a serious court order, you know, if you were sentenced to custody you go the same day, if you're sentenced to Community Payback it's the same day. I understand that but I don't understand why then we'll get this gap.” (Interview 4, UPW staff)

Factors affecting commencement speed

- 4.61 Interviews with CJSW and UPW staff in the four case study areas suggested a number of broad factors that are affecting their ability to meet the deadlines for speed of commencement.

Offender-based factors

- 4.62 First, there are those that relate to the characteristics or behaviour of offenders. For example, one of the most common barriers to commencement within either the 24 hour or seven day timescale is simply that offenders fail to turn up for UPW. Reasons for this include, offenders claiming not to be fit for UPW following sentencing (despite presenting as fit at the CJSWR interview) or offenders not turning up when expected. It was also felt that some offenders struggled with the speed and structure of the order, with health issues, or to combine UPW with full time employment. It was also acknowledged by CJSW and UPW staff that many individuals on UPWOA Requirements lead chaotic lives, have drug or alcohol problems, or unstable accommodation and that immediate adjustment to a highly structured routine is unrealistic.

“We have always acknowledged that if we don't accept people on community service, who had alcohol or drug problems, who had poor mental health, who had unstable accommodation, we wouldn't be doing anything, we'd be sitting twiddling our thumbs, because that is the nature of the presenting problems.”
(Interview 55, CJSW)

“You're dealing with human beings who might say in court they'll do anything but walk out and not do it.” (Interview 35, CJSW)

- 4.63 The issue of an offender's employment status being the reason for not beginning an UPW placement can be difficult to manage, as employment is often highlighted in the CJSWR as a reason for keeping the individual in the community in the first place. Consequently, CJSW staff indicated that they will sometimes allow a degree of leeway at the beginning of a placement, so long as they see a clear demonstration of commitment in subsequent weeks.

“Some of the clients always have a good reason – quite rightly so – not to attend, and you've just got to accept it. But that's OK. That'll be reinforced by their attendance the following week, and, if it's not, you then have to start a little bit of enforcement by saying, 'Well, I've given you leeway, and now you've not attended, and you're using the same reasons. You either do it, or I take it back to court and say to the Sheriff you've accepted the order but you're not flexible enough to attend'.” (Interview 36, UPW staff)

- 4.64 Attempts to ensure the prompt commencement of unpaid work can also sometimes be complicated by an offender already being on a CPO with an UPWOA Requirement. This means that they cannot start the hours on the new CPO until they have completed their existing one.

“...some of the other things that can get in the way are you might get 150 hours' unpaid work on a Thursday but you've just started 120 hours' unpaid work the week before, so we can't start that 150 hours until they finished that 120 hours. So, you know, it might be weeks away before they actually start that order but they might already be on another one.” (Interview 35, CJSW)

Process and communication issues

- 4.65 Strong relationships and communication between CJSW staff and the court appear to aid in the notification process from the court in relation to UPW, and where these are less good that invariably takes longer.
- 4.66 Many of the UPW/CJSW staff interviewed felt that commencement was faster for CPOs than for the previous community disposals because of the fact that the court should now issue the order on the day of sentencing. If a member of the court-based CJSW team is unable to attend a specific hearing, court staff will let them know that a CPO has been issued and, where possible, direct the offender to the CJSW team before they leave court. It was suggested that this did not happen before the introduction of CPOs. In one of the smaller case study areas, there was also evidence that the solicitors too, would encourage their clients to speak to the court-based social work team before leaving court.
- 4.67 In another case study area, there was variation by geographic area. In a relatively self-contained area with a small court, communication was good and orders were served on the same day as being made. However, in another, more rural part of the local authority, where the relationship between CJSW

staff and the court was less direct, the time between the court issuing and CJSW becoming aware of an order could be greater.

“It can take three days here before we get the orders [from the court]”
(Interview 77, CJSW)

- 4.68 Although there were isolated suggestions from CJSW staff of delays at the court end, court staff suggested that any such delays resulted from a conflict in priorities and deadlines – in other words, the need to first ensure that they meet their own performance indicators.
- 4.69 There is also some evidence that different methods of communication have an impact on speed of commencement. Most communication *within* local authorities is electronic (although some forms are still completed initially on paper), involving either secure email or access to a central database. As a result, placements can usually be allocated swiftly. Orders from courts in other local authorities, however, are generally sent by post and can take several days to arrive.

“In [name of case study area], we get a dump from the Scottish Court Service into our secure email box. Other places, it might be by snail mail. If they're coming from England or Wales, it will definitely be by snail mail and coming from other courts into [name of case study area], there's likely to be a delay. So, the ones coming from [name of case study area], you know, you're pretty sure that, for the most part, for the majority, you should get them started within the time. Other ones, you know, it's gonna be more hit and miss.”
(Interview 35, CJSW)

- 4.70 Across all four case study areas, CJSW staff were keen to see *all* communication relating to UPW placements in electronic form, as it was felt that this would speed up the transmission process both within and between local authorities. Currently, staff are deploying a range of workarounds to address delays in the system. One CJSW Manager, for example, encouraged their team to be pro-active and phone other local authorities for details of relevant court disposals on the day, rather than wait for details to arrive by post.
- 4.71 Internal discussion and communication within the CJSW team – for example, supervision meetings – was considered useful as means of reviewing cases and exploring the reasons why some of the timescales may not have been met.
- 4.72 Wider process factors that were believed to aid the speedy commencement of unpaid work included notifying offenders at the CJSWR stage where and when they should attend should they receive a sentence involving UPW. CJSW staff in some areas were also warning offenders in advance that, if they receive an UPWOA Requirement, they will be expected to work on that day.

“And as part of the letter that we have for them, to court, it confirms that they are aware that, should they be sentenced to unpaid work, they have to go out

- they've consented to going out that afternoon. 'Cause there was... probably word on the street, 'Oh, if you say this, they'll let you go away,' and all of a sudden emergency dental appointments were through the roof." (Interview 13, CJSW)

- 4.73 Increased CJSW/UPW staff presence in court at the point of sentence was also felt to increase the likelihood that a post sentence interview or first appointment with court-based CJSW staff would take place on the same day.

"They get the order printed out by the clerk, sign it and then they're sent down to their main office that same day. They are then signed up by an officer who will just go over things with them. For example: are you still living at this address? Have you got a mobile phone number? Have you got any disabilities? Are you working? What days could you work? They will then be told to come in the next day for their health and safety induction." (Interview 35, CJSW)

Structural and organisational factors

- 4.74 A number of structural and organisational factors also appeared to have influenced whether best practice timescales were being met. These included the centralisation of UPW placements and the proximity of UPW to the court, and simplifying the first UPW placement so that (almost) anyone could complete it on the first day.

- 4.75 In three of the four case study areas, the administration of UPW placements had been centralised following the introduction of CPOs. This generally meant that all those with an UPWOA Requirement reported to the same location for induction, often enabling them to start their placement on the first day (or within 24 hours) too. This was widely viewed as an improvement on previous ways of working:

"Under the old system they struggled to meet the Key Performance Indicators in terms of getting people interviewed and started on placement within seven days, no matter how they tried it" (Interview 2, UPW staff)

- 4.76 Alongside the centralisation of unpaid work in at least two of the case study areas, a single manager or team leader had been appointed with an overview of unpaid work as a whole. It was felt in some cases that this had led to a clearer focus on unpaid work and to a range of service improvements, including speedier access to placements.
- 4.77 While the fourth case study area was looking into centralisation of its UPW team, at the time of fieldwork unpaid work inductions were still taking place in a separate location, thus extending the time taken to actually start the order.
- 4.78 The location of UPW offices in relation to the court is also important. Having unpaid work within walking distance of the court was perceived to increase the likelihood of offenders going there after being sentenced at court.

“It is very useful having a social work office based [close to] the court whereas other councils don't have that luxury.” (Interview 2, UPW staff)

- 4.79 In order to facilitate speedy commencement, most areas had also moved towards provision of initial placements that (almost) anyone could undertake, such as litter-picking.

Speed of completion

- 4.80 A significant difference between a CPO with an UPWOA Requirement and the old CSO (Community Service Orders) is the amount of time offenders are given to complete their hours. With a CSO, the average timescale was 12 months, regardless of the number of hours involved, while offenders serving CPOs now have three months to complete a Level 1 order (20-100 hours) and six months to complete a Level 2 order (101-300 hours), unless the court determines otherwise. There were mixed views about the feasibility of completing UPW hours within the new timescales.

- 4.81 Most CJSW and UPW staff were initially unhappy with the shorter timescales, and particularly those for Level 1 orders because of the potential difficulty of managing someone through 100 hours in three months. This was viewed as challenging both in relation to offenders who are unemployed and may lack the structure and personal discipline to attend frequent appointments, and those in work and so have limited availability each week. It was also felt that the margins for error were slight, and that a single missed appointment could sometimes leave offenders struggling to complete on time.

“If someone gets 100 hours [UPWOA], and the Sheriff only gives them three months [to complete these hours], if [the offender is] off once, that's it, you know? [...] we're continually over the time, because somebody's ill or something...” (Interview 77, CJSW)

“A three month order rather than 12 months. [...] if it's 100 hours, that can be quite a task for them...particularly if they're on unpaid work and if they're in full-time work...and they're only available a limited amount of time each week.” (Interview 24, UPW staff)

- 4.82 Since then, views seem to have diverged. While some CJSW and UPW staff still believe the timescale to be too short, others feel that it can work and see some of the benefits of this in terms of maintaining the link between the conviction and the punishment and in providing staff with a greater focus on ensuring that hours are completed.

- 4.83 It was also felt that Sheriffs increasingly appreciate the difficulty in giving 100 hours to someone only available at the weekends – in part because of the number of reviews they have received asking for extensions – and so are adjusting the timescale or number of hours as appropriate at sentencing.

“[Sheriffs will] say, ‘You'll get 100 hours, or 90 hours, and you'll... do it in four months’ or, they might reflect the gravity of an offence by saying, you know,

‘You’ve got four months to do it, but you’re getting 120 hours’, so they ...impose something a little bit stricter, but it works quite well.” (Interview 36, UPW staff)

- 4.84 The timescales for Level 2 orders were generally seen as less problematic. Although CJSW and UPW staff felt that anything over 200 hours in six months could be challenging – particularly if offenders were working full time, had family commitments or could only undertake light work – the actual number of hours involved in most Level 2 orders was felt to be manageable over the longer timescale.

“Again that’s a big change for us but we’re always aware of timescales, we monitor timescales and try and find placements that can accommodate that and that’s a big challenge. But one I think that we all take on.” (Interview 4, UPW staff)

- 4.85 In relation to both Level 1 and Level 2 orders, CJSW staff suggested that identifying an appropriate placement, addressing particular needs for flexibility and applying for extensions when appropriate were all important factors, but that, ultimately, outcomes are also strongly dependent on the motivation of the offender.

In and for the community?: UPW, community consultation and community payback

- 4.86 As we highlighted in the introduction, the notion of community is core to the reforms and to the very notion of payback. This finds perhaps its clearest potential expression in the area of unpaid work, with the suggestion that such work should be carried out *in* and *for* the community.
- 4.87 There is little doubt that much UPW in all four case study areas was being carried out in community settings. As already highlighted, this included group work projects to clean up the local area, building work and renovation. Most individual placements are also with local community groups and charities. As such, offenders carrying out UPW could undoubtedly be said to be ‘paying something back’ to the communities in which such work is carried out. What is much less clear is the extent to which members of the public are aware of this. There were some isolated examples of improvement or building work being labelled as having been completed by individuals carrying out unpaid work orders. In general, however, there were few examples of such work being well publicised. In this context, one factor may be the willingness and ability of organisations hosting placements – and, in particular, of the local managers of those organisations – to highlight those to the wider public.
- 4.88 The introduction of CPOs has, of course, placed a requirement on local authorities to consult with stakeholders and engage with the community, especially in finding suitable UPW placements. In the survey of CJSW managers, almost all indicated that their authority had carried out some form of community consultation – most frequently with Community Councils,

Community Planning/Safety Partnerships (30 out of 30); or voluntary organisations (28 out of 29). Typically, this was aimed at providing information about CPOs, gathering views about community penalties and building partnerships for UPW placements. The Scottish Government Summary of Local Authority Annual Reports 2012-13 also listed a wide variety of community consultation that had been undertaken. Some of the reported benefits of this consultation included raising awareness of UPW and generated some suggestions for UPW projects (Scottish Government, 2014a).

- 4.89 However, in the four case study areas – and, elsewhere in Scotland, according to feedback at the validation event – such consultation has been somewhat fragmented and ad hoc in character. There was little sense of a strategic approach to community consultation and, indeed, CJSW managers highlighted the resource implications of addressing the issue more systematically.

“If you're going to go to community groups then that actually does take time if you're doing that properly and it's not like lip service to it. So there's still that part of it I think needs to be developed.” (Interview 67, UPW staff)

Flexibility and inconsistency: The introduction and evolution of the ‘other activity’ element

- 4.90 As noted earlier, one of the distinctive features of CPOs by comparison with earlier penalties involving unpaid work is the inclusion of the OA element. As a result, and perhaps not surprisingly, this has taken longer to bed down. While there is increasing provision for – and understanding and use of – OA, this is inconsistent and still evolving. In this section, we examine to what extent and how OA has been used and some of the factors influencing that; and we ask whether the benefits associated with the flexibility of OA are being outweighed by inconsistencies in its implementation.

The use of OA

- 4.91 Findings from the survey of CJSW managers indicated that, at the time the survey was conducted in Autumn 2013, OA in most local authorities was still in its early stages. While managers from 16 local authorities (out of 27 from whom we had a reply) felt that the majority of offenders (51% and over) were assessed as being suitable to undertake OA, 22 (out of 27) indicated that only a minority (less than 50%) were actually undertaking some form of OA in their area. Low uptake of OA was also signalled as a concern in the first year of local authority annual reports on CPOs (from 2011-2012). More recently, however, there have been signs that OA provision is developing and increasing in most areas.
- 4.92 Most initial OA activity across the four case study areas involved interventions aimed at improving employability and life skills, and was often provided via local council services or third sector organisations. Some of this allowed offenders to acquire certification in new skills (e.g. Construction Skills

Certificate). In addition to this there was evidence, to a greater or lesser extent, that case study areas had been developing or experimenting with different types of programmes.

4.93 Area 2, for example, took its employability training a step further by offering offenders the opportunity to attain Scottish Qualification Authority (SQA) units and an employability award. Some of these individuals were then taken on in full time work with the Council, or secured other training and employment opportunities, after completing their sentence.

4.94 Another area (Area 1) launched an arts-based programme as a means for offenders to communicate their stories and to assist in their recovery.

“...an organisation came in and were doing a media education programme and they had I think about six or seven offenders working on this programme and they were producing small films. It was fabulous. ...I went to see what they produced and they were buzzing. The service users were buzzing with what they had managed to do. The confidence that it had given them.”
(Interview 4, UPW staff)

4.95 In case study area 4, an OA programme was developed around a garden at the workshop and involved offenders learning to grow vegetables, and preparing meals using those with the aim of developing employability and life skills.

4.96 There is also evidence of OA being used to provide more tailored services for women. Each of the case study areas had some form of programme tailored towards women, aimed at identifying and addressing issues related to offending behaviour, often through the development of skills such as cooking, computer skills, plastering, painting and decorating. Some of these services were being delivered in-house, while others were delivered in conjunction with third sector organisations.

4.97 Following a slow start, then, the use of OA appears to be gaining traction, and there was evidence of CJSW staff seeing its potential to deliver more than straightforward skills and employability training.

“I think it's a fantastic idea – the ‘other activity’ side of this [...] The majority of our clients have got other issues. They've got addiction problems, they've got lots of like social problems, and I thought the other activities bit... [...] training and skills, ...didn't go far enough. [...] It's taken us the whole time now to get to the point where we've got our heads round the other activities.” (Interview 77, CJSW)

“At first, I would say, it wasn't really being used, you know, when I first started in 2011, bearing in mind it was only eight months down the line since [...] since the whole changeover. Now it's being used quite well.” (Interview 14, CJSW)

4.98 Significantly, the case study area in which the use of OA was most developed was one which was already delivering similar activities under the old CSOs

(with agreement from the local judiciary). This meant that when CPOs with UPWOA were introduced, the area effectively had a head start, and – shortly after the reforms were introduced – was able to establish a service level agreement between the council’s employment and training unit (ETU), criminal justice service and a national charity to deliver supported learning for the Council’s employability award.

“...our view was if you educate people and get them a job, hopefully it’ll stop them reoffending... It’s better for the community in the long run. And that has then snowballed. Other people took it on, and then the CPOs got hold of it, and it’s grown arms and legs.” (Interview 36, UPW staff)

Factors shaping the implementation and evolution of OA to date

4.99 Various factors – a lack of clear local guidance, inconsistent interpretation and implementation of OA by CJSW and UPW staff, further influences on practice such as an overlap between Supervision and OA or offender interest in undertaking OA – seem to have shaped the implementation and evolution of OA since the introduction of the reforms in early 2011. In this section we discuss each of these factors in more detail and also explore how OA is now developing.

Lack of clear local guidance

4.100 A lack of local guidance meant that some CJSW and UPW staff lacked a clear understanding about what OA consisted of or how it might be used. Although the NOS Practice Guidance on CPOs provides information about the maximum number of hours that can be done under OA, as well as some examples of the different possibilities for OA, it is relatively broad-brush and certainly not designed to be exhaustive. As a result, it is left very much to the case manager or UPW case manager to make decisions about the amount and type of OA an offender does.

4.101 In the survey of CJSW managers, 17 (out of 30) participants did not consider there to be any guidance available to CJSW staff in their area on assessing offenders’ suitability for OA. The remaining 13 indicated that such guidance did exist in their area - typically involving staff being given training or guidance on how to assess offender suitability; guidelines drawn up by services and shared by teams.

‘Staff have received training and guidance with regard to assessment of attendees suitability.’ (Open-ended response to survey of CJSW managers)

4.102 While it was not felt that another national guidance document from the government was required, there was a sense from interviews that local authorities needed more time to develop their own local practice procedures around the implementation and delivery of OA.

“We've got guidance on everything and my heart would sink if we got another big guidance document on 'other activity'. I think it's something we've got to work on ourselves and I mean we have got it as part of the work plan for the unpaid work manager this year to develop that. So I'd like to see how that turns out first.” (Interview 55, CJSW)

Interpretation and implementation of OA

4.103 There is a great deal of flexibility in terms of how OA is used, meaning that it can be closely tailored to individual need. However, this flexibility has also meant that it has been interpreted and implemented inconsistently by CJSW and UPW staff in the case study areas.

4.104 Whether or not an offender received OA at all appeared to be partly dependent on how their case manager understood the UPWOA Requirement. For example, as one CJSW interviewee noted:

“Certain workers will credit engagement of addiction work, others won't.”
(Interview 2, UPW staff)

4.105 There was also a broader lack of consistency in terms of understanding of how and when OA should be used. It was suggested that some CJSW staff viewed OA as an add-on that could be earned once offenders have engaged in some reparative work and shown a commitment to their UPW placement. Those offenders with a poor attendance record, performance or attitude would not, therefore, be granted the same opportunities. Other CJSW staff appeared to view OA as a way to 'get the hours down' (i.e. as a way to reduce the number of UPW hours the offender would be required to do); and/or as something offenders were entitled to.

4.106 Those CJSW staff who viewed OA as something that could be earned felt that the attitude of other CJSW who saw OA as something offenders were entitled to could lead to getting the balance wrong between the restorative and rehabilitative elements of the requirement.

“I think the way it is just now, people can look for ways to try and grab 30 hours out of the system. I'm more of a believer that people need to be doing the unpaid work part first, and [...] providing reparation to the local community, and then if there's 'other activity' they can do based on their efforts at unpaid work, they can do it. Because it has backfired. We've had people turning up at [name of local college], learning, getting the qualifications, getting jobs, but their unpaid work has been really sticky.”
(Interview 36, UPW staff)

4.107 CJSW staff reported that for joint orders there was potential crossover between OA and work carried out under the Supervision Requirement and a lack of clarity about what should count towards an individual's OA hours. For example, it might be agreed in the supervision action plan that an offender would attend drug counselling. One interviewee argued that this should count toward OA since it is something that the person would not be doing otherwise

– “it’s still a fine on their time”. However, another view was that, in a joint order with UPWOA and Supervision, little use is made of OA since similar work could be carried out under the Supervision Requirement (and that OA was therefore more applicable to those on Level 1 orders where there is no Supervision Requirement). In this context, it was suggested by one CJSW interviewee that the NOS Practice Guidance on CPOs could be clearer about the types of work that can or should be carried out under OA or Supervision.

- 4.108 OA was also seen as a potential means of motivating offenders to attend services they might not otherwise have agreed to (e.g. alcohol counselling) due to the impact it would have on their UPW hours.

“I think if it wasn't for the fact that he knows that that's whittling down his hours of unpaid work, he wouldn't go otherwise. With this particular person, I doubt if he would go if I just made it part of the supervision action plan, there'd be an excuse or two. I think it's beneficial for him.” (Interview 14, CJSW)

Influences on practice

- 4.109 CJSW staff emphasised that the OA element is not necessarily suitable for all offenders and that individual motivation is key. Some offenders are just not interested in doing any OA but ‘just want to put their head down’ and get through their hours.

“Not everybody wants to do other activities. Some people just want to do their hours and that's fine and, and for some people, it's a challenge just getting them to do the [UPW] hours.” (Interview 35, CJSW)

- 4.110 It was also suggested that a strong relationship between an offender and their UPW supervisor could offer many of the same benefits as OA.

“Not everybody going through the order wants to do another activity. Although we do put it to them, they go, ‘No. I'm no interested. I just want to go out in the vans’. Some o' the supervisors build up cracking relationships with the guys, and they can do more to a person's self-esteem and wellbeing than any course that we send them on.” (Interview 36, UPW staff)

- 4.111 CJSW staff noted, however, that offenders who may have initially resisted the idea of OA are sometimes more open to it at a later date. This of course relies on staff not giving up at the first try, and instead giving the offender a little time to think about it and follow up at a later point. There was a view that offenders were more receptive to OA at particular points during the order than others – and that speaking to someone about OA after they have done a few UPW shifts could be a good time:

- 4.112 “...what we're finding is that when someone comes out of court they're relieved to be out, they just want to get on with it and get home ...and so ‘other activity’ is not best targeted at that stage. [...] However, what we're finding is that it's probably more reliable once someone's been out on a few shifts or days with unpaid work and ... they've been out in the rain all day - a

potentially ...less appealing day of unpaid work - then working to consider 'other activities'." (Interview 2, UPW staff)

- 4.113 It was also acknowledged that offenders are more likely to be receptive to OA if they can see the benefit to themselves, that it can be a way to improve their current situation by, for example, finding a job. CJSW and UPW staff reported that there was a degree of resistance from offenders to 'off the peg' activities such as adult literacy or brief interventions – often because they failed to see its relevance to their own situation and preferred straightforward work hours, which could be completed more quickly.

"We [do] get people at lunchtime saying, 'Oh, just remembered about a doctor's appointment', and they tail off because they don't want to do it, and that's probably the biggest challenge is getting people to do it. [...] they're like, 'Oh, didn't get the letter', not turning up. So, there are major challenges with the other activity." (Interview 85, UPW staff)

- 4.114 Other programmes that offenders might be motivated to attend were only run at certain times in the year. This meant that participation was limited to those whose sentence happened to fall within the times it ran.

"So we were running [an] outdoor centre which provided a six week pursuits [course], it's something that has supported people in problem solving skills. However that [only] ran five times over a year so it's just a bit of when did we finish the order? When did they come on the order? How quickly can we get them onto a programme?" (Interview 2, UPW staff)

The way forward: How OA is developing

- 4.115 Provision of OA is clearly still evolving. In case study area 3, for example, the unpaid work team is in the process of developing a pathway into OA as part of the ongoing contact with every offender (while recognising that it will not be the choice for everyone). They also acknowledged that despite improvement in this area, there was still a lot more they could be doing.

"we have done, a few things, in relation to... [offenders] being referred to places that might support the recovery from substance misuse, some training in employment opportunities. But we've got a long, long way to go on the other activity front." (Interview 55, CJSW)

- 4.116 Case study area 4 are currently in the process of planning and developing new modules for offenders that will enable them to get their ECDL (European Computer Driving Licence, or their CSCS (Construction Skill Certification Scheme) card required for working on construction sites alongside developing an integrated literacy programme.
- 4.117 Case study area 2 are in the process of developing, in collaboration with a third sector partner, a women's mentoring programme – this would involve training women on UPWOA as mentors who will then provide mentoring and support to other women who have been sentenced to UPWOA.

4.118 According to the NOS Practice Guidance on CPOs, OA must not exceed 30% of the specified hours of the requirement or 30 hours, whichever is lower (Scottish Government, 2011a). One case study area, which already had a wide range of OA options, suggested that having more flexibility over the proportion of OA hours would be useful. CJSW staff in this area reported that getting offenders into formal skills training at present can be a challenge because most full SQA units are about 30 hours. By the time an offender has been through their Health and Safety induction and, for example, completed a substance misuse module there is not enough time for them to do a full unit.

“...an SQA unit in working safely with others or communication is 30 or 40 hours, it would be helpful if we had the flexibility to allow somebody to do it within our setup. Because what we would really want is for them to be engaged in a learning environment...” (Interview 35, CJSW)

Key points

4.119 The UPWOA Requirement is fundamental to the successful implementation of CPOs – not only because it is used with far greater frequency than any other requirement, but because it speaks to many of the core elements of the reforms as a whole. Through the combination of unpaid work – a disposal long familiar from Community Service Orders – with the new ‘other activity’ option, the requirement seeks to balance elements of punishment, reparation and rehabilitation.

4.120 For it to be judged to have done so effectively, the evaluation was looking for evidence of relevant, flexible and appropriate provision of UPW placements; improvements in the speed of commencement and completion; and a visible and credible connection with the local community.

4.121 There appears to be a reasonably wide range of UPW placement types available. All four case study areas were making similar use of group placements (in the form of both workshop and project groups). There was greater variation, however, in the availability and use of female only and individual placements.

4.122 Although CJSW staff in most areas indicated that they had struggled to cope with the initial increase in UPW placements following the introduction of the reforms, the situation now seems to have eased somewhat – in part, because of an expansion in the availability or use of individual placements. However, the ‘supply’ of such placements remains somewhat patchy and ad hoc.

4.123 Key challenges in terms of overall provision included competition for individual placement opportunities from other sources (such as large employers offering their staff the opportunity to volunteer); variation in the number and range of local organisations potentially able to offer placements; and funding constraints limiting the use of workshops or other resources.

4.124 Flexibility of provision is both a desirable and a necessary characteristic of UPW provision – desirable because of the aspiration to tailor disposals to

individual needs and circumstances; necessary because of the often highly unstructured character of individual offenders' lives. Consequently, across the case study areas, UPW provision allowed offenders a degree of flexibility about when and how to complete their hours.

- 4.125 CJSW staff face a number of challenges in trying to assess suitability and match offenders to particular UPW opportunities. For example, it can be difficult to match the skills of an offender to the placements available; to find appropriate placements for those for whom English is not a first language or who have complex needs. Other challenges include the difficulty of finding suitable community placements for sex offenders.
- 4.126 There are also significant issues around the imposition of Level 1 orders in the absence of a CJSWR, in terms of the potential for both risks and needs to be missed and the potential for offenders to be given unsuitable placements. There was some evidence of the emergence of informal local arrangements to address these.
- 4.127 There is a widespread perception that UPW placements are commencing faster than in the past and that a large majority of local authorities, are meeting the target of commencement within seven days of the CPO being imposed.
- 4.128 Around one in five local authorities, however, are not meeting this target (commencement of UPW placements within seven days). Key challenges faced by CJSW and UPW staff in this respect include the often chaotic nature of offenders' lives or the need to coordinate UPW hours with those for a previous order; problems of communication between CJSW, UPW and court staff; and structural or organisational issues (e.g. allowing 'gaps' to emerge between induction and first placement).
- 4.129 There is also evidence that the emphasis on speed of commencement may be shaping the type of initial placements available and that matching to a more suitable placement to complete the rest of the order may sometimes be delayed.
- 4.130 In terms of speed of completion, the timescale for Level 1 orders (three months for up to 100 hours of UPW) was seen as unrealistic by many CJSW and UPW staff, although some felt that this relatively compressed time frame could actually be useful in keeping momentum going from the start to the finish and motivating staff to stay vigilant to ensure offenders got through their order.
- 4.131 Amongst other things, the OA element provides an opportunity to deliver varied work to help develop offenders' confidence and employability, and to deal with issues around addiction as well as more tailored work for women.
- 4.132 The OA element was slow to get off the ground. CJSW and UPW staff needed time to adjust to the new reforms as a whole, and to manage increased numbers on UPW, leaving little scope for a clear focus on OA. A lack of local guidance also meant that some CJSW and UPW staff lacked a clear

understanding about what OA consisted of or how it might be used. There was also some initial resistance from CJSW staff who felt that OA might undermine the supervision plan in a combined order.

- 4.133 There is a great deal of flexibility in terms of how OA is used, meaning that it can be closely tailored to individual needs. However, this flexibility – and differing views and interpretations of how and when it should be used – has meant that OA use has varied within and across local authorities.

5 USE OF THE REMAINING CPO REQUIREMENTS

- 5.1 Although, as seen in Chapter 3 (Table 3.2), there was a marked increase between 2011-12 and 2012-13 in the total number of CPOs imposed, many requirements were used *relatively* less frequently in the second year and several – including the Alcohol and Drug Treatment Requirements – saw a fall in absolute numbers. Following the especially sharp reduction in the use of the Conduct Requirement, only the Unpaid Work or Other Activity (UPWOA) Requirement and the Supervision Requirement were imposed in more than 10% of cases. We also saw a relatively high degree of local variation in the use of the different requirements, beyond that which might be expected on the basis of differences in population size and characteristics.
- 5.2 In this chapter, we take a closer look at the operation of these less frequently used requirements. The initial focus here is on what we have termed the ‘treatment’ requirements – those relating to drugs, alcohol and mental health – and their relationship with the Supervision Requirement. (These are referred to as the DTR, ATR and MHTR respectively for the remainder of this chapter.)
- 5.3 The latter part of the chapter examines a number of specific issues relating to the four remaining requirements – namely, Programme, Conduct, Compensation and Residence.
- 5.4 The main aim of the chapter is to understand some of the factors that may be influencing the level of use of these requirements. We also consider, however, whether the extent of use of particular requirements (such as ATRs, DTRs and MHTRs) is problematic, in terms of ensuring offenders receive sentences (and services) that are tailored to their needs, or whether such needs are being met through the use of other requirements.
- 5.5 Although the Supervision Requirement is not discussed separately in this chapter, it is considered in relation to the use of the treatment and Programme Requirements. Chapter 6 (para 6.68) looks in greater detail at some of the broader work carried out under this requirement in the context of the relationship between offenders and CJSW staff.

Use of the ‘treatment’ requirements

- 5.6 Both interview and survey data¹⁸ from the evaluation suggest that understanding and practice in relation to the ATR, DTR and MHTR lack consistency, that there is uncertainty in some quarters about when the use of these requirements is appropriate, and a desire in others to see them used more frequently. We suggest that this can be explained by the interaction of several main factors – namely, a degree of uncertainty and ambiguity about eligibility and assessment requirements (from para 5.7); the availability of and

¹⁸ Qualitative data from depth interviews with CJSW and ‘other practitioners’ detailed this uncertainty, as well as entries from open ended text boxes from some respondents in both the CJSW and Sheriff surveys.

access to particular services (from para 5.26); an element of concern about the imposition of orders with multiple requirements (from para 5.32); and the availability and use of Supervision as a 'catch all' requirement (from para 5.38).

Issues relating to eligibility and assessment

- 5.7 From interviews with CJSW staff, it is clear that there is a lack of certainty about some aspects of each of the treatment requirements. As will be clear below, the nature of that uncertainty varies across the different requirements. Sometimes it appears to be rooted in ambiguity in the original legislation or guidance; at other times, to be the result of misconceptions on the part of CJSW staff and other actors. Overall, though, there is a sense that the treatment requirements are not yet being fully bedded in or understood and that there is some lack of consistency across the country – raising questions about whether and how offender needs are being met and about the transparency of that process.

The Alcohol Treatment Requirement (ATR)

- 5.8 At first sight, the legislation appears to be highly prescriptive in terms of the target group for the ATR, stating that:

'A court may impose an alcohol treatment requirement on an offender only if the court is satisfied that –

- (a) the offender is dependent on alcohol,
- (b) the dependency requires, and may be susceptible to, treatment, and
- (c) arrangements have been, or can be, made for the proposed treatment, including, where the treatment is to be of the kind mentioned in subsection (3)(a), arrangements for the offender's reception in the institution or other place to be specified.'

(Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) Section 14)

- 5.9 The Act itself, however, does not attempt to define what is meant by 'dependency'. The NOS Practice Guidance on CPOs does refer specifically to the technical definition of dependency provided by the World Health Organisation (WHO) which emphasises – among other things – physiological withdrawal. It also specifically addresses the question of how non-dependent alcohol problems should be addressed – namely, through appropriate intervention under the Programme, Supervision or 'Other Activity' part of the UPWOA Requirements.
- 5.10 Neither document, however, specifies how dependency is to be established nor who should conduct the relevant assessment, although the NOS Practice Guidance states that:

'Depending on the stage of the process, the potential need for this requirement would be identified by CJSW staff in consultation with relevant

others involved in the treatment of the individual' (Scottish Government, 2011a, p42)

- 5.11 Together with the clear references to dependency, this has been widely interpreted by CJSW staff as implying a need for a medical assessment and, in practice, has deterred them from recommending an ATR in the CJSWR because of the (perceived or actual) difficulty of arranging such an assessment within the timeframe for preparation of the report:

"I suppose in terms of the alcohol treatment, I think one thing that's preventing it is the ...definition of dependency. So that kind of breakdown between, 'Is this person dependent?' and 'What do I need to do to get that dependency assessed?' So again the guidance refers to [...] there needs to be a kind of medical element." (Interview 14, CJSW)

"The rehabilitation programme, the basic alcohol [treatment requirement], that one doesn't get used at all because you need to have an assessment by Addiction Services to assess that the man is, or the female is, alcohol dependent and that is almost impossible to get [...] arranged within a timescale. So that one is very rarely used." (Interview 3, CJSW)

- 5.12 It is important to note, however, that not all CJSW staff in the case study areas interpreted the guidance as implying that prior assessment by a medical practitioner was a prerequisite for the recommendation of an ATR. In one case study area, CJSW staff had begun to conduct their own assessments of both alcohol and drug dependency using the same tools as those used by the NHS locally, the Alcohol Use Disorders Identification Test (AUDIT¹⁹) and the Drug Abuse Screening Test (DAST-10²⁰). This allowed assessments to be conducted rapidly at the CJSWR stage, but also produced assessments that could be subsequently accessed and used by NHS treatment providers.
- 5.13 Anecdotal evidence from the validation event also suggested that a further local authority (outside the case study areas) had been allowing self-reporting of problematic alcohol use at the CJSWR stage to allow an ATR to be recommended. The local Drug Action Team (DAT) is then being used to assess the individual formally within a few days of the ATR being imposed. In this context, it is worth noting that this particular local authority has a relatively high level of use of ATRs.
- 5.14 There were also some isolated reports from CJSW staff about Sheriffs imposing ATRs (and MHTRs) before any medical assessment had been undertaken, especially in the period soon after the introduction of CPOs. This

¹⁹ The AUDIT was developed by the WHO as a simple method of screening for excessive drinking and to assist in brief assessment (WHO, 2001)

²⁰ DAST-10 was devised by the Addictions Research Foundation (1982) with the aim of providing a quantitative index score of the degree of problems related to drug use and misuse (Gavin, Ross, Skinner, 1989)

was regarded as potentially problematic as it was felt that, if a subsequent medical assessment failed to establish alcohol dependency, the order might be returned to court. It was not possible, however, to establish during the course of the evaluation whether ATRs or MHTRs had actually been imposed in such circumstances or with what consequences.

The Mental Health Treatment Requirement (MHTR)

- 5.15 The evaluation also suggested a degree of uncertainty around the target group for the MHTR. The NOS Practice Guidance in relation to the MHTR indicates that, for such a requirement to be imposed, an assessment must have been carried out by a medical practitioner. This has led some CJSW staff to conclude that the intended target group for MHTRs is people with relatively serious or 'high end' mental health problems.

"I've never seen that being used because, actually, if somebody's mental health is really that bad they're just [...] not going to be suitable to undertake ...a court order, you know, it could actually make things worse for them. So ...nobody ever uses it." (Interview 46, CJSW)

"The Mental Health Treatment Requirement – that is very high end again and we work with a lot of people with mental health problems but few who would meet that specific [requirement]." (Interview 57, CJSW)

- 5.16 In fact, it is clear in the NOS Practice Guidance that the intention of the legislation is to identify those offenders who might not otherwise be in contact with mental health services but who suffer from a treatable mental condition that would not render them subject to statutory intervention (Scottish Government, 2011a, p.33). In that context, other CJSW staff have clearly interpreted that as implying a wider target group – "the people that are sort of in the middle" (Interview 59, Other Practitioner), as one interviewee put it.
- 5.17 This uncertainty about the intended use and focus of the MHTR was also reflected in interviews with other professionals. One mental health professional, for example, felt that the majority of mental health disorders could be better addressed by existing mental health disposals available to the court, such as community-based Compulsion Orders or Guardianship. The interviewee suggested that these disposals had greater safeguards for patients as they involve recourse to the Mental Welfare Commission (in terms of getting a second opinion for psychiatric medication) and are also subject to scrutiny by a mental health tribunal, whereas this is not the case for MHTRs.
- 5.18 The same interviewee did feel there were a handful of conditions not adequately covered by existing mental health legislation where an MHTR might be appropriate, and gave the specific example of paraphilic disorders²¹.

²¹ To be diagnosed with a Paraphilic Disorder, DSM-5 requires that people with these interests:

- feel personal distress about their interest, not merely distress resulting from society's disapproval; or
- have a sexual desire or behaviour that involves another person's psychological distress, injury, or death, or a desire for sexual behaviours involving unwilling persons or persons unable to give legal consent (American Psychiatric Association, 2013).

However, as the participant explained “I can think of a couple of cases [of this] in the last ten years....it’s pretty rare.” (Interview 59, Other Practitioner).

- 5.19 While the small number of individuals perceived to have eligible conditions is clearly an important factor in the level of use of MHTRs, the requirement to obtain a psychological or psychiatric assessment in order to establish eligibility was also frequently cited as an important barrier to their use, even where that might be appropriate.
- 5.20 There were examples given of MHTRs both being recommended by CJSW in CJSWRs and imposed by Sheriffs in the absence of such an assessment. As in relation to ATRs, some participants felt this was potentially problematic as, if a subsequent medical assessment failed to establish mental health treatment was necessary, the order might be returned to court. At present, it is not clear how often this happening. This is an issue we return to in the conclusions.

The Drug Treatment Requirement (DTR)

- 5.21 By comparison with the ATR and MHTR, the wording of the DTR is less prescriptive and, as a result, CJSW staff seem more comfortable with it and clearer about the circumstances in which they might recommend it. Indeed, the fact that it does not specifically focus on those with a physical drug dependency was felt to meet an important need – especially in light of a perceived increase in the number of service users with poly drug use issues.
- 5.22 That said, a few CJSW participants (usually those who also interpreted the ATR as needing a medical assessment) appear to have bracketed the ATR and DTR together – at least in terms of the severity of the presenting substance misuse problem and the nature of the accompanying assessment:

“...when we were trained, we were told the drug or alcohol requirement is very specifically about a medical intervention that has been assessed by a medical person [...] and they would have said, 'Yes, he's available for - he needs to go into treatment'. (Interview 37, CJSW)
- 5.23 It is also worth noting that, although most of the CJSW staff interviewed understood that a DTR might be imposed in circumstances in which an individual’s drug problem was not serious enough to merit a DTTO, there was a perception that some Sheriffs were imposing DTRs when a DTTO would be more appropriate and vice versa.

“I would be seeing it that a DTTO would be seen as [...] potentially a higher tariff because of the intensity that's associated with it...So if we were looking at something like a Drug Treatment Requirement, [...] the guidance actually refers to women that are involved in drug use, whose offending isn't quite serious enough to justify a Drug Treatment and Testing Order; you would perhaps look at a CPO with a Drug Treatment Requirement. So again, I think there's just nuances that

perhaps Sheriffs and, some report-writers haven't quite got their head round.” (Interview 13, CJSW)

- 5.24 This proposition is supported by the data, outlined in Chapter 3, showing the use of DTRs by each local authority to be inversely related to its use of DTTOs. The scope for further blurring of this distinction is likely to increase if and when the DTTO II (with its focus on lower tariff offenders) is rolled out nationally.
- 5.25 Anecdotal evidence from the validation event suggests the extent of use of both DTTOs and DTRs may be related to the nature of assessment services available. In one part of the country, for example, there is ‘fast track’ drug treatment service which has well-established assessment procedures. This appears to have made it easier to implement DTRs and it is noticeable that use of the requirement is relatively high in the local authority areas covered by this service.

Issues relating to the availability of and access to services

- 5.26 The likelihood that offenders will receive a CPO with an explicit treatment requirement has also been influenced by the ability of CJSW staff to identify and specify the exact nature of that treatment. This has a number of dimensions (of relevance, variously, to ATRs, DTRs, MHTRs and, indeed, to Programme Requirements). These include an element of confusion about the nature of the treatment that can be provided under the requirements; the difficulty of securing treatment places within the CJSWR timescales; and lead times for treatment to actually begin or be completed. Each of these is expanded on below.
- 5.27 Despite clear descriptions in the NOS Practice Guidance of what can be included as treatment for the DTR and ATR, a number of CJSW interviewees wrongly believed particular constraints to apply. For example, some reported that the DTR and ATR could only be used for people who need residential treatment or detox – a confusion which may have arisen simply because of the connotations of the word ‘treatment’ in the titles of the requirements.
- “The Act wasn’t clear enough... because people assumed ‘treatment’ meant treatment that had to be, you know, health, and it doesn’t.” (Interview 76, CJSW)
- 5.28 Moving on to the question of the need to provide details of treatment at the point the requirement is imposed, there are, in fact, some subtle differences in the wording of the legislation in relation to ATRs, MHTRs and DTRs. For example, the legislation in relation to the MHTR is clear that the details of treatment must be specified and ‘arrangements made for the proposed treatment’ at the CJSWR stage. In relation to the ATR, the wording is similar, although it requires that ‘arrangements have been, *or can be*, made for the proposed treatment’. The DTR shares this latter wording in relation to arrangements, but is looser about the extent to which the details of the treatment itself must be outlined in advance, indicating only that the offender

'must submit, during the *specified period*, to treatment by or under the direction of a *specified person*'.

- 5.29 Despite these minor differences, there is a clear onus on CJSW staff to include a significant level of detail about proposed treatment when recommending one of these three requirements. Of course, even where suitable services do exist, it can be extremely challenging to both complete an assessment and line up a treatment place in advance of sentencing. This appears to be the case for residential or detox services.

"I suppose the guidance for CPOs is very clear that in order to recommend an alcohol requirement for example, you should already have a place set up in a rehab that the person will go into straight away. And that doesn't fit really with how rehabilitation centres and alcohol programmes work round here. They usually have a four to six month waiting list, or longer. Sometimes you have to look at funding and that type of thing as well. So that's a barrier." (Interview 56, CJSW)

- 5.30 This is also the case for psychological interventions, as offenders on CPOs are generally subject to the same waiting times as the general population. These waiting times are subject to HEAT targets which are intended to deliver faster access to mental health services by delivering 18 weeks referral to treatment for Psychological Therapies from December 2014 (NHS Scotland Performance and Business Management, 2013). In practice, access to treatment varies by local authority and according to the type of therapy and, depending on these factors, an offender may experience a wait for treatment which is longer than the original order. This is an additional potential barrier to the recommendation of treatment requirements.

- 5.31 Some CJSW staff found these barriers frustrating, as the resulting necessity to address substance misuse or mental health issues within the context of a Supervision Requirement can reduce the scope for other important work with the offender.

"... [it's] frustrating, because of the fact that you've got highly key individuals who need, for public safety, need the counselling undertaken [...] and also for their, for their own wellbeing, really, this work has to be done. And you end up sometimes in supervision having to do a hotchpotch of addiction counselling yourself because you know it's not getting done elsewhere. That dilutes the amount of offence-focused work that I can undertake with somebody because I'm having to deal with various addiction issues." (Interview 14, CJSW)

Reluctance to recommend or use multiple requirements

- 5.32 A further possibility worth considering in relation to the use of the treatment requirements is that they are not being used because of a reluctance on the part of CJSW staff to recommend multiple requirements.

- 5.33 The evaluation certainly provides evidence that some CJSW staff believe that recommending multiple requirements ‘sets people up to fail’, especially when offenders have drug, alcohol or mental health problems.

“...rather than have separate requirements and setting somebody up to fail, you could have that all under the supervision action plan as A, B, C, D in the action plan, rather than individual requirements.” (Interview 14, CJSW)

“...you're mainly looking at supervision and then steering people towards that work and kind of multi-agency working, rather than having something that might well get them breached.we can do the same work but without the risk of having to get warrants.” (Interview 56, CJSW)

- 5.34 This argument was especially evident in relation to offenders already in contact with drug, alcohol or mental health services. In such circumstances, CJSW staff sometimes saw little or no added value in recommending an additional treatment requirement – especially when it carried a risk of breach.

“...because the treatment was already in place... the social worker didn't make that recommendation because they felt, 'What's the point? They're already working with services. Just [recommend] Supervision, and I'll work with them.’” (Interview 76, CJSW)

“...there's almost a kind of perception of, well, 'if it's not broke', or 'like, we can continue, we'll work with them on Supervision'; 'If I get a Drug Treatment Requirement, I might be setting them up to fail, and they're already working with addictions’.” (Interview 13, CJSW)

- 5.35 It is possible that this view has, in part, been influenced by practice under the previous probation orders, in which multiple conditions were associated with individuals at higher risk of offending and who were actually more likely to breach. In other words, the risk of breach was seen as attaching to multiple conditions *per se* rather than to the characteristics of the individuals subject to them.

- 5.36 This perspective may also have been reinforced by the NOS Practice Guidance on CPOs, which states:

‘Most community payback orders will consist of at most three requirements. The more requirements attached to the order, the more likely it is that the individual will fail to comply, therefore careful targeting of the requirements to assessed risk and needs is necessary.’ (Scottish Government, 2011a, p44/45)

- 5.37 But while the evaluation suggests that CJSW staff are concerned about the risk of ‘setting people up to fail’, as we will see in the following Chapter (para 6.9), there is actually little current empirical evidence that multiple requirements are necessarily associated with higher levels of breach.

The availability and use of Supervision as a ‘catch all’ requirement

- 5.38 In the context of the various issues described above, it is perhaps not surprising that alcohol, drug or mental health issues are very commonly addressed under the Supervision Requirement rather than one of the specific ‘treatment’ options. This often seems appropriate – indeed, as stated earlier the NOS Practice Guidance on CPOs actively suggests that some work relating to less complex alcohol, drug or mental health issues should be done in this way.
- 5.39 However, there was also some evidence of concern – from CJSW staff and others – about its use as a potential ‘catch all’. Although many social workers appear to be happy with the flexibility afforded by the requirement, others felt there was a danger that the clarity and transparency of the new disposal may have been lost.
- 5.40 Sheriffs, too, expressed concern about the effectiveness and transparency of Supervision by comparison with a dedicated treatment or Programme Requirement – again, a theme returned to later in the report (see para 7.22).
- 5.41 Information included in the annual CPO reports submitted to the Scottish Government highlighted the different approaches of CJSW managers across Scotland in relation to this issue. In one local authority, for example, it was clear that senior managers were encouraging the use of the Supervision Requirement instead of treatment requirements whereas another local authority, admitted that they are still adjusting to the needs led menu of CPO requirements, which they saw as different to the “tariff system” of Probation Orders. Again, this highlights the extent to which CPOs have seen inconsistent practice across different areas.

Does it matter?: Understanding whether and how drug, alcohol and mental health needs are being met in other ways

- 5.42 We have seen that the three treatment requirements are being used relatively rarely, and that there are a range of possible explanations for this. The question remains, however, of whether such issues are preventing meaningful and tailored work from being carried out with offenders with drug, alcohol and mental health problems. For the most part, drug, alcohol and mental health treatment is still being delivered. As we have already seen, such issues are regularly being addressed within the scope of the Supervision Requirement, and some work is also being done under other requirements (such as Programme, Conduct and even ‘Other Activity’). Moreover, many of the offenders coming before the courts are already in contact with relevant services.
- 5.43 Nevertheless, there are several important consequences of the way that such issues are currently being handled. The first is that there is considerable variation by area in strategies for ensuring provision of appropriate treatment.

- 5.44 For example, in one case study area, some work that could conceivably be done under the Programme and treatment requirements is carried out under the Supervision Requirement (an approach which is explicitly recognised in their annual report on CPOs to the Scottish Government as cited in para 5.41). Young males are given unaccredited programme work (in relation to general offending behaviour) through the Supervision Requirement. Female offenders are given unaccredited programme work and alcohol, drug and/or mental health treatment – via a partnership project involving the NHS, local authority and a national third sector organisation – also through the Supervision Requirement.
- 5.45 In another area – Area 2 – seconded workers from third sector organisations are used to provide wider support to people with mental health issues and/or problematic alcohol use, again under the Supervision Requirement.
- 5.46 A second potential consequence is that some of the original aspirations for CPOs may not be being met in relation to such cases – in particular, that the disposal should be simpler and more transparent. Put simply, there is a lack of clarity and visibility about the handling of offenders with drug, alcohol or mental health problems. Even if such individuals are receiving high quality treatment and support, the difficulty in accounting for such arrangements may ultimately erode the credibility of the overall CPO framework – posing the question of why certain requirements exist in the first place and making it difficult to plan effectively for appropriate service provision. The implications of these issues are returned to in the conclusions.

Specific issues related to the other requirements

- 5.47 In the remaining part of this chapter, we focus on the operation of the remaining requirements – namely the Programme, Conduct, Compensation and Residence Requirements. Again, it is worth noting that, in practice, there is considerable overlap between these and some of the requirements already discussed – especially ATRs, DTRs, MHTRs and Supervision.

Programme Requirement

- 5.48 A range of both accredited and unaccredited programmes was being offered in each of the case study areas under the Programme Requirement. Examples of accredited programmes included the Caledonian programme (domestic abuse); Change (domestic abuse); Constructs (general offending); Community-Sex Offender Groupwork Programme (C-SOGP); Moving forward, making changes (sex offender) and Community Intervention Service for Sex Offenders (CISSO).
- 5.49 As stated earlier in this section, unaccredited programme work included some programmes that had either not got their accreditation or not had it renewed (e.g. Constructs).

5.50 It should be noted that several CJSW staff mentioned that they thought the Programme Requirement was intended solely for the provision of accredited programmes, even though the NOS Practice Guidance on CPOs specifically states that it can be used to deliver both accredited and unaccredited programmes (Scottish Government, 2011a, p31).

“...obviously that [the Programme Requirement] only pertains to the accredited programmes.”(Interview 57, CJSW)

5.51 Perhaps as a result of this, unaccredited programme work is being carried out under different requirements – often under Supervision.

5.52 Examples were also given of CJSW staff recommending a Programme Requirement in relation to delivery of an accredited programme but Sheriffs subsequently imposing this work under a Conduct Requirement (despite the NOS Practice Guidance suggesting that this should not happen – see para 5.59).

“So, I'll ask for a Programme Requirement, so I've got a Programme Requirement for him to attend [a] sex offender programme, he'll come back with a Conduct Requirement and I'll be like, 'But that's different'.” (Interview 37, CJSW)

5.53 While some work that might reasonably be expected to be carried out under the Programme Requirement is being delivered under other requirements so, too, is some work that might conceivably be delivered under other requirements being delivered under the Programme Requirement. As highlighted earlier, for example, offenders in Area 1 are being given alcohol ‘treatment’ under a Programme Requirement.

5.54 There were also several comments regarding the lack of suitable programmes for female offenders.

Conduct Requirement

5.55 In the absence of any automatic provision under Community Payback Orders to breach an offender if they commit a further offence, Sheriffs were initially using the Conduct Requirement to require the offender to be of good behaviour or not to offend. This practice was successfully challenged, with an Appeal Court judgement in June 2012 (Kirk and Hunter v Procurator Fiscal Stirling (2012) HCJAC 96).

5.56 After this court challenge, CJSW reported a fall in the number of Conduct Requirements imposed. Following the court order, a few CJSW participants reported being told not to recommend Conduct Requirements because of the legal challenge and some also felt there was hesitancy by Sheriffs to use them.

"[W]e got numerous Conduct Requirements that 'you will not commit another offence during the period of this order'...But that got legally overturned and they've all been shelved." (Interview 65, CJSW)

- 5.57 By the time the fieldwork was conducted for the evaluation, CJSW staff generally felt that Conduct Requirements were being used more appropriately, although some concerns were still raised. For example, it was reported that some Sheriffs were using the Conduct Requirement to specify that someone should stay away from a specific location. Although this is in line with the NOS Practice Guidance on CPOs (Scottish Government, 2011a, p.42/43), several CJSW interviewees indicated that they were unsure how it could be enforced.

"'You shall not enter the high street in X between the hours of such-and-such and such-and-such,' and they go, 'And how are we supposed to enforce that?'" (Interview 65, CJSW)

- 5.58 There was also some confusion about whether the Conduct Requirement could be used to ensure that an offender stayed away from a certain person, typically a victim of their offence. In some areas, CJSW interviewees thought this was acceptable; in others they thought that it was not the intended purpose of the requirement. Although the NOS Practice Guidance on CPOs says that the Conduct Requirement provides courts with 'additional flexibility to impose requirements on an offender to do or refrain from doing specified things not covered elsewhere in the legislation (Scottish Government, 2011a, p.42/43), it does not explicitly discuss whether it can or cannot be used to ensure that an offender stays away from a specific person.

- 5.59 As seen in the preceding sub-section, CJSW staff also indicated that the Conduct Requirement was being regularly used to instruct attendance at a programme or Alcohol/Drug counselling. According to the NOS Practice Guidance on CPOs this is not an appropriate use of the requirement. It states that the Conduct Requirement should not be used where another requirement would meet the objective:

'...where it is deemed necessary for an individual to undertake alcohol treatment it would not be necessary or permissible, under the legislation, for the court to impose a Conduct Requirement to ensure that the individual complies with alcohol treatment' (Scottish Government, 2011a, p.43)

Compensation Requirement

- 5.60 CJSW staff highlighted some issues in relation to this requirement. First, it was suggested that a Compensation Requirement was sometimes imposed (alongside a Supervision Requirement necessitated by the legislation) in cases in which they considered that there was little prospect for meaningful work to be done with the offender under Supervision. CJSW staff found this frustrating, as they felt it effectively meant they had to 'find' work to do in supervision.

“We’re finding Compensation Requirements are an absolute nightmare and [it is] ridiculous that they [...] can only be imposed alongside the Supervision Requirement which is the bane of our lives on a weekly basis at the moment. Because sometimes, somebody’s suitable to pay compensation or to have unpaid work but they don’t need supervision, there’s no focus for supervision.” (Interview 46, CJSW)

“I’m having to waste my time. If there’s no real need to supervise somebody, no real need to go for offence-focused work with somebody, ...as a qualified social worker who’s paid X amount per year, you know, a good salary, to protect the public, to prevent people from re-offending, to commit to the social work values what I’ve signed up for, just to manage somebody to actually repay a fine, at the end of the day, is ridiculous.” (Interview 14, CJSW)

- 5.61 The frustrations of such a situation are amplified for CJSW staff when an offender cannot pay the Compensation Requirement off in the intended timescales and is consequently given an extension on the Supervision Requirement.
- 5.62 In general, CJSW staff recognised the value of a Compensation Requirement when it could be usefully tied in with offence-focused work. Otherwise, some felt that it made more sense for a Sheriff to impose a separate Compensation Order, although interviewees expressed some uncertainty about whether this was possible. According to the NOS Practice Guidance on CPOs, ‘a Compensation Order continues to be a disposal available to the court independent of a CPO’ (Scottish Government, 2011a, p.29).
- 5.63 Finally, the evaluation highlighted a specific issue around the use of Compensation Requirements in relation to domestic abuse cases. One CJSW interviewee cited an example of someone on his current caseload who had “received a Compensation Requirement for an assault on their partner, and you know that can feel quite difficult for them....equally if they are still in a relationship that’s a bit strange....he might well be paying her with her own money” (Interview 56, CJSW). Recognising that financial abuse is common in relationships where there is domestic abuse, CJSW staff indicated that they would not recommend a Compensation Requirement but noted that sometimes it is still imposed.

Residence Requirement

- 5.64 CJSW staff felt that the Residence Requirement was being proposed (by social workers) and used (by Sheriffs) relatively rarely, and this is reflected in the published statistics, which show that only 0.2% of CPOs had a Residence Requirement (2012-13).
- 5.65 Awareness and understanding of this requirement was certainly low. One CJSW interviewee, for example, thought that the Residence Requirement was aimed at homeless people – “that only comes in really if they’re homeless” (Interview 56, CJSW). However, the NOS Practice Guidance specifically

states that 'Problems of homelessness alone should not suggest imposition of a Residence Requirement' (Scottish Government, 2011a, p.33).

5.66 Another cast doubt on Sheriffs' understanding of the requirement, explaining that they had "one last week where the Sheriff dictated that this person couldn't move out of Scotland because they kept jumping over the border and getting orders there." (Interview 68, CJSW). According to the NOS Practice Guidance on CPOs (Scottish Government, 2011a), a Residence Requirement can be imposed by a court to require an individual to reside within designated accommodation, it does not specifically state whether the requirement could be used to require an individual to reside within a designated country.

5.67 The lack of understanding of the Residence Requirement does not mean relevant issues are not being addressed; again, it is likely CJSW may be dealing with this under the Supervision Requirement,

"...if we do use it, it's gonna be for particular persons and reasons maybe at higher risk and so on and so forth but I don't think we use it much 'cause we probably think that a lot of the things that we can do, ...on a Supervision Requirement." (Interview 35, CJSW)

Key points

5.68 The three 'treatment' requirements – ATRs, DTRs and MHTRs – are being used relatively rarely but also inconsistently across different areas. There are issues here around differences in understanding of the exact target group for each and of what constitutes treatment.

5.69 From a CJSW point of view, however, the most significant obstacle to proposing an ATR or MHTR is the apparent necessity to obtain a medical assessment in advance of sentencing, although, in a few areas, it appears that some of these requirements are being imposed without a formal medical assessment. While there are some indications that this latter approach may lead to a higher level of use, some participants felt it may also run the risk of such orders being returned to court.

5.70 Even if the relevant assessments can be obtained, an ATR or MHTR (or indeed a Programme Requirement) all need the treatment to be specified in detail at the point of sentence. This can again be difficult within the timeframes for preparation of the CJSWR.

5.71 For all three treatment requirements, waiting times for certain types of treatment (for example, residential detox and psychological interventions) are often lengthy – indeed, waiting times to begin such treatment are often longer than the length of the CPO itself. This also has the effect of limiting their use.

5.72 Although most CJSW staff are more content with the wording of the DTR and with its potential scope (than the ATR or MHTR), there was also some evidence that others remained uncertain about exactly when a DTR should be used instead of a DTTO. CJSW interviewees also gave examples of Sheriffs

imposing a DTR when they felt a DTTO would have been more appropriate, and vice versa.

- 5.73 Many CJSW staff have a concern about the use of multiple requirements and this, too, appears to be a factor in limiting the extent to which they are likely to propose the use of the treatment requirements.
- 5.74 In the context of the various issues described above, it is perhaps not surprising that alcohol, drug or mental health issues are commonly addressed under the Supervision Requirement. While this is often entirely appropriate, there was also some evidence of concern about its use as a potential 'catch all' and about the effectiveness and transparency of work conducted under Supervision by comparison with that which might occur under one of the more structured requirements.
- 5.75 While it appears that the needs of offenders with drug, alcohol or mental health issues are generally being met, there is considerable variation in exactly how this is happening. Moreover, the lack of transparency around these issues has potential implications for effective service planning and provision.
- 5.76 The wide-ranging character of the Supervision Requirement also impacts on the use of Programme and Residence Requirements.
- 5.77 CJSW interviewees were often frustrated about the way the Compensation Requirement is being used and, in particular, about its imposition in cases where they consider that there is little prospect for meaningful work to be done under Supervision. These frustrations are amplified in situations in which an offender requires an extension to the compensation element.

6 ENGAGEMENT, COMPLIANCE AND BREACH

- 6.1 In this chapter, we move from consideration of how (and how often) CPOs are being used to questions of effectiveness, engagement and enforcement.
- 6.2 The chapter starts with an examination of the unit level data relating to the outcomes for individual orders, and focuses in particular on levels and patterns of completion and breach, overall and for different types (and combinations) of requirements. It then draws on qualitative interviews with criminal justice practitioners, and the surveys of Sheriffs and CJSW managers, to explore some of the issues around the use of reviews and breach proceedings. Finally, the views and experiences of offenders – as captured in qualitative interviews – are examined, with a view to understanding how much those subject to CPOs understand about what is expected of them, how they feel about the orders and how seriously they take them.

Outcomes of CPOs/different requirements

- 6.3 The evaluation team was given access to the anonymised unit-level dataset underlying the aggregate statistics reported in Chapter 3. This allowed a focus on the outcomes for individual orders and for some analysis of the key predictors of those outcomes. It is important, however, to recognise the limitations of these data. Most importantly, the data tell us little about the offender and nothing about the crime or offence for which the order was made. For example, a higher proportion of orders involving Supervision and Compensation Requirements were successfully completed than orders involving Supervision and DTRs. It cannot be concluded from this that the former are working better than the latter, because the differences in outcomes may well reflect the characteristics of those receiving the different requirements. This is especially important when considering the outcomes for orders with multiple requirements, as these are more likely to be imposed for more serious offences.
- 6.4 The dataset includes orders either *terminated between April 2012 and March 2013*, or *still in force at the end of March 2013*. As the first orders were made in February 2011, analysis which focuses on terminations will naturally be slightly biased in that it cannot include any orders in force for more than 26 months. Complete data for a case, including information about the order when it was imposed, and information about the order when it was terminated, is only available for orders imposed and terminated with the 12 month period covered by the dataset. Any analysis which requires both sets of information will be biased to an even greater extent towards orders of short duration²². As the dataset builds over time, these biases will be reduced.

²² For example, looking at outcomes by employment status at the start of the order, or looking at differences between hours of unpaid work and other activity imposed and hours completed.

- 6.5 Some combinations of requirements are rarely used, so the figures presented in Table A6.1 in Appendix 4 are based on small numbers. Considerable variation in these figures for these particular combinations would be expected over time, and data for one year only are unlikely to reflect the whole picture.
- 6.6 The analysis presented here is also subject to constraints on data availability. No data were provided for Aberdeen City, Fife or Moray.

Overall outcomes

- 6.7 At the national level, figures published by the Scottish Government²³ show that around two-thirds (69%) of CPOs terminated in 2012-13 were successfully completed or discharged early. One in six (18%) was revoked due to breach, and one in twenty (5%) revoked due to review. We will now explore the underlying variation, both on a geographic level, and according to the different requirements of the CPO.

Variation in outcomes by number of requirements

- 6.8 Overall, 60% of CPOs in 2012-13 had only one requirement. Of these, most (85%) were Level 1 orders with an UPWOA Requirement only. The remaining 15% included Supervision Requirements only. Overall, three quarters of all orders with only one requirement (75%) were completed successfully.

Table 6.1: Outcome of CPOs terminated in 2012-13 by number of requirements (percentages)

	Number of requirements					
	1	2	3	4	5+	All
Successfully completed	75%	55%	55%	49%	41%	67%
Early discharge	1%	5%	5%	12%	3%	3%
Revoked due to a review	4%	5%	5%	7%	7%	5%
Revoked due to breach	13%	24%	26%	21%	38%	18%
Other	8%	11%	9%	10%	10%	9%
<i>Total</i>	<i>5059</i>	<i>2022</i>	<i>1213</i>	<i>163</i>	<i>29</i>	<i>8486</i>

Notes: (1) Other includes transfer out of area, death, and other outcome. (2) Totals may not agree with published figures, which take into account aggregate returns from those authorities not providing unit level data. (3) Columns may not add up to 100%, due to rounding.

- 6.9 Orders with more than one requirement had lower completion rates. For example, when two or three requirements were included in the order (i.e. Supervision, plus one or two further requirements), 55% were successfully completed, with a further 5% receiving an early discharge. For orders with four requirements, the proportion successfully completed was lower, at 49%, but the proportion either successfully completed or receiving an early

²³ Scottish Government (2014b)

discharge remained around 60%. For five or more requirements, the proportion either successfully completed or receiving an early discharge was lower, at around 45%, but the small total number of such orders (n=29) means that little can be inferred from this. Overall, then, we can conclude that CPOs with a single requirement are more likely to be completed but that increases in the number of requirements beyond two do not raise the risk of non-completion further.

Variation in outcomes by combinations of requirements

6.10 Table 6.2 is an extract from Table A6.1 in Appendix 4. It shows the outcome for CPOs with the most common combinations of requirements.

Table 6.2: Outcome of CPOs terminated in 2012-13 by combination of requirements (percentages)

	Combination of requirements						
	Unpaid work and other activity only	Supervision only	Sup. + UPWO A	Sup. + conduct	Sup. + UPWO A + Comp.	Sup. + UPWO A + Prog.	Sup. + UPWO A + Cond.
Successfully completed	76%	65%	54%	61%	52%	43%	59%
Early discharge	0%	3%	5%	3%	6%	7%	5%
Revoked due to a review	4%	5%	6%	4%	6%	6%	4%
Revoked due to breach	12%	16%	25%	23%	24%	35%	25%
Other	7%	10%	11%	8%	13%	9%	7%
Total	4321	738	1390	371	142	113	674

Note: Columns may not add up to 100% due to rounding.

6.11 More than half the CPOs completed in 2012-13 had UPWOA as their only Requirement. The next most common arrangement was for Supervision and UPWOA, followed by Supervision only. Other combinations used in more than 100 orders completed in 2012-13 had requirements of Supervision and Conduct; Supervision, UPWOA, and Compensation; Supervision, UPWOA, and Programme Requirement; and Supervision, UPWOA, and Conduct Requirement.

6.12 Of these seven different types of CPO, those with just an UPWOA Requirement had the highest rate of successful completion (76%), and the lowest rate of being revoked due to breach (12%). Those with just a

Supervision Requirement had the next highest rate of successful completion (65%) and next lowest rate of revoke due to breach (16%). Those CPOs which included a Programme Requirement, as well as Supervision and UPWOA, had the lowest rates of successful completion (43%), and highest rate of being revoked due to breach (35%), although they only represented 1% of all CPOs. The levels of revocation due to breach were similar for the other four most commonly used arrangements (between 23% and 25%).

6.13 Table A6.1 in Appendix 4 shows outcome details for all other combinations of two requirements and combinations of three requirements used in at least 60 orders.²⁴ Because of the small numbers involved, it is inadvisable to infer anything about the relative success of different combinations of requirement from Table A6.1. Most combinations of two or more requirements actually have relatively similar levels of successful completion, between 39% and 61% (with the exception of Supervision and Compensation Requirement). However, the table does raise some issues that may require further investigation.

- CPOs containing a Programme Requirement have low levels of successful completion (39% of those with Supervision and Programme Requirements), and high levels of early discharge (14%).
- CPOs containing an ATR have higher levels of successful completion when there is no additional requirement of UPWOA (59% of those with ATR and Supervision Requirement, compared with 47% of those with an additional UPWOA Requirement).
- The same pattern can be seen for CPOs containing a Compensation Requirement (73% successful completion for those with a Compensation Requirement and Supervision only, compared with 52% of those with an additional UPWOA Requirement).

Court disposals for orders revoked due to breach or revoked due to review

6.14 Offenders whose CPOs were referred back to the courts or the procurator fiscal for breach, review or other reasons were given a new disposal by the courts, either a custodial sentence, a new CPO, a monetary penalty, or some other penalty or outcome. 'Other penalties' available to the court include other community sentences, such as DTTOs and Restriction of Liberty Orders. 'Other outcomes' include outcomes in which there is no penalty, such as absolute discharge, admonishment or psychiatric assessments, as well as unknown outcomes. Table 6.3 and Table A6.2 (from Appendix 4) summarise these disposals for CPOs that were revoked due to breach or review in 2012-13.

²⁴ This excludes 12 orders (in eight different local authorities) reported as containing UPWOA Requirements, and either Conduct Requirements or Compensation Requirements, but no Supervision Requirements. While it appears that these orders have been made contrary to the guidance on Supervision, it is possible that they have simply been entered incorrectly into the database.

Table 6.3: Disposal of CPOs revoked due to breach or review in 2012-13, by combination of requirements (percentages)

	Combination of requirements						
	Unpaid Work or Other activity	Supervi-sion	Sup. + UPWO A	Sup. + conduc t	Sup. + UPWO A + Comp.	Sup. + UPWO A + Prog.	Sup. + UPWO A + Cond.
Custodial sentence	29%	38%	37%	36%	19%	28%	31%
New CPO issued	31%	24%	26%	13%	31%	28%	26%
Monetary penalty	8%	3%	3%	5%	2%	2%	3%
Other penalty issued	2%	3%	3%	8%	5%	0%	4%
Other outcome	30%	33%	31%	39%	43%	41%	36%
<i>Total</i>	<i>695</i>	<i>156</i>	<i>420</i>	<i>103</i>	<i>42</i>	<i>46</i>	<i>194</i>

Note: Columns may not add up to 100% due to rounding.

- 6.15 The disposal is likely to reflect both the nature of the original offence and the reasons the CPO was revoked. Custodial sentences were given in 28% to 38% of cases, depending on the combination of requirements of the original CPO, with the exception of the combination of Supervision, UPWOA, and Compensation Requirements (19%), and the combination of Supervision and ATRs (50%). Because of the small numbers of cases involved, little should be read into these differences, and further research is required to determine the reasons for them.
- 6.16 A new CPO was the most common outcome when there was no Supervision Requirement in the original CPO (in 31% of cases). New CPOs were also issued in more than 20% of cases when Supervision was the only requirement, or when there were two or three requirements in addition to Supervision. However, when there was only one requirement in addition to Supervision (with the exception of UPWOA), between 8% and 13% of cases only resulted in a new CPO being issued. Hence it could be suggested that courts were less likely to feel a new CPO could be successful if the original CPO that was referred back to them was addressing a single specific issue, such as drug or alcohol treatment or Conduct.
- 6.17 Monetary penalties were rarely used when CPOs were referred back to the courts. They were most commonly used when there was no Supervision Requirement, which tends to be for minor offences but, even so, in just 8% of cases.

Variation in outcomes across Scotland

6.18 Further variation in outcomes can be seen by looking across the different local authorities of Scotland (see Table A6.3 in Appendix 4).

- Rates of successful completion ranged from 54% in Renfrewshire and Scottish Borders to 92% in Eilean Siar.
- 19% of cases in Shetland, 16% in Angus and 15% in Scottish Borders resulted in an early discharge, compared with 3% nationally.
- 5% of cases nationally were revoked by review, with no more than 10% in any local authority.
- Only 4% of cases in Orkney were revoked due to breach, compared with 18% nationally. Revocation due to breach was most common in Clackmannanshire and Perth & Kinross (29%).

6.19 What this table does not show is the reason for this variation. Some of the variation can be explained by looking at Table A6.4 (in Appendix 4). This shows the number of requirements by local authority, for orders completed in 2012/13, splitting those with just one requirement into Supervision and UPWOA.²⁵ The correlation between the proportion of orders with just an UPWOA Requirement and the proportion successfully completed is actually quite weak.²⁶ While some authorities, such as Midlothian, have high levels of successful completion as well as high levels of orders containing an UPWOA Requirement only, others, such as Eilean Siar, have high levels of successful completion, but far fewer orders with just an UPWOA Requirement.

6.20 Another factor which can explain some of the variation is the way in which breach applications during the lifetime of the CPO are processed. Roughly two-thirds of breaches in orders which finished during 2012/13 (64%) resulted in a CPO being revoked. It is therefore not surprising to find that there is a strong correlation between the proportion of CPOs in each local authority with no breach applications and the proportion successfully completed.²⁷

6.21 However, there is considerable variation between authorities in terms of whether breach applications directly lead to a CPO being revoked. Fewer than half of the CPOs in which a breach application was made in Argyll & Bute, East Lothian and Glasgow City resulted in the CPO being revoked due to breach. In Glasgow, 30% of orders in which a breach application was made had a change to the order as a result. This figure was even higher for West Dunbartonshire (35%), although as a result of far fewer orders. 47% of orders in which a breach application was made in Argyll & Bute, and 42% in East Lothian resulted in no change to the order. In East Renfrewshire, Eilean Siar

²⁵ It would have been preferable to include a breakdown by Level 1 and Level 2 orders, but due to the incompleteness of the data, this can only be done for orders commenced in 2012/13, or for orders in which the UPWOA Requirement has been successfully completed.

²⁶ R = 0.22, using figures for the 29 local authorities shown in Tables A6.3 and A6.4 in Appendix 4.

²⁷ R = 0.59, using figures from Tables A6.3 and A6.5 in Appendix 4.

and Inverclyde, all orders in which a breach application was made were revoked due to breach (Table A6.5 in Appendix 4).

Predictors of successful completion

- 6.22 Logistic regression allows us to consider whether the inclusion of a particular requirement in a CPO increases or reduces the likelihood of successful completion, taking into account some of what is known about the offender.²⁸ Details of the analysis undertaken are provided in Table A6.6 (in Appendix 4).²⁹
- 6.23 Given the findings in Table 6.2 above, it is not surprising to find that the strongest predictors of successful completion are the CPO having UPWOA as its only requirement (with no Supervision), followed by the CPO having Supervision as its only requirement.³⁰
- 6.24 What was not clear in the earlier analysis, however, is that CPOs containing Programme Requirements and those containing DTRs appear to be less likely to be successfully completed than orders not containing these requirements.³¹ The reasons for this cannot be identified from the unit level dataset, but may be related to the needs of the types of offenders subject to these requirements. The fact that CPOs with Programme Requirements are more likely to be associated with longer periods of Supervision may also be a factor here – many of these will still be ‘live’ and a truer completion rate will therefore take some time to emerge.
- 6.25 The inclusion of UPWOA together with Supervision, ATR, MHTR and Residence Requirements all made little difference to the likelihood of a successful outcome.
- 6.26 Older people, and those in education, employment or training – in other words, with greater previous experience of work settings and structures – were more likely to successfully complete the CPO. Multiple orders within the

²⁸ Controls are included for age, sex, being in employment, education or training, and having had previous orders during the year 2012/13.

²⁹ Care should be taken in interpreting the table, as it is based on administrative data, rather than sample data. Statistical significance is therefore a meaningless concept, although the measure of significance provided gives an indication of which findings may be a result of small numbers of cases.

³⁰ Those with the largest odds ratios, and with a significance level < 0.05 (see note above). An odds ratio of just over 2.5 for unpaid work and other activity only indicates that the odds of a successful outcome for a CPO with this requirement are 2.5 times the size of the odds of a successful outcome for a CPO with different requirements. Similarly, the odds ratio of 1.5 for offender supervision only indicates that the odds of a successful outcome for a CPO with offender supervision as its only requirement are 1.5 times the size of the odds of a successful outcome when offender supervision is not its only requirement.

³¹ The odds ratio for each of these requirements is 0.65, so the odds of a CPO which includes a DTR achieving a successful outcome are around two-thirds of the odds of a CPO which does not contain a drug treatment requirement achieving a successful outcome. The same is true for CPOs containing a Programme Requirement.

period were less likely to be successfully completed than when just one order was imposed.

Predictors of revocation due to breach

- 6.27 Similar analysis was also carried out to identify predictors of revocation due to breach. Details of the analysis are provided in Table A6.7 (in Appendix 4).
- 6.28 Broadly, and not surprisingly, those factors which predicted a lack of successful completion were also those which predicted an increased likelihood of revocation due to breach, although inclusion of a Programme Requirement did not significantly raise the likelihood of revocation. Orders containing a DTR did have an increased likelihood of revocation due to breach in 2012/13 – again, not surprisingly, given the specific needs of this client group.

The use of reviews and breach

- 6.29 We turn now from the quantitative data on the outcomes to a consideration of the effectiveness of the main processes associated with monitoring and compliance.
- 6.30 One of the key roles of a case manager is to work with an offender to achieve compliance with their CPO. The NOS Practice Guidance on CPOs specifies that case managers/UPW case managers have a responsibility to support an individual to enable them to complete their order and to enforce the requirements of the order should they fail to comply:

‘When the case manager decides that an explanation offered by the individual for failure to comply is unacceptable, the following action should normally be taken:

- First unacceptable failure to comply – a formal warning in writing, recorded in the case file and issued by the case manager.
- Second unacceptable failure – a final warning in writing and again recorded in the case file and issued by the case manager.
- Third unacceptable failure to comply – letter to the individual indicating that breach proceedings are being instituted.’ (Scottish Government, 2011a, p.50)

- 6.31 As a result of the success of review hearings as part of the DTTO pilots, the Management of Offenders (Scotland) Act 2005 included statutory provision for discretionary review hearings to be arranged as a means of managing Probation Orders. The review hearings were found to be a successful instrument in managing the orders and potentially improving compliance levels and reducing the rates of breach. As such the legislation for CPOs also included provision for this type of review as part of a CPO and they can be arranged for any stage of the sentence (Scottish Government, 2011a).

Use of reviews

- 6.32 There was a perception among both CJSW staff and Sheriffs that the number of reviews has increased with the introduction of CPOs. A relatively large proportion of Sheriffs (35 out of the 68 responding to this question in the Sheriffs' survey) indicated that they are using reviews more often since the introduction of CPOs – 29 (out of the 68) think that their use has remained the same while only three (out of the 68) think that their use of reviews has decreased.

"I think I've probably used it [with Probation], but I don't ... think I used it as often as I use review hearings for CPOs." (Interview 69, Sheriff)

- 6.33 Among the reasons Sheriffs gave for *not* using reviews (or only using them in very specific circumstances) were a reluctance to 'micro-manage' orders from the bench; concerns about the impact of additional review hearings on court workload, and the potential overlap with breach.

Usefulness of reviews

- 6.34 On the whole, reviews were considered to be useful by both CJSW staff and Sheriffs. The vast majority of Sheriffs who responded to the survey typically found reviews 'very' or 'fairly useful' (63 out of 72). There are various dimensions to this.

- 6.35 *Monitoring and encouraging compliance* – This was considered to be particularly useful with those who have previously shown a lack of progress/non-compliance, have previously breached, or may otherwise be difficult to manage. In these circumstances, reviews give Sheriffs the opportunity to issue warnings to the offender. It was felt that this encouraged offenders to take their CPO more seriously and sometimes aided compliance.

- 6.36 *Review as a substitute for breach* – Some Sheriffs reported that reviews were useful where they were doubtful about whether an offender was appropriate for a CPO and they suspected that breach would follow.

'It avoids the delay and hassle of breach procedure unnecessarily convoluted.'

'I use them rarely but for some specific cases they are useful – if I want to keep a grip on a particular accused who I think may not comply.'

(Open-ended responses to Sheriffs' survey)

- 6.37 *Motivating the offender (e.g. by setting targets)* – Some Sheriffs felt that the supervision of the order by the court is important to motivate offenders, (and young offenders in particular) and that reviews offer the chance to set short-term targets that may make the longer-term objectives seem more achievable. They were also considered useful in recognising and maintaining non-offending behaviour.

"I might say, 'I'm going to fix a review for 2 months' or whatever it is, 'and what I want to see then, when you come back, is that you've made a start with your supervision and you're cutting down on the drink, and once you've done that then we'll get on to some of the other bits of the order.'" (Interview 6, Sheriff)

"I've recommended them once, which was because a guy's offending had dropped off a lot. He'd reduced his offending a lot and it felt like having that regular thing for him to think about would help him to maintain not offending... which I think was really effective with him actually." (Interview 56, CJSW)

- 6.38 *Acknowledging successful progress if made* – Both Sheriffs and CJSW interviews mentioned the relationship that sometimes builds between the Sheriff and offender and believed that offering encouragement, when appropriate, could be very useful.

"As you know, some of the people we see have a feeling that they've failed at everything in life, and they're just going to carry on failing, and to come to court and be told, 'You've done even better than I thought you would do. You've done really well', is quite powerful I think." (Interview 6, Sheriff)

"I've had some cases where review is actually sought by the accused. ...he ...or she would like me to continue to have that involvement – in the case, over a period of time, you build up a certain relationship, and sometimes it's a case of they want to come and tell you how well they're doing, and they want to seek some sort of approval." (Interview 51, Sheriff)

- 6.39 *Adapting an order to changing offender circumstances* – The flexibility of reviews means they can be used to help tailor sentences to offender circumstances. A case manager gave the example of putting in a request to review an order for an offender in full time employment who was struggling to complete their UPW within the allocated timescale:

"...they can only attend one day a week, you just do one day a week and then you see how far you get within the three months, and stick a review back to court saying, 'Can I have more time please?', and just manage it that way." (Interview 36, UPW staff)

Impact on workload

- 6.40 As already noted, there is some concern among Sheriffs about the impact of reviews on court workloads.

"They are quite useful, but, again, I'm conscious of the loadings in our courts are such that I wouldn't say I'm 'hesitant' to use them, but I want to have a good reason for using them ...because I know that the supervising officer is going to breach if something goes wrong, in any event, so I just wonder if there's a duplication of effort in setting up a review. ...Unless I've got a very, very clear reason for doing it." (Interview 50, Sheriff)

- 6.41 The perceived increase in reviews does not appear, however, to have had a major impact on CJSW workloads. It was felt that the additional time spent writing a (short, in most areas) progress review report was balanced out by the positive impacts that reviews can have.

Use of breach

- 6.42 There is considerable discretion around the decision to instigate breach proceedings for CPOs, especially as further offending does not constitute an automatic breach as it did under the previous legislative arrangements. We look now at the views of Sheriffs and CJSW staff of the current use of breach.

Level of confidence

- 6.43 In the survey of Sheriffs, 54 (out of 72) said that they had 'a lot/quite a lot' of confidence in CPOs in terms of the monitoring of progress and appropriate use of breach. Of those Sheriffs who reported having 'not very much' confidence (17) or 'no confidence at all' (1), the main reason was that CJSW staff were taking too long to instigate breach proceedings.
- 6.44 Only 2 (out of 67) Sheriffs rated CPOs as worse than previous community sentencing options available in terms of the monitoring of progress and appropriate use of breach. All other respondents felt it was either 'about the same' (37 out of 67) or 'better' (27 out of 67) under CPOs.
- 6.45 That said, in both the survey and the qualitative interviews, some Sheriffs expressed discontent with the loss of automatic breach for subsequent offences, seeing this as impacting on the seriousness with which CPOs would be viewed by offenders:
- '[The fact that] commission of an offence no longer [leads to] automatic breach is a serious weakness in the system.' (Open-ended response to Sheriffs' survey)
- 6.46 Some CJSW staff also took the view that this had effectively 'neutered the CPO', and could make it very difficult to work with an offender who was fulfilling the requirement of their order but still offending – especially if the subsequent offences were serious ones.
- "It gets very difficult working with somebody who's constantly offending but they're turning up for their appointments and they're going to see their addiction worker; but they're maybe still battering lumps out their missus and all the rest of it and we can't breach that person." (Interview 15, CJSW)
- 6.47 Most CJSW staff, however, felt that the previous automatic breach for reoffending made it difficult to work with many offenders at the start of an order, when there was still a high chance of reoffending. This was felt to be especially relevant for individuals with a chronic pattern of offending, such as shoplifting or housebreaking, or in the early stages of drug treatment.

“We used to spend a lot of time in the past putting breaches in for further offences where a person was new on an order, [...] so in the first few months of the order we were just relentlessly putting breaches in, asking the court to continue the order, which the court was doing and again it was just taking up people's time. Sometimes the clients would go off the radar during this period...” (Interview 57, CJSW)

6.48 Prior to the reforms, CJSW staff dealt with frequent breaches of Probation Orders due to this type of behavior and generally asked the court to continue the order which – in most cases – they did. Since, according to CJSW interviewees, around nine out of ten orders were continued at first breach, and as it was felt that it did not make sense to take a break from the order while this was being decided, they often continued to work with offenders on a voluntary basis.

6.49 With the introduction of CPOs, CJSW and other practitioners have been able to continue working with the offender throughout the process and to help address offending and other issues as they arise.

“‘If you're drinking more, let's look at that, alcohol counselling. If it was mental health, let's go to your GP’ and ...keep him on track and look at the issues that will reduce his risk of reoffending...I think it was an old-fashioned idea that, you know, you're on this order [...] you can't offend for two years even though you've been an offender and you've been offending on a consistent basis. So, it's more flexible, it's more responsive to the person, it's more realistic.” (Interview 37, CJSW)

Views about the instigation of warnings and breach proceedings

6.50 Findings from qualitative interviews and the survey of Sheriffs suggest that there are some areas where Sheriffs feel CPO processes could be improved – especially in terms of the length of time it takes to declare a breach and the sense that too many warnings are given. One Sheriff, for example, commented:

‘I repeatedly come across cases where there has been a total failure by the social work department to instigate breach proceedings at the appropriate time - i.e. early in the order - and things then go from bad to worse’. (Open-ended response, Sheriffs’ survey)

6.51 Another suggested that reviews are undermined because case managers are not breaching CPOs where there is clear non-compliance.

‘They are not as useful as they could be because often it is plain from the terms of the review report that there has been a lack of full co-operation from the offender but little or no effective action has been taken to deal with that.’ (Open-ended response, Sheriffs’ survey)

6.52 CJSW staff acknowledged that Sheriffs need to have confidence that they are breaching people when needed, though there were some reports of CJSW staff feeling pressure to be seen as tough on non-compliance as a result.

6.53 CJSW staff are sometimes reluctant to take an order back to court if they think that the Sheriff will breach the order – usually because they believe there remains scope to work with the offender constructively through supervision.

“I suppose the main problem for me with them, is that ... often when you might think about doing that then putting it in could lead to somebody being breached. But actually working with them in supervision and having them voluntarily engage with an alcohol programme, might well get at least the same amount of good out of it, but without them being breached for not attending the programme. It takes into account that that kind of relapse can happen but not be the end of the process (Interview 56, CJSW)

6.54 CJSW staff observed that if they applied ‘the letter of the law or legislation’ the court would be inundated with breaches for people missing appointments. They felt that it was appropriate to use their discretion depending on the circumstances, and as long as they backed this up by actively pursuing the offender and being proactive with supervision.

“I think it's good that we're still allowed to exercise a professional level of judgment; it isn't just one, two, back to court, because that's not going to get a buy in from anybody.” (Interview 57, CJSW)

6.55 A related view was that if CJSW staff held back from breaching immediately, they could still try to re-engage the offender. If, however, the offender continued to refuse to comply, they would have a stronger case for breach which would be likely to result in more decisive action once returned to court.

6.56 Some CJSW staff felt that Sheriffs were being inconsistent and not always following through with their orders:

“It seems to be much more prevalent that the first breach will not result in anything other than a continuation. And the, the reviews themselves, the Sheriffs will quite often prescribe a certain amount of hours to be done in a certain amount of time and on the occasions where that isn't achieved, then, again, nothing happens. And if that happens once or twice, the offender then gets to feel that non-compliance isn't a particular problem... because there are no sanctions for my non-compliance – as long as I make some sort of effort.” (Interview 24, UPW staff)

Issues around responsibility for issuing warnings and breach

6.57 While responsibility for issuing warnings should be largely clear, there are still occasional problems in practice, rooted in the way in which the NOS Practice Guidance on CPOs is being interpreted. The guidance indicates that the UPW case manager has responsibility for issuing warnings in relation to UPWOA and that the case manager is responsible for the order as a whole. Therefore

when a CPO contains an UPWOA Requirement alongside a Supervision Requirement, the UPW case manager should notify the case manager if an offender has already been subject to a final warning and then incurs a further unacceptable absence.

6.58 However, in practice there is variation across (and sometimes within) case study areas in terms of who has responsibility for issuing warnings and at the point in which UPW staff notify CJSW staff. Some examples of these differences in practice include:

- The UPW officer issuing warnings and then informing CJSW about what they have done.
- The UPW officer informing CJSW that an offender has not attended and discussing with them whether a warning should be issued or not
- UPW staff issuing a first warning but not a final warning.
- UPW and CJSW staff discussing whether to give a formal warning first, or independently give a formal warning and then letting the other know.

6.59 It was reported that, on occasion, duplicate warnings were being issued. When this happens it was noted that it was important for UPW and CJSW staff to discuss it and decide the best course of action. In deciding whether the warnings should count as one or two, factors such as the timing and level of non-compliance were taken into account.

“If it was in the same week that you both issued that, let's just call it one first warning. If it's a longer timescale and it's for different things and it's significant, then we might need to say, 'Well, maybe we need to call it a first warning and a second warning and we need to do something about that'. But you've got to think, 'Is it proportionate to what has happened? Is it justifiable?' Because if you've got to go to court, you've got to be saying, 'Well, these are the warnings that have been issued, this is what led me to issue that breach'.”
(Interview 35, CJSW)

6.60 In order to address some of these issues, some of the case study local authorities issued additional guidance about the respective responsibilities of UPW and CJSW staff. For example, one area stated that UPW staff could issue warnings and that they were to make sure they informed the case manager; the guidance from another area stipulated that UPW staff could not issue a final warning.

6.61 Although communication issues of this kind between UPW and CJSW predate the reforms, the subsequent centralising of UPW (in order to improve speed of commencement) has meant that, in most case study areas, UPW and CJSW teams are not located in the same building. Communication is, therefore, largely by phone or email, and since UPW officers are frequently working out of the office, things can be missed.

“When ...in the old office the unpaid work team were in our office so you could go [and] have a conversation [...]. Now they're based [much further away] its telephone conversations, they're out and about more, they have different bases, we don't have that same level of communication so...I think

we've all felt that ...not having that interpersonal communication as easily has meant sometimes that breaches are being recommended to go in when maybe we would have had a conversation and suspension before.” (Interview 57, CJSW)

- 6.62 Even in a case study area in which CJSW and UPW staff were still co-located – and communication was generally considered to be good – similar issues still arose:

“When we're looking at unpaid work, we'll issue a second warning, not realising they've issued one already [...] It's a simple thing. You just really need to 'cc' it so as they get a copy of the letter, or you phone them up and discuss why you're sending a second warning. ...It's just the way of the world, so no system's perfect. ” (Interview 36, UPW staff)

Offender perceptions and understandings of CPOs

- 6.63 The offenders interviewed as part of the evaluation were generally positive about CPOs – and some enthusiastically so. As noted in the introduction, however, those least engaged with the criminal justice system are also least likely to volunteer to be interviewed about it. Older offenders were also slightly over-represented in the sample and few of the participants were subject to treatment requirements. That said, there were a wide range of opinions offered and a mix of those who had breached, those who struggled to avoid breach and those who had completed their orders with less difficulty.

Initial reactions to being given a CPO

- 6.64 When asked about their initial feelings about being given a CPO, offenders generally expressed relief at having not being given a custodial sentence. Some felt they had been given an inappropriate community sentence or were not happy about their situation in general. However, on balance, most recognised a number of positive aspects to community sentencing (the specifics of which will be discussed later in the chapter).

“I didnae want to get sent to prison, so I was quite happy. You meet new folk. They're nice folk that come here. I would rather no be daein' it obviously, because it's the punishment, but if I've got to come here, I don't mind it at all.” (Interview 70, Offender)

“A lot better, staying wi' my daughter and my girlfriend, so instead of being locked up and the wean coming up and seeing me in prison.” (Interview 18, Offender)

Whether CPOs were explained properly to offenders

- 6.65 Most offenders also felt their CPO had been explained clearly by their CJSW. The official terminology was not normally used but the crucial details of what was expected of them, when to turn up and what would happen if they breached were usually understood.

“It was pretty self-explanatory, when I've spoken to the people that conduct the orders, they explained everything to me, and they put me at ease, I felt quite comfortable and well-informed.” (Interview 60, Offender)

Some commented that signing the actual order or an agreement with the terms of the CPO laid out helped with this. There were some exceptions to this, however, where offenders were unsure of what the next steps were post-sentencing.

“It wasn't made clear what the process was, or if there was a written process or stuff like that. I ...just kinda thought that's what would happen.” (Interview 82, Offender)

- 6.66 For repeat offenders who had experience of community sentences prior to the introduction of CPOs, there was often a sense that the process was largely unchanged – “different wording, [but] the same thing at the end of the day” (Interview 10, Offender). On the other hand, some offenders noted the increased flexibility, opportunities for training and wider variety of UPW available.

“They've got the courses now. And even when you're building the sheds you're actually learning something. [B]efore, it was just like grass cutting, painting, picking up litter. Whereas, now, because there's a workshop here now, there's a whole lot o' things that you're learning when you're doing your hours here.” (Interview 70, Offender)

Issues affecting offender engagement and compliance

- 6.67 While the evaluation did not set out to gauge directly changes in levels of engagement and compliance, the interviews with both CJSW staff and offenders give an indication of the key influences at work here.

The Supervision Requirement and offenders' relationship with CJSW staff

- 6.68 The NOS Practice Guidance stipulates that all requirements, with the exception of UPWOA, must have a Supervision Requirement imposed. The case manager is outlined as having two roles:

‘To work with the individual and relevant others to achieve change in the individual's behaviour to encourage desistance from offending behaviour; and to work with the individual to achieve compliance.’ (Scottish Government, 2011a, p.30)

- 6.69 The importance of the relationship between CJSW and the offender has been subject to much debate (McNeill, Farrall, Lightowler & Maruna, 2012). It has generally been concluded that the role of the case manager is key in encouraging desistance from offending behaviour and compliance (Burnett & McNeill, 2005; Farrall & Calverley, 2005; McNeill, 2006; Weaver & McNeill, 2010 & Ugwu-dike, 2010). It is therefore unsurprising that one of the findings in this evaluation is that the role of the social worker in Supervision appears key to engagement and compliance with the order. Offenders regularly reported that their relationship with their case manager helped them change their behaviour, reduce or stop offending behaviour and to achieve compliance.

“It does make a big difference, ‘cause he pushes me. I push myself as well though, cause I want to get it done as quick as, and it is a great help. And I keep saying it: as much as it's annoying and frustrating, it does make a difference, I feel, personally - it might sound a bit cheesy like! - but I just feel it makes me a better person, and it's opened my eyes, like you can't go around doing things that you do.” (Interview 61, Offender)

“I think if I never got the help I'd be dead, or in jail for a long time” (Interview 9, Offender).

“She's got a way of putting things to me and I understand it better... when I got in trouble she was like 'this is the way it is” (Interview 31, Offender).

- 6.70 Offenders were often very positive about both the support and the actual work done in Supervision, often highlighting the practical benefits or behaviour change that flowed from this.

“‘X’ was absolutely brilliant! I mean I was homeless because I'd split from my wife and she was an absolute diamond, some of the suggestions she was coming up [with], phoning places, and when I did get sorted 'oot somewhere she was there for support all the time” (Interview 62, Offender)

“Since I've been out, working with my social worker... I feel my confidence is improving. I feel more comfortable. I understand, why I did the things I did, and what to look for in myself and how you control that....It made me realise a lot of different things about myself...It's made me start to believe in myself again... given me goals....I can see daily the end return.” (Interview 12, Offender)

Tailoring CPOs to offender needs

- 6.71 It is perhaps also unsurprising that the more closely tailored a CPO is to an offender's needs and interests, the greater the reported levels of engagement and compliance.
- 6.72 In those cases where offenders were most motivated to engage with their UPW, this was usually because the work matched the offender's interests or there were new skills they could learn or develop.

“Obviously I was kinda nervous about daein' the fence, because I'd never done it afore, but I enjoyed it. It's something I would like to dae. I felt if a job ever come up for like fencing I'd be interested, so it's kinda motivated me to dae that.” (Interview 70, Offender)

- 6.73 Other offenders seemed to have high levels of engagement if they were accessing some rehabilitative work (for example, being given drug, alcohol and/or mental health treatment) which they would not have accessed without the order.

“Having that Alcohol Treatment Order attached to the Community Payback Order, that was the turning point in my life certainly over the past few years.” (Interview 82, Offender)

- 6.74 However, as we saw earlier, there were also instances of individual needs 'slipping through the net', especially when an offender was given a Level 1 order. This sometimes meant they breached this initial order and were only given the help they needed once the order had been returned to court and their needs better assessed.

“I've got a serious mental disability, which has been a contributory factor to me spending [more than 15] years of my life locked up in prisons... And this is where I feel that I was let down [...] I believe the public's been let down as well, and I think there's a loophole in the system.” (Interview 73, Offender)

- 6.75 Another general aspect of CPOs that contributed to engagement was ensuring that basic practical needs were met, such as flexibility in making appointments, offenders not having to travel too far and being fully reimbursed if travel is necessary. One offender in a rural area reported that travel reimbursement did not cover the return journey for UPW. In a different rural area, an offender who breached UPW was asked in the interview what might have helped prevent this:

“I think if there was an option o' something in my area to do something. I think the travelling and everything, I was pregnant [and] had a difficult pregnancy. I think the travelling in the buses and things, and morning sickness and everything, I found difficult” (Interview 72, Offender).

- 6.76 However the same individual also commented that CJSW and UPW staff had done all they could to be flexible through her pregnancy.

- 6.77 The increased flexibility of CPOs in comparison to previous community sentencing was also something CJSW commented on approvingly.

“It's more flexible I think than the old Probation Orders... [Y]ou don't have to see everyone [as] the same... it's all about trying to tailor. So, national standards coming in have helped I think to – have a more tailored approach, more responsive approach.” (Interview 37, CJSW)

Other factors associated with engagement and compliance on the UPWOA Requirement

- 6.78 A common view among offenders carrying out UPW, was that they enjoyed doing work that clearly benefitted their community – especially if it was for more vulnerable groups (such as the elderly).

“I worked all my life, but last year I've been unemployed, and I'm on the sick at the moment. It's actually motivated me. I know it's a punishment, and it's unpaid, but it gives me a reason to get up and dae something wi' myself, and o' course you're helping a community. That's why they're called 'Community Paybacks', I mean a lot o' the work we do is really good, and a lot o' it's for old people and disabled people that cannae manage normally.” (Interview 33, Offender)

- 6.79 The sociable element of UPW was often seen as a positive and staff treating offenders fairly and with respect could also motivate them to engage more fully in a placement.

“I really enjoyed it cause it was mixing wi' all different people, all different ages, and I got to do lots o' different jobs, and mix in wi' different groups.” (Interview 72, Offender)

“That woman basically took me underneath her wing if you know what I mean and I trusted the woman a hell of a lot. She was just kind of showing me stuff like management stuff, she was being alright with us... It was a really good placement because there was this woman who worked in it who's got learning difficulties ... me and that woman grew dead close and then obviously because I was helping this woman 'oot then me and the manager became really really close.” (Interview 9, Offender)

External factors affecting engagement and compliance

- 6.80 As with many other re-offending initiatives, it could be argued CPOs are most likely to work with more mature offenders, who have greater stability in their lives, or have decided they want to stop offending (Scottish Government, 2014b, p.17). Maturation reform theories have a long history in desistance research and are based on the established links between age and certain criminal behaviours (McNeill, Batchelor, Burnett & Knox, 2005; Maruna, 2001). Social bond theories also suggest that ties to family, employment or educational programmes in early adulthood explain changes in criminal behaviour across the life course (McNeil et al., 2005).

- 6.81 CJSW staff were certainly aware that, while their role was important, there was a wide range of important external influences on engagement and compliance, including poor health, chaotic lifestyles, significant life events, or time constraints due to employment or caring responsibilities.

“But [with] compliance, I think it's up to us to sell the order to people for them to see the worth in it and the benefit in it. But that's only half the job I suppose.

People's lifestyles as well, if you're in like a chaotic lifestyle or you have addiction problems you're gonna prioritise other things in your mind than keeping your appointment with your social worker.” (Interview 15, CJSW)

“The other thing is around bereavement. A huge number of people that I work with have bereavement issues that they've never dealt with the grief of things. So especially... around anniversaries or similar events happening, they can disengage from a lot of stuff, and once they've disengaged it can become harder for them to reengage.” (Interview 56, CJSW)

Key points

- 6.82 CPOs with a single requirement are more likely to be completed than those with more than one. However, an increase in the number of requirements beyond two does not raise the risk of non-completion further. However, the combination of requirements does appear to influence chances of successful completion.
- 6.83 More than half of CPOs completed in 2012-13 had UPWOA as their only requirement – and it was these orders that had the highest rate of successful completion and the lowest rate of being revoked due to breach.
- 6.84 Those with just a Supervision Requirement had the next highest rate of successful completion and next lowest rate of revocation due to breach. Completed CPOs containing a Programme Requirement (alongside a Supervision Requirement) had the lowest levels of successful completion, although the fact that a relatively high proportion of CPOs with Programme Requirements remain live may be a factor here.
- 6.85 CPOs containing an ATR had high levels of successful completion when there was no additional UPWOA Requirement. The same pattern can be seen for CPOs containing a Compensation Requirement.
- 6.86 Although reviews were previously available for DTTOs and Probation Orders there is a perception that their use has increased under CPOs. Those Sheriffs making relatively little use of reviews under the new arrangements tend to be resistant to the idea that they should be responsible for ‘micro-managing’ the order.
- 6.87 The flexibility with which reviews could be used is welcomed by CJSW staff and Sheriffs, though has inevitably led to variation in use. Reviews are considered useful for several reasons: by monitoring compliance they can be used to encourage offenders to take orders more seriously (e.g. where past orders have been breached); they can represent a substitute for breach in cases where there were doubts about the appropriateness of the CPO; and they can be used to motivate the offender (e.g. by setting targets) and acknowledge successful progress if made.
- 6.88 There are still some issues around who has responsibility for issuing warnings/breach in joint orders with supervision and UPWOA – specifically

around first and final warnings. There are longstanding communication issues between UPW and CJSW staff at work here, but some interviewees felt these had been exacerbated by recent structural changes, such as the centralisation of UPW.

- 6.89 Some Sheriffs are unhappy that further offences do not constitute a breach of a CPO. CJSW interviewees, by contrast, are more likely to appreciate the flexibility that this provides in allowing them to continue to work with offenders following a subsequent offence.
- 6.90 Sheriffs appear to have broad confidence in CPOs in terms of monitoring of progress and appropriate use of breach. However there are still some areas in which it is felt the processes could be improved – especially in relation to the length of time it takes to declare a breach and the number of warnings given.
- 6.91 Most offenders reported that their CPO had been clearly explained to them; that they knew what was expected of them and that they understood what would happen if they breached the order. Signing the order, or an agreement, seems to help this understanding.
- 6.92 Offenders are usually very positive about the relationship they have (or had) with their case manager, citing this relationship as being of key importance for engagement and compliance.
- 6.93 Engagement and compliance is most likely when a CPO was tailored to an offender's needs and interests. Other factors that offenders respond positively to include feeling that they are paying back to the community, and the sociable element of UPW (especially the individual placements).

7 JUDICIAL DECISION-MAKING ABOUT THE USE OF COMMUNITY PENALTIES

- 7.1 This penultimate chapter of the report considers the extent to which all three aspects of the reforms – Community Payback Orders (CPOs), Criminal Justice Social Work Reports (CJSWRs) and Presumption Against Short Sentences (PASS) – have influenced judicial decision-making in relation to the use of community penalties and, by extension, short prison sentences. In the language of the logic model, it considers the extent to which Sheriffs have confidence in community penalties and see them as an appropriate and viable alternative to custody. As such, it draws almost entirely on the views of Sheriffs themselves, as captured via the qualitative interviews and the national survey. The chapter begins, however, by reviewing briefly recent statistics on actual use of community penalties and short prison sentences.

Use of community penalties and short prison sentences in the Scottish courts

- 7.2 There has been a long-term increase in the use of community penalties in Scotland. In 2003-4, for example, 13,943 such penalties were imposed, accounting for 11% of all disposals; by 2012-13, the number had risen to 17,254 or 17% of the total. It should be noted, however, that the increased use of community penalties was not associated with a corresponding fall in the use of custodial sentences, which also increased in absolute terms during the period between 2003 and 2009 and as a proportion of all main disposals across the period as a whole. Since 2008-9, however, community penalties have accounted for a slightly greater proportion of all disposals than custodial sentences. Moreover, the increase of three percentage points in the proportion of all sentences accounted for by community disposals between 2010-11 and 2012-13 is the largest in any two-year period in the last decade, suggesting that the introduction of CPOs and PASS may have given additional impetus to a longer-term trend.
- 7.3 Table 7.1 shows that the total number of prison sentences of three months or less imposed in 2012-13 was 4,334 – slightly fewer than in 2011-12 and markedly fewer than in the year immediately preceding the reforms.

Table 7.1: Prison sentences of up to two years imposed in the Scottish courts, 2010-2013

	Total	Less than 3 months		From 3 months to less than 6 months		From 6 months to less than 2 years	
	n	n	% of total	n	% of total	n	% of total
2010-2011	15256	5324	34	5220	31	3436	24
2011-2012	15874	4516	28	6149	39	3908	25
2012-2013	14748	4334	29	5470	37	3804	26

Source: Criminal Proceedings in Scotland, 2010-11, 2011-12, 2012-13.

- 7.4 By contrast, though, the use of sentences of three to less than six months and six months to less than two years rose sharply in the first full year following implementation of the reforms. Both figures fell back again in 2012-13, but remain above the level imposed in 2010-11.
- 7.5 Overall, then, there are grounds for thinking that progress is being made on two key objectives associated with the reforms – the increased use of community penalties and decreased use of short prison sentences. Considerable caution is, however, required in the interpretation of these figures – both because relatively little time has elapsed since the introduction of the reforms and because we may simply be seeing the continuation of longer-term trends and influences: for example, the increase in sentences of between three months and two years over the same period is consistent with longer-term trends which pre-date the reforms.
- 7.6 With this statistical backdrop in mind, we turn now to evidence of judicial views and perceptions of the disposals open to them for lower tariff offenders.

Overall views of CPOs and willingness to use community penalties

- 7.7 We start this section by looking at Sheriffs' overall views of CPOs and the extent to which they consider that the new arrangements have shaped their sentencing practice. On balance, there is evidence that CPOs are seen as an improvement on previous community penalties, have contributed to a greater willingness to use such disposals and are viewed with a reasonable degree of confidence by most Sheriffs. However, while signs of such impacts may be evident at an aggregate level, the nature and extent of such change is limited, and many – if not most – Sheriffs see little change in the balance of their use of community and custodial disposals. What is clear, however, is that there is almost no evidence of a shift in the opposite direction – in other words, towards a loss of confidence in or use of community penalties – as a result of the reforms.
- 7.8 In the Sheriffs' survey, for example, around a third of respondents (25 out of 67) thought their use of community penalties had increased as a result of the

introduction of CPOs; a majority (41) thought that there had been no real change while none thought it had decreased.

- 7.9 Those Sheriffs who were particularly positive about the reforms typically welcomed the range and flexibility of the options on offer to them, the simplification of the overall framework and evidence of swifter implementation and more rigorous enforcement. One Sheriff simply commented that CPOs offered: 'Better and more creative sentencing options', while another indicated that he/she was making greater use of community penalties under CPOs because of 'the robust nature of the process – the robust monitoring and the encouragement against imprisonment'. Others focused on the advantages of CPOs in terms of being able to combine different type of requirements (and sentencing objectives) in a single order.

"You just use a combination of these things. And it's a flexible tool. You can do a lot of things." (Interview 27, Sheriff)

'The multiple requirements, including unpaid work and the Conduct Requirements, have made them more relevant and appropriate sentencing options.' (Open ended response to Sheriffs' survey)

- 7.10 It is also worth noting that, on the specific measures of confidence, CPOs score relatively highly. The vast majority of Sheriffs (62 out of 72 replying), for example, had 'a lot' or 'quite a lot' of confidence in CPOs in terms of the 'capacity of CJSW and other agencies in their area to offer an appropriate range of programmes and services'. Those who expressed little or no confidence in this respect attributed this to insufficient budgets and lack of resources – issues that are returned to below.
- 7.11 Around a third of Sheriffs (24 out of 67 replying) also thought that CPOs were an improvement on previous community sentencing options in terms of the capacity of CJSW and other agencies to offer an appropriate range of programmes and services, though most (40) felt there was little difference between the two. Again, very few (2) Sheriffs regarded CPOs as worse than the previously available community sentencing options in this respect (Table 7.2).

Table 7.2: Sheriffs' confidence in CPOs and comparison with previous community sentences (n)

	Confidence in CPOs in terms of...			CPO compared with community sentencing options previously available in terms of...			
	A lot/ Quite a lot	Not very much/ None at all	Don't know/ can't say	CPO much better/ Better	About the same	CPO worse/ Much worse	Don't know/ can't say
...the capacity of CJSW and other agencies in your area to offer an appropriate range of programmes and services	62	8	2	24	40	2	1
...the monitoring of progress and breach	54	18	0	27	37	2	1
<i>Bases</i>	72			67			

Source: Sheriffs' survey.

7.12 There was a similar level of confidence in terms of the 'monitoring of progress and breach' (54 Sheriffs saying they had either a lot or quite a lot of confidence in this regard). Nevertheless, as we saw in Chapter 6 (para 6.50), the qualitative data suggest that there are still some areas in which Sheriffs feel that these processes could be improved – especially around the length of time it takes to declare a breach and the sense that too many warnings are given.

7.13 A sizeable minority of Sheriffs (27 out of 67 replying) also thought that CPOs were 'better' or 'much better' than the community sentencing options previously available in terms of monitoring and breach. Again, this suggests that some Sheriffs are more confident in CPOs compared with previous community sentencing options and some progress is being made towards the outcomes.

Use and views of the specific requirements

7.14 We have already explored the use of the specific requirements, though largely from the point of view of CJSW staff and offenders. It is worth revisiting some of these issues, however, in the context of judicial decision-making.

7.15 Sheriffs' reported frequency of use of different requirements broadly matches evidence from other sources. Table 7.3 below shows how often Sheriffs report that they use each of the requirements as well as whether they would like to make greater use of any of them (this issue is addressed in the following subsection). These data follow a broadly similar pattern to the official Criminal Justice Social Work Statistics 2011-12, outlined in Chapter 3.

Table 7.3: Sheriffs' use and views of different CPO requirements (n)

Requirement	How often use requirement			Whether would like to make greater use of requirement		
	Very often/ Fairly often	Not very often/ Almost never/ never	Don't know/ can't say	Yes	No	Not answered
Unpaid Work or Other Activity	71	0	1	19	47	6
Offender supervision	69	2	1	3	62	7
Compensation	20	51	1	12	53	7
Programme	30	41	1	25	40	7
Mental Health Treatment	9	62	1	14	51	7
Drug Treatment	25	46	1	18	48	6
Alcohol Treatment	29	42	1	24	42	6
Residence	3	68	1	8	56	8
Conduct	20	50	2	13	53	6
Some other requirement not currently available	N/A	N/A	N/A	9	11	52
<i>Bases</i>	<i>72</i>			<i>72</i>		

Source: Sheriffs' survey.

7.16 For example, Sheriffs were most likely to report use of the UPWOA and Supervision Requirements: 71 using UPWOA and 69 Supervision 'very' or 'fairly' often. Interestingly, a relatively high proportion (19 out of 66) also indicated that they would like to make *more* use of the UPWOA Requirement – even though all of this group reported that they already used UPWOA 'very often' (n=13) or 'fairly often' (n=6). While this may reflect what some Sheriffs see as general lack of resources, it is also likely to signal a desire to be able to make more creative and appropriate use of both UPW and OA – for example, for offenders with health difficulties. This perceived lack of resources is also seen by some Sheriffs as creating difficulties in the timely completion of UPWOA Requirements.

'I would make a greater number of such orders if work was available quickly, intensively and, to a greater extent, at weekends.'

'Need for a wider range of activities/work settings for those with general health difficulties.'

'There are insufficient resources to allow work to be done within the relevant time limits. Always being asked for extensions which defeats the purpose of the exercise – not 'swift' enough.'

(Open-ended responses to Sheriffs' survey)

7.17 It is also clear that some sentencers are unhappy with what they see as a lack of clarity and transparency around the eventual balance between these two elements. The concern here appears to be that too much of the 'demarcation' of the two elements is left to the discretion of the supervising social worker.

'I would like to be able to impose unpaid work (as punishment) plus 'other activity' requirement (as rehabilitation) rather than have this requirement combined as at present.'

"Other activity' should be defined and identified in the CJSWR. There should be a clear demarcation between 'unpaid work' and 'other activity' so that the sentencer is aware precisely of how punishment/rehabilitation is to be achieved.'

(Open-ended responses to Sheriffs' survey)

7.18 Both the qualitative interviews and Sheriffs' survey revealed considerable enthusiasm for Level 1 orders, described by one interviewee as 'a great innovation'. That enthusiasm largely derives from the fact that it is seen as a more constructive disposal than a fine for low tariff offenders – especially those on benefits – and young males who might otherwise be lacking structure and direction.

"I think the availability of the Level 1 order is a good thing. I think [...] for people who do not have very much money to start with and don't have any structure to their lives, but they are fit, doing something like this not only repays the community for their offending behaviour, but it can offer them something. It can offer them something to do. It can offer them a degree of, you know, self-esteem, in the sense that they've completed something that is worthwhile, and – who knows? – on some occasions, it may open a door to something." (Interview 51, Sheriff)

7.19 We saw earlier that the absence of a CJSWR in the case of Level 1 orders is seen as potentially problematic by CJSW staff. For several Sheriffs, however, this also forms part of its attraction – not only because it reduces the demands on the system, but also because it can lead to swifter imposition of the penalty.

"You don't need a report, you know? Sometimes you might be borderline whether you get a report, and the reports are very time-consuming and they're expensive to make. [I] can impose that sentence without a report... if there's an early plea. For example, you can reduce the 150 hours, which is quite a substantial sentence, to 100 to take account of the early plea, and you can do that without the report, and it [...] gets them out, and they're in the next day." (Interview 44, Sheriff)

7.20 There were also some apparent differences between the patterns evident in the published statistics and Sheriffs' own reported use of different requirements. Despite Conduct Requirements being the third most commonly issued type of requirement according to data on actual disposals, only 23

Sheriffs reported using these very or fairly often – a lower reported frequency than was evident for some of the other requirements, including Programme, DTR and ATR, which have very low levels of actual use.

- 7.21 Although it has been recognised by Sheriffs that the use of the Conduct Requirement to impose a general ‘good behaviour’ clause is not consistent with the aims of the legislation, in the qualitative data, several indicated that they would still welcome such a provision – especially in the absence of further offending representing an automatic breach.

‘Since it was established that a Conduct Requirement cannot include a requirement that the offender be of good behaviour, but I have never used this. But in principle, I don't see why this shouldn't be a requirement, as it was for probation orders.’ (Open-ended response to Sheriffs’ survey)

- 7.22 DTR, MHTR and, especially, ATRs (along with the Programme Requirement) also featured relatively frequently when Sheriffs were asked whether they would like to be able to make greater use of specific requirements. While some Sheriffs simply seem frustrated by the failure of CJSWR writers to suggest such requirements, or to do so in the specific terms required by the legislation, most recognise that there are very significant resource constraints that make it difficult to secure assessments or identify and access appropriate services, and that these factors underpin the ‘failure’ of CJSW staff to make such recommendations. There is a widespread view, however, that many offenders would benefit from dedicated treatment programmes, rather than more generic counselling or support of the kind available under the Supervision Requirement.

‘I can't impose a Programme Requirement or Drug Treatment Requirement or Alcohol Requirement or Mental Health unless the possibility and contact of that requirement is identified in the CJSWR. But, that is rarely done – so usually drug/alcohol support is only done through Supervision, which I think is much less likely to be successful. I suspect that one reason why Programme Requirements are not usually recommended is lack of resources. I believe many of those appearing before us would benefit from intensive and extended Programme Requirements were they to exist.’ (Open-ended response to Sheriffs’ survey)

The Presumption Against Short Sentences

- 7.23 Although PASS was the subject of much debate during the Bill stages of the legislation – in part, because of opposition that forced the (then) minority SNP administration to amend the point at which judges would have to formally justify the use of imprisonment from six months to three – in practice, it has been one of the less visible aspects of the reforms.
- 7.24 Although the presumption has been widely referred to in the media as a ‘ban’ on sentences of less than three months in all but exceptional cases, this is too strong a characterisation. The presumption carries little direct force, other than a requirement for judges to record formally the reasons for their decision.

In practice, this seems to amount to a sentence or two in the minutes of the court – often added by the clerk and simply stating that ‘no other sentence was appropriate’.

- 7.25 From the qualitative interviews with sentencers, there was little sign of PASS figuring prominently or explicitly in decision-making, although one or two indicated that it had made them think twice on occasion:

“It’s certainly pointed me away from a short sentence on a few cases, particularly where a good, skilled court practitioner will remind the Bench about that – and very proper that they should do that.” (Interview 50, Sheriff)

- 7.26 Most of those who took part in qualitative interviews, however, considered that the presumption had little practical consequence because custody was always treated as a last resort. Had the original six month limit stood, the direct impact of the presumption might have been greater; but the fact that sentences of three months or less are already used relatively rarely is a key factor here.

“I don’t think the approach has been particularly different. The presumption against short sentences, it kind of reinforces the thought process a little but from the practical view, we were using ours on a low level anyway.” (Interview 75, Sheriff)

- 7.27 Perhaps equally significantly, several interviewees emphasised that – regardless of the presumption – they would continue to impose short sentences where they felt them to be the only appropriate sanction:

“Sometimes a sharp shot across the bows is appropriate. [...] And I have to say that I still do that – it makes no difference other than having to give a justification for it.” (Interview 20, Sheriff)

- 7.28 One interviewee also pointed out that the effect of imposing a short sentence was sometimes to *release* someone from prison, in circumstances in which they have been held on remand and the sentence has already effectively been served.

- 7.29 For many of the Sheriffs interviewed, then, PASS was largely seen as an irrelevance to day-to-day sentencing practice or, at most, as a background factor in their considerations. Consequently, it was not viewed as a particular source of contention. It is worth noting, however, that a small number of Sheriffs were overtly and extremely critical of PASS. One Sheriff, for example, described it as ‘a hopeless piece of legislation’; while another commented that it was ‘a disgraceful section [of legislation]... showing a complete lack of trust in the sentencing person’. A third said that he regarded the changes as ‘largely cosmetic’ and as an exercise in ‘spin’. The strength of such views suggests that it may be some time before there is a consensus among Sheriffs about this aspect of the reforms.

- 7.30 Although much of the discussion around PASS centred on its impact – or lack of impact – on the use of short prison sentences, a small number of

interviewees also broached the possibility that it might lead to the imposition of *longer* sentences (of more than three months). Indeed, as one Sheriff commented: “In place of short sentences, I use both CPOs and longer sentences”.

7.31 This suggestion of a slightly more nuanced picture is reinforced by findings from the (national) survey of Sheriffs (see Table 7.4). This suggested little change overall, although it found that some Sheriffs have increased their use of community penalties *or* longer prison sentences as a result. In this context, it is possible that Sheriffs feel that their increased use of community penalties is also increasing the likelihood of breach and that they are making additional use of short prison sentences – for reasons discussed in paras 7.34 to 7.37 below – once other options have effectively been exhausted.

Table 7.4: Sheriffs’ views of the impact of the Presumption Against Short Sentences (n)

	Strongly agree/ Agree	Neither agree nor disagree	Disagree/ Strongly disagree	Question not answered
PASS has led me to give some offenders slightly longer sentences than I would otherwise have done	20	11	35	6
PASS has made it more likely that I will give offenders a community rather than a custodial sentence	24	15	29	4
PASS has made little of no difference to my own sentencing practice	40	14	16	2
<i>Base</i>				72

Source: Sheriffs’ survey.

7.32 Only 16 Sheriffs disagreed with the statement ‘PASS has made little or no difference to my own sentencing practice’ while 40 agreed, suggesting that most feel they are continuing to impose sentences as they did prior to the Act. But a sizeable minority of Sheriffs thought PASS had made it more likely that they would give offenders a community rather than custodial sentence (24 Sheriffs strongly agreed or agreed); and almost as many (20) thought PASS had made it more likely that they would impose a longer sentence. Returning to the theme highlighted above (in para 7.30), a small minority of Sheriffs (10 out of 72) indicated that PASS had made it more likely that they would impose both community sentences *and* longer sentences.

The continued use of short prison sentences

- 7.33 Sheriffs largely maintain, then, that they continue to use custody as a ‘last resort’ or where there is ‘no other suitable alternative’. In what cases, then, do they consider this to be the case and that a community penalty is either inappropriate or ineffective? At first sight, there appears to be consensus that prison is simply reserved for cases where the specific offence merits it in terms of seriousness, or where the offender has multiple previous convictions and an entrenched record of serial non-compliance. In practice, however, there is a degree of variance in the assessment of seriousness and in the willingness of sentencers to give offenders ‘one more chance’.

Short sentences as a response to persistent non-compliance

- 7.34 In this context, it is worth noting that several of the Sheriffs interviewed were keen to emphasise that previous non-compliance in itself would not necessarily be a barrier to a community penalty. Indeed some indicated that if the CJSWR contained *any* indication that the offender might be open to a constructive engagement with social work – regardless of previous record – they would look to build on that. As one put it, “really when I’m imposing short sentences, that’s when we’ve run out of ideas!” (Interview 63, Sheriff). Another talked about gaining a sense from a CJSWR written by a social worker they trust that there is ‘something to work with’:

“If you see somebody in that context saying, ‘Yes, we know all of this. We know about all of these breaches, but...’ And sometimes it can be for all sorts of reasons. It can be they’ve done a little bit and they’ve got contact with their family member, they’ve got contact with their child again, they’ve got some other...something” (Interview 28, Sheriff)

- 7.35 But it is equally true that if that ‘something’ is missing, and the CJSWR simply gives no grounds to believe that the offender will respond to a community disposal, Sheriffs have little choice but to impose a custodial sentence.

“You can defer sentence for good behaviour for a person for a short while, with a bad record, and say, ‘Well, if you are of good behaviour, I may consider a CPO’. If he comes back, and has been of good behaviour... but if the criminal justice team come back and say, ‘No. We can’t actually work with this man’, then... there’s very little to go on.” (Interview 27, Sheriff)

- 7.36 Perhaps the clearest marker of this situation, then, is not repeat offending as such, but *serial non-compliance* – particularly in the light of clear and repeated warnings about the consequences of flouting existing orders. At this point, for some Sheriffs, the balance between the various elements of sentencing shifts decisively towards the punitive: in the absence of any prospect of rehabilitative progress, either inside or outside prison, what remains is the need to signal to the offender and to others that their behaviour has consequences. Sometimes, this is precisely how and why some Sheriffs do continue to make use of very short sentences.

“I impose a sentence that I think is apt for the individual offender in the circumstances of the crime in the particular moment that I impose it. And if you have somebody who has committed even a relatively minor offence, and has been given three opportunities to do something else, and has not done it, then you have to sanction them in a way that has an impact upon them and on others who might be in that situation. And that doesn’t justify sending that individual to prison for six months or more because I’m told that a short sentence has no impact. I’m not at that stage trying to engage in the process of rehabilitation... I’m saying, ‘You were told to do a variety of other things as an option. You have not done it. Here is the inevitable consequence’.” (Interview 28, Sheriff)

- 7.37 While the above example describes what might be described as ‘wilful’ non-compliance, other Sheriffs gave examples of serial non-compliance rooted in complex and overlapping individual problems, such as homelessness, mental ill-health and alcoholism. While there may be greater sympathy for the plight of such individuals, in practice, a short prison sentence can not only come to be seen as inevitable, but even beneficial in the absence of appropriate facilities elsewhere. For example, it may allow individuals to ‘dry out’, or simply ‘give the local high street a break’ from their behaviour. But it can also ‘wipe the slate clean’ – meaning that they no longer have to deliver on what may have become a complicated and (for them) unmanageable accumulation of community disposals and monetary penalties.

“[I]f you’ve got people with a transient lifestyle, and we know from history they’re not going to be able to respond to a community-based disposal, and... the agents are generally inviting you to take the view of ‘there’s nothing else we can do’. [...] That’s where a short sentence comes in...” (Interview 50, Sheriff)

Gender and decision-making about the use of short sentences

- 7.38 Several Sheriffs were at pains to emphasise that gender is not a specific factor in their decision-making about whether to impose a short prison sentence rather than a community penalty. Nevertheless, it clearly does feature in consideration of domestic circumstances and caring responsibilities, and occasionally more explicitly, as in the following account in which a Sheriff indicates that the fact that prison would necessarily involve a great deal of travel for family members (because of the lack of local places for female offenders) was a potential factor in their decision-making.

“You have to bear in mind, [...] a factor here in sentencing is that if I sentence someone to prison, I mean, at closest, it’s [name of location] or [name of location], which is so-so for visiting. But if it’s a female [...] in general it’s Cornton Vale. And it’s a bit discriminatory in that sense!, that, if you’re female, your family are only going [to] get to see you by traipsing [XX] miles. [...] With] a community disposal – if they’re reasonably orientated to do it – at least they’re here, they’re still in the community, they’re part of the community.” (Interview 75, Sheriff)

Attitudes towards 'recommendations' from CJSWR writers

- 7.39 When looking at Sheriffs' views of CJSWRs earlier in the report, we touched briefly on the question of report-writers' 'recommendations' or 'preferred sentencing options'. These were less likely than other aspects of the reports to be viewed as useful by Sheriffs (although 33 out of 69 did find them so³²) and it is worth considering the range of judicial views here.
- 7.40 In many ways, this issue cuts to the heart of the relationship between the judiciary and criminal justice social work and its potentially thorny character is captured in the movement between the formal language of 'preferred sentencing options' and the informal discussion (evident in qualitative interviews with both Sheriffs and social workers) of 'recommendations'.
- 7.41 Most Sheriffs maintained that they were happy to receive 'recommendations' from CJSW. Indeed, some were adamant that social workers are actually much better placed to arrive at such judgements because of the closeness of their work with individual offenders. One Sheriff even proposed an expanded role for social workers in the sentencing process (although, at the same time, acknowledging that this was an idea unlikely to find favour with his colleagues):
- "My innovation would be, let the social workers do the sentencing because they're closer to it." (Interview 44, Sheriff)
- 7.42 Another talked of the difficulty in persuading social workers to put forward detailed recommendations, based on their experience and knowledge of the offender.
- "Some Social Workers will say, 'Well, we can't tell you how long you should be ... It's a matter for you'. I think it's helpful for them to suggest periods... – because they're suggesting disposals, so why can't they suggest periods? They're afraid of being seen to be running it, as it were." (Interview 27, Sheriff)
- 7.43 Other sentencers, however, were keen to preserve a clearer distinction between professional roles and to emphasise the continuing independence and discretion of the bench. In practice, this meant that they were happy for social workers to outline options and to highlight the relative 'appropriateness' of those; they were not, however, content for social workers to give them a 'strong steer' or highly detailed 'recommendation'. In direct contrast to the quote in the previous paragraph, for example, a different Sheriff explicitly indicates that it is inappropriate for the report writer to specify the proposed length of the disposal.
- "I'm happy to have a recommendation that says that ... 'this individual is appropriate for a Drug Treatment & Testing Order', 'this individual's appropriate for Supervision', or .. 'We do the X Programme here for that kind

³² Three Sheriffs did not answer this question.

of issue'. That's perfectly appropriate. I do not like a recommendation that says, 'This person should get 80 hours' or 'This person should get ...' whatever. That's not the social worker's job." (Interview 28, Sheriff)

- 7.44 There is also evidence that Sheriffs are sometimes frustrated by what they see as 'unrealistic' recommendations – either because, as discussed earlier, they are seen as overly-reliant on offender accounts, or because they are felt to reflect an in-built preference among CJSW staff for community disposals:

'Always involves accused's account of offence – often way off mark' (Open-ended response to Sheriffs' survey)

'Many social workers as a policy ALWAYS 'recommend' a community disposal (even if unrealistic) which affects my perception of the credibility of such suggestions.' (Open-ended response to Sheriffs' survey)

- 7.45 Even though some Sheriffs are known to look to social workers to make very clear recommendations, a degree of cautiousness – or at least sensitivity to potential judicial attitudes – is still evident in the wording of reports.

"[C]ertainly historically it was very bad form to recommend anything in a report because it just sent the Sheriff into a very bad mood! ...I find on the whole they don't say [...] 'I recommend the court does this' - they're much more circumspect than that, which is good. They suggest that 'the court might like to consider'." (Interview 63, Sheriff)

- 7.46 Sheriffs' attitudes towards the issue of 'recommendations' are likely to be a reasonable proxy for their wider attitudes towards the respective roles of social workers and the judiciary. There is certainly no doubt that several of the Sheriffs interviewed for the evaluation would regard themselves as liberal in outlook and were keen to emphasise the closeness of their working relationship with social workers and other criminal justice professionals. Others have what might be termed a more traditional stance, clearly distinguishing their role from that of other agencies and showing a degree of scepticism about the willingness of social workers to face some of the realities of the courtroom (including the need, on occasion, for an explicitly punitive disposal).

"Some sheriffs...I think feel much more responsibility or have much more of a... not a feeling that they're actually a social worker, but a feeling they're part of that process; whereas other sheriffs feel that they're not part of that process, that they're part of a different process." (Interview 63, Sheriff)

- 7.47 It should be emphasised, however, that this latter position did not necessarily lead to any kind of antagonism, but did shape the way that Sheriffs would understand or interpret the actions and recommendations of social workers – that is, as coming from a different professional start point and frame of reference.

"I think there's... traditionally been a disparity in approach. Social Workers think Sheriffs want to send people into prison, and Sheriffs think Social

Workers will say anything to keep them out of prison. And so you... go in with that allowance perhaps. [...] So you have a slightly different reference point, but, again, you take that on board and you carry on. It doesn't mean you can't come to a view. It's just a factor in the whole decision-making process.”
(Interview 75, Sheriff)

Judicial perceptions of how community penalties are viewed by offenders and the public

- 7.48 Judicial perceptions of how CPOs are viewed by other actors can influence their decision-making in relation to specific cases and the use of community penalties more generally. Perceptions of the seriousness with which individual offenders are likely to approach a particular disposal are, of course, critical. But sentencers also sometimes invoke public expectations or opinion in explaining why a community penalty may be inappropriate.
- 7.49 Findings from the Sheriffs' survey suggest that views are fairly evenly balanced in terms of the confidence sentencers have in how seriously CPOs are taken by offenders. Of the 72 Sheriffs who responded, just two indicated that they had 'a lot' of confidence in CPOs in that respect though 29 said that they had 'quite a lot' of confidence; 32 said they had 'not very much' and just one said 'none at all'. Views were also mixed in relation to Sheriffs' confidence in the acceptability of CPOs to victims and members of the public, though fewer said they had 'a lot' of confidence and more said that they were unable to offer an opinion (see Table 7.5).

Table 7.5: Sheriffs' confidence in CPOs and comparison with previous community sentences (n)

	Confidence in CPOs in terms of...			CPO compared with community sentencing options previously available in terms of...			
	A lot/ Quite a lot	Not very much/ None at all	Don't know/ can't say	CPO much better/ better	About the same	CPO worse/ Much worse	Don't know/ can't say
...the seriousness with which such sentences are likely to be viewed by offenders	31	33	8	16	44	4	3
...the acceptability of such sentences to victims and other members of the public	25	29	18	9	52	1	5
<i>Bases</i>	72			67			

Source: Sheriffs' survey.

7.50 In terms of comparisons between CPOs and previously available community penalties, most Sheriffs felt that there was little difference in terms of the seriousness with which such disposals were viewed by offenders or their acceptability to members of the public. In relation to both issues, however, Sheriffs were more likely to say that CPOs were better than to say they were worse than the previous arrangements.

7.51 The qualitative interviews allow us to unpack some of these issues. Most Sheriffs who took part in these did not seem to think that offenders viewed CPOs as a 'soft option', though few doubted that almost all would prefer a community to a custodial sentence:

"I think generally – and it's a generalisation... – offenders, at the outset certainly, want the chance of the CPO." (Interview 20, Sheriff)

7.52 That said, and as noted in the last chapter, the absence of the facility to breach offenders automatically for reoffending was seen by some Sheriffs to weaken the credibility of community penalties, as was perceived lack of speed or decisiveness in pursuing breach proceedings in the face of clear non-compliance.

7.53 There is little evidence from the qualitative interviews that Sheriffs have more than an anecdotal sense of what public opinion might be in relation to the use of community penalties, and this tends to emphasise public scepticism about unduly lenient sentencing.

Interviewer: “Would you have any idea or any notion of public views about CPOs?”

Sheriff: “Only from what people say to me, that they can't understand why some people get ‘community service’, as they still call it”. (Interview 20, Sheriff)

- 7.54 However, there is also a strong sense from Sheriffs (and indeed from other actors, such as CJSW staff) that members of the public know very little about the specifics of ‘community payback’ or indeed would even be familiar with the phrase. Most considered that the language of community service or probation remained the currency of public (and offender) discussion and understanding.
- 7.55 Such views are broadly in line with research conducted for the McLeish Review in 2007 into attitudes towards community penalties. This suggested that members of the public generally had a limited understanding of what such disposals involve; saw them as appropriate only for low-level and non-violent offenders (and hence not as an alternative to prison); and did view them as a ‘soft option, which is perceived to accomplish little in the way of punishing or deterring offenders’ (TNS, 2007, p.11). That said, the research also pointed to scepticism about the effectiveness of prison and to greater potential support for community penalties, subject to such penalties retaining a punitive element, and yielding tangible (and visible) benefits to victims and communities.
- 7.56 On the question of visibility, sentencers generally felt that members of the public had little sense of the overtly reparative aspects of CPOs. While few if any favoured ‘chain gang’-style visibility, there was nevertheless a sense that such activities – and their contribution to the community – could be more widely and more effectively publicised and that this might increase the degree of public support for such disposals.
- “If they're creating a children’s play park, if they're cutting gardens of old folk in the street – that wouldn't otherwise be done [...]That’s something that people should be told about.” (Interview 28, Sheriff)
- 7.57 In this context, it is also worth noting that Sheriffs themselves tended to have little direct exposure to projects and placements on the ground. While some made a conscious effort to ‘get out and about’, this was felt to be hindered by workloads.

Key points

- 7.58 The two years following the introduction of the reforms saw both an increase in the use of community penalties and a fall in use of short prison sentences in Scotland – two key long-term objectives for the reforms.
- 7.59 Caution is warranted in the interpretation of these figures, however, and it would certainly be unwise to draw a direct line to the reforms. The increase in the use of community penalties is consistent with a much longer-term trend,

while the fall in the use of sentences of three months or less has been accompanied by an increase in the number of sentences of three to less than six months and six months to less than two years.

- 7.60 Nevertheless, on balance, there is evidence that CPOs are seen by Sheriffs as an improvement on previous community penalties, have contributed to a greater willingness to use such disposals and are viewed with a reasonable degree of confidence by most Sheriffs. While many Sheriffs see little change in the balance of their use of community and custodial disposals, there is a minority who say they are using community penalties more since the introduction of CPOs and there are almost none who say they are using them less.
- 7.61 Those Sheriffs who were strongly positive about the reforms typically welcomed the range and flexibility of the options on offer to them, the simplification of the overall framework and evidence of swifter implementation and more rigorous enforcement.
- 7.62 Sheriffs' reported frequency of use of different requirements broadly matches the data on actual patterns of use. Interestingly, however – and despite its already widespread use – a minority of Sheriffs indicated that they would like to make still greater use of the UPWOA Requirement, reflecting concern about the resourcing of UPW and provision for offenders with particular needs. There was also evidence that Sheriffs would like to be able to make greater use of the treatment requirements and other, more highly structured programmes and interventions.
- 7.63 One of the aspects of the reforms that Sheriffs are most positive about is the introduction of Level 1 orders, especially for lower tariff, young male offenders and those on benefits, for whom it is seen as a more constructive option than a fine.
- 7.64 There was little sign from the qualitative interviews of PASS figuring prominently or explicitly in decision-making in relation to specific cases – in part because Sheriffs indicated that they already used short prison sentences very rarely, but also because sometimes such a disposal was the only option left to them. That said, the survey provided evidence that some Sheriffs felt that PASS had contributed both to an increase in their use of community penalties *and* to the use of slightly longer sentences.
- 7.65 The clearest marker of the 'inevitability' of a short sentence is not repeat offending, but *serial non-compliance* – particularly in the light of clear and repeated warnings about the consequences of flouting existing orders. In the case of wilful non-compliance, this can have an explicitly punitive aspect; for others, whose lives are simply too complex and chaotic to break the cycle of offending, a short prison sentence is sometimes viewed as offering the chance to dry out or to 'wipe clean the slate' of accumulated penalties.
- 7.66 There is considerable variation in the attitude of Sheriffs towards the preferred sentencing options (or recommendations) contained in CJSWRs. Most Sheriffs say they are happy to receive 'a steer' on the most suitable disposal.

While some like to see these couched in relatively cautious terms – avoiding any sense of encroachment on the independence of the bench – others called for social workers to be more creative and directive. Differences in Sheriffs' attitudes towards this issue are likely to be a reasonable proxy for their wider attitudes towards the respective roles of social workers and the judiciary.

- 7.67 There was some scepticism among Sheriffs about the seriousness with which CPOs would be treated by offenders and, especially, the acceptability of such disposals to the general public – although some interviewees were at pains to emphasise that they had little access to reliable evidence about either issue.
- 7.68 There was a sense that elements of CPOs such as unpaid work were still insufficiently visible to communities, and that it would be helpful for members of the public to understand more about the reparative aspects of such programmes.

8 CONCLUSIONS

- 8.1 In this final chapter, we summarise some of the key themes emerging from the evaluation. We start by revisiting the logic model for the reforms and arguing for a closer focus on some of the ‘hidden’ mechanisms that link the implementation of the reforms to some of the intended short-term outcomes. We then review briefly what we have learned about the extent to which the reforms were implemented as intended and progress has been made towards key short and medium-term outcomes. Returning to the theme of the missing or hidden elements of the logic model, we conclude by identifying a number of specific areas where there is scope for further progress or improvement.

The logic model revisited

- 8.2 A logic model is sometimes referred to as a ‘theory of change’, in that it articulates the underlying mechanisms through which it is intended or expected that a given set of inputs will lead to specific outputs or activities and to short, medium and long-term outcomes. In designing a logic model, it is conventional to start at the far right hand side – with the long-term goals or ultimate purpose of a policy or intervention. In the case of these reforms, those are specified as being: a reduction in reoffending, increased reintegration and reduced ‘churn’ in the prison population. For those to be plausible long-term outcomes, the model suggests that one would expect to see a number of specific medium-term outcomes: the judiciary making less use of prison sentences, and more (and more highly tailored) use of community penalties; the availability of timely and high quality CJSWRs; provision of a full range of CPO requirements; and engagement, compliance and behaviour change among offenders. And for those medium term outcomes to be plausible, one would look for evidence of specific short-term outcomes, such as the Judiciary having confidence in community penalties and CJSWRs; CJSW staff having the time, knowledge and skills to produce high quality reports and the capacity to provide the elements of CPOs; and offenders understanding what is required of them, taking CPOs seriously and becoming motivated to change.
- 8.3 Tracing the ‘causal chain’ backwards to this point seems reasonable in that one can see how each set of outcomes is a necessary (if not always a sufficient) precondition for the next. Perhaps the weakness of the model, however, is its failure to account for how the all-important short-term outcomes are to be realised. There is no specified or self-evident causal chain between the implementation of the reforms – the introduction of CPOs with a full range of requirements and powers, the introduction of standardised and high quality CJSWRs, and the presumption against short sentences – and critical outcomes such as offenders taking CPOs seriously, or the judiciary having more confidence in community penalties and an intention to reduce their use of short prison sentences.
- 8.4 In the introductory chapter, we identified a number of other themes and objectives that were associated with the development of the reforms – for example, the calls for community penalties to be simultaneously tough,

flexible and relevant, immediate, visible and publicly acceptable – and this is perhaps where those themes come back in. These are, in effect, some of the prerequisites – the earlier links in the causal chain – for some of the short-term outcomes in the model.

- 8.5 What the evaluation formally set out to do was to examine whether the reforms had, in fact, been implemented as intended, and whether there was evidence of the short-term (and some of the medium-term) objectives being met. In practice, much of the discussion with those closest to the reforms – criminal justice practitioners and individuals subject to a CPO – focused instead on these ‘missing’ or ‘black box’ elements of the model, and it is around these that many of our conclusions are centred. First, however, we summarise what we have learned in relation to the core aims of the evaluation.

Were the reforms implemented as intended?

- 8.6 The introduction of CPOs and the new CJSWR represented a major practical challenge for CJSW and the Scottish criminal justice system more generally. Even though the actual volume of CPOs increased gradually, as offences committed after 1 February 2011 started to enter the courts, of course, a great deal of work needed to be done in advance – for example, in ensuring that all relevant practitioner groups were trained and briefed; in revising the NOS Practice Guidance for CJSW; bringing relevant partner agencies up to speed, and so on. Within CJSW, this coincided with other major developments, including the introduction of LS/CMI and, in many local authorities, restructuring of management and existing service provision. This represented a challenging backdrop to the implementation of the reforms and placed considerable pressure on staff time and training provision.
- 8.7 It also meant that some of the more visible and familiar elements of the reforms tended to be foregrounded. As a result, some of the processes and requirements were established relatively quickly – for example, UPW and Supervision, which directly mirrored work previously undertaken under CSOs and Probation. Other less familiar and more complex elements, by contrast, received less in the way of immediate focus and attention. This was undoubtedly true of OA, which required CJSW staff to think very differently about the possibilities for supporting offenders undertaking unpaid work. It is clear that, in most areas, CJSW staff simply lacked the time to give an adequate level of attention to this element of the reforms. Other requirements – such as DTRs, ATRs and MHTRs – presented similar challenges.
- 8.8 As CJSW teams started to get to grips with increased volume of UPW placements (resulting, in particular, from the new Level 1 orders), there was more scope to develop thinking and provision in relation to OA – especially in areas where existing services and resources could be redirected towards OA hours. In areas without such existing provision, the development of OA has been slower.

- 8.9 A further factor influencing the implementation process was the pressure on training and CJSW staff time posed by the near simultaneous introduction of LS/CMI. This made it more difficult to fully address some of the nuances and complexities around particular requirements. As we have seen, these issues have still not been fully resolved – and indeed have been exacerbated by other issues such as the difficulty of accessing appropriate treatment services. As a result, the requirements of CPOs have been implemented and are all technically available. It is much less clear, however, whether they are always being used appropriately and as intended. These issues are returned to below.
- 8.10 In relation to CJSWRs, the scope for staff engagement was again limited by the range of other simultaneous developments and, in particular, the introduction of LS/CMI. However, the basic template was up and running in time and there was no evidence of any major disruption to the availability of reports when needed by the courts.
- 8.11 The introduction of PASS had little in the way of immediate practical consequences for Sheriffs or court staff, though it did introduce a requirement for reasons to be formally recorded for any short sentences passed by the court. The question of whether the simple introduction of the presumption into law actually resulted in a change in sentencing behaviour is returned to below.

What evidence is there that the short and medium term outcomes have been realised?

- 8.12 We turn now to a very brief summary of progress towards the achievement of key summary outcomes. These have been distilled from the original logic model and, in places, combine short and medium term elements.

The timeliness, consistency and quality of CJSWRs

- 8.13 The issue of the timeliness with which CJSWRs are submitted to court appears to be relatively uncontroversial. The vast majority of CJSWRs are being submitted on time. CJSW staff understand the importance of doing so and systems seem to be set up to deliver this. Sheriffs and court staff did not feel there were any systematic problems in this area. To the extent that there are any issues with timeliness, they relate to the speed with which requests for CJSWRs are conveyed by the courts and reports allocated to individual staff within CJSW. While problems in these areas were sporadic – and do not seem to be impacting on the overall ability of CJSW to meet their reporting commitments – they do cut into the time available for the preparation of CJSWRs and that may have implications for quality.
- 8.14 There is no doubt that the new template has delivered more consistent and highly structured reports. Both Sheriffs and CJSW staff generally welcomed the standardisation of the format across local authorities, the clearer emphasis on offending and the improved navigability of the new reports.

- 8.15 What is less clear is that reports are ‘focused and concise’ or that they consistently include high quality analysis and recommendations. Many Sheriffs and some CJSW staff feel that reports are often too long or contain duplication or unnecessary detail. This was felt to be an unintended consequence of the template itself, both because it was seen as encouraging CJSW staff to ‘write to the boxes’ and because of a degree of overlap between different sections. Sheriffs suggested that this made it difficult to identify critical information or arguments, while CJSW staff were concerned that the level of detail might prevent staff from developing compelling and coherent analysis and conclusions.
- 8.16 There certainly remains scope for improvement in key aspects of CJSWRs, both from the perspective of Sheriffs and CJSW staff involved in the participative audit. The latter identified the analysis of risk, in particular, as being of a variable quality. Sheriffs also had some concerns about this, although this sometimes reflected a degree of scepticism about the utility of the underlying concepts and tools. Sheriffs were also occasionally critical of the quality of the sentencing recommendations offered by CJSW staff, although sometimes acknowledged the challenge for report writers in being largely dependent on offenders’ accounts.

The readiness and ability of CJSW staff to produce high quality reports

- 8.17 Although initial training appears to have been well-received and relatively systematic, follow-up has been more sporadic. It is also clear that training to date has tended to focus more on the transactional aspects of the template than on broader report writing skills.
- 8.18 Although the new template was not widely seen as creating problems with workloads (beyond the initial implementation period where staff were getting used to it), this may be the result of a drop in the total number of requests for reports. There was a consensus that – because of the emphasis on multiple sources and the depth of analysis required – *individual* reports are taking longer to prepare than SERs. While this was generally seen as worthwhile in order to achieve improvements in quality and consistency, there was concern about workload assumptions relating to the preparation of CJSWRs and the balance of report writing and direct work with clients.

Judicial confidence in and use of community penalties

- 8.19 There are signs that, on balance, the introduction of CPOs has improved (and certainly not harmed) judicial confidence in community penalties, but that overall attitudes have not been radically transformed.
- 8.20 Some Sheriffs were clear that they saw the new framework as simpler, more coherent and more flexible, and the vast majority expressed ‘a lot’ or ‘quite a lot’ of confidence in CPOs in terms of the capacity of CJSW and other agencies to offer an appropriate range of programmes and services and in terms of the monitoring of progress and use of breach.

- 8.21 In the Sheriffs' survey, a majority felt that there had been no change in their use of such disposals, but a minority felt they were using them more often and almost none that they were using them less often.
- 8.22 There was also widespread evidence of a commitment to use community penalties wherever possible – and even in the face of serial offending or non-compliance – if there was any indication from the CJSWR of scope for constructive engagement. Whether this approach can be directly attributed to the introduction of CPOs (or to other aspects of the reforms) is less clear.
- 8.23 Sheriffs remain sceptical about the seriousness with which CPOs will be regarded by offenders and their acceptability to the general public. Both factors are potentially important background influences on their own confidence in the appropriateness of the disposal.

Judicial intention to reduce or stop the use of short prison sentences

- 8.24 The published statistics provide indications that actual use of *very* short prison sentences (i.e. of three months or less) is falling. Indeed, the number of such sentences imposed in 2012-13 was only 81% of the number imposed in 2010-11. However, that needs to be set against a sharp increase in the year following the reforms in the number of sentences of three to six months, and six months to two years. Although both figures fell again in 2012-13, they remain above the level prior to the introduction of the reforms.
- 8.25 The extent to which such changes can be attributed to the greater availability of community penalties for low tariff offenders, or indeed the introduction of PASS, is not clear. The decrease in the use of very short sentences and increase in the use of sentences of 3 months or over are both broadly consistent with longer-term trends. And in the qualitative interviews, there was little sign of PASS figuring prominently or explicitly in judicial decision-making; although some Sheriffs did suggest it had been a background factor in avoiding a short prison sentence in a small number of cases. Most, however, considered the presumption to be of little practical consequence both because of an existing commitment to use community penalties wherever possible and because of the 'inevitability' of a short custodial sentence in a small number of cases.
- 8.26 By contrast, there was some evidence from both the qualitative interviews and the Sheriffs' survey that PASS may be encouraging both greater use of community penalties *and* increased use of longer custodial sentences – a hypothesis that would be consistent with the statistics summarised above.
- 8.27 Although there was consensus that a custodial sentence remains a 'last resort', there is clearly variation in when Sheriffs consider that threshold to have been crossed. Most regarded prison as the only option in the face of serial non-compliance and the absence of any indication from the CJSW of the potential for constructive engagement. Examples of such non-compliance were often wilful – offenders simply refusing to engage with the opportunities

given to them – though others were seen as rooted in complex and overlapping social problems (such as homelessness and addiction). In such cases, a short sentence, while having little explicitly rehabilitative potential, was sometimes seen as helpful in allowing individuals to ‘dry out’ or ‘wipe the slate clean’ in terms of an unmanageable accumulation of fines and community penalties.

The provision and use of a full range of CPO requirements

- 8.28 As we saw earlier, the full set of CPO requirements is technically available. However, the evaluation raised some important questions about whether all the requirements are being used appropriately and with sufficient frequency. There are two main aspects to this.
- 8.29 The first is the (increasing) proportion of orders involving an UPWOA requirement – now representing four-fifths of all those imposed. By contrast, and with the sole exception of Supervision, no other requirement was used in 2012-13 in more than 10% of CPOs. In relation to the specific use of UPW, there are indications that placements are being commenced faster than in the past; the timescales for completion of UPWOA hours are also shorter. Level 1 orders are being widely used and are seen by Sheriffs as a welcome addition, especially as an alternative to monetary penalties for low tariff young male offenders and those on benefits.
- 8.30 There are particular issues around the level of use of the three ‘treatment’ requirements (ATRs, DTRs and MHTRs). Although the precise nature of these varies by requirement, there are common themes relating to clarity about the intended target group, timescales for assessment and access to treatment, a perceived reluctance on the part of some CJSW staff to recommend multiple requirements and a corresponding preference for undertaking such work under the Supervision Requirement.
- 8.31 The second important (and related) issue here is the wide variation in the use of different requirements by area. While a degree of variation is to be expected on the basis of differences in the underlying characteristics of local authority areas, the nature and extent of variation in the use of specific requirements suggest that differences in interpretation of the NOS Practice Guidance and other factors (for instance, relating to service availability) may lead to inappropriate diversity of opportunity and outcome for offenders across Scotland.

Offenders' understanding of CPOs, engagement, compliance and behaviour change

- 8.32 Most offenders have little understanding of the difference between CPOs and previous community penalties. Those interviewed for the evaluation, however, seemed to have a good understanding of what was expected of them as part of the order, and of what might happen should they fail to comply. There was positive feedback about the nature and extent of social work support received under Supervision and evidence of the importance of relationships with individual CJSW staff. Engagement was positively driven by experience of concrete help and support (e.g. in relation to housing or addiction needs), as well as by measures to monitor and ensure compliance.
- 8.33 Around two-thirds of CPOs in 2012-13 were completed – a figure broadly consistent with that achieved under the previous framework for community penalties. Completion rates were highest for orders involving a single requirement, and lower for orders involving two or more different requirements. There is no evidence that the risk of non-completion increases with each additional requirement beyond this point but the specific combination of requirements appears to be a factor here – for example, CPOs which included a Programme Requirement as well as Supervision and UPWOA had the lowest rates of successful completion overall. Of course, it should be noted that all of these relationships may reflect correlation rather than causation – in other words, offenders who are more likely to breach may be more likely to be given particular combinations of orders, rather than be rendered likely to breach by the combination of requirements they receive.
- 8.34 Despite the fact that overall completion rates are comparable with those for previous penalties, there is a widespread perception among both CJSW staff and Sheriffs that the arrangements for the monitoring of compliance and enforcement of breach are more robust as a result of the reforms. Extensive use is being made of reviews, as a means of encouraging offenders to take orders more seriously; as a substitute for breach in cases where there were doubts about the appropriateness of the CPO; and to motivate the offender (e.g. by setting targets) and acknowledge successful progress if made.
- 8.35 Sheriffs generally consider that breach is being used appropriately, although there remain some concerns about perceived delays in initiating proceedings. There is also a continuing issue in some areas about the respective roles of CJSW and UPW staff at key stages in the process.

Where now?: Potential next steps suggested by the results of the evaluation

8.36 We have argued, then, that the reforms have been largely implemented as intended: there is a fully-featured and largely functioning set of CPO requirements; the CJSWR template is operational, offering standardised reports containing analysis and recommendations; and the presumption against short sentences is in place. And yet across all three key domains – the judiciary, CJSW and offenders – the evidence of short and medium term outcomes is somewhat muted. In this final section, drawing on some of the original aspirations for the reforms and on the issues that emerged as important to those closest to them in practice, we suggest some ways in which some of the missing links in the logic model might be reconnected and the longer-term goals ultimately realised.

Beyond the template: improving the quality and usefulness of CJSWRs

8.37 As the logic model acknowledges, the degree of confidence that Sheriffs have in CJSWRs is central to the effective and appropriate use of community penalties. As we have seen, certain features of the new template seem to contribute to such confidence. But, in several respects, the evaluation also highlights the limits of the template in terms of delivering confidence and credibility.

8.38 Regardless of overall judicial confidence in the reports, the fact that Sheriffs feel reports are too long is a concern because it suggests that key points or arguments may be lost.

8.39 *Feedback from Sheriffs about the length and relevance of reports could be usefully incorporated into training for CJSWR writers. Previous exercises involving the piloting of summary reports should be revisited, along with the scope for making greater use of oral reports in certain types of less complex cases.*

8.40 The evaluation also suggests that Sheriffs find the analysis of risk and suggested sentencing options to be less useful than other aspects of the report. In relation to risk, there is some scepticism about the comprehensive assessments deployed by CJSW – especially in relation to less serious cases. In relation to sentencing options and recommendations, there remains a concern among some Sheriffs that social workers are overly dependent on offenders' accounts and/or that they propose unrealistic community penalties when a custodial sentence is 'unavoidable'. Both factors – the limited evidence base on which CJSWR writers are able to draw and the perception that recommendations are sometimes unrealistic – can serve to undermine the credibility of individual reports and CJSWRs as a whole.

8.41 *There would be benefit in additional joint work involving Sheriffs and CJSWR report writers in order to develop shared language and understanding around risk, and agreement about the types of cases in which or more or less thorough assessment is warranted. The Scottish Government may wish to*

review the scope to increase CJSW access to prosecution summaries and revisit the results of previous pilot exercises.

- 8.42 The evaluation also makes clear that – especially in smaller courts – Sheriffs do not assess the credibility of individual reports in isolation, but through their knowledge of, and trust in, the particular CJSW staff who have prepared them. In other words, the process can have an important inter-personal dimension, even if the emphasis on the template gives a sense of being highly standardised and impersonal.
- 8.43 The sense of a single ‘model CJSWR’ is also undermined by the fact that individual Sheriffs have varying requirements and preferences and ultimately ‘consume’ the reports in different ways. The character of the information they are looking for also varies according to the nature and complexity of the case. For all these reasons, improvements in the quality and credibility of CJSWRs in the eyes of sentencers will not be driven by simple adherence to a set template but by its intelligent application in relation to the character of particular cases.
- 8.44 *There would be benefit in seeking additional opportunities – at both local and national levels – to bring Sheriffs and report writers together, in order to improve understanding of each other’s position and priorities, share concerns and improve the fit between what Sheriffs feel they require and what CJSWR writers provide for different kinds of cases.*
- 8.45 As many CJSW staff acknowledge, the template also brings with it a risk that the more complex and analytical aspects of the process will be overlooked. The implications of this are explored below.

Giving CJSW staff the time, skills and support to produce high quality reports

- 8.46 Although it is clear that fairly comprehensive initial training was given to relevant CJSW staff in the use of the new template, there was a sense from the interviews that this was over-shadowed by the introduction of CPOs and the LS/CMI and that it tended to focus on the technical aspects of the CJSWR rather than on wider report writing skills. This would certainly be consistent with the suggestion that staff are tending to ‘write to the boxes’ and are not always offering high quality analysis or drawing out the more important messages around individual cases. Since the initial training, it is also clear that inadequate attention has been given in some areas to follow up training for new starters and refresher training for existing staff.
- 8.47 *There should be regular national oversight of the training provided to CJSWR report writers within individual local authority areas; and that training should explicitly aim to improve the quality of analysis and recommendations, as well as covering the technical requirements of the template.*
- 8.48 It also needs to be acknowledged that high quality CJSWRs – that draw on a range of sources and contain high quality analysis and conclusions – are time-consuming to produce.

- 8.49 *Estimates of the time required per report need to be reviewed and cannot be assumed to be consistent over time. The balance of staff time spent on report-writing and other aspects of casework should also be monitored.*
- 8.50 Although CJSWR writers generally felt well supported through broader line management and ad hoc consultation with colleagues, systematic quality assurance of reports appears to be the exception rather than the rule (except for new staff and students) and opportunities to identify problems and contribute to individual and group learning through retrospective audit are being lost.
- 8.51 *There should be clear best practice guidance about the use of quality assurance as part of routine working practices. Consideration should also be given to regular intra- and inter-local authority audit of samples of reports. The findings of quality assurance and audit exercises should be fed back into training and practice.*

Sharing experience and good practice in relation to the use of OA

- 8.52 OA is another aspect of the reforms that was slightly overshadowed by the extent of initial change and has taken some time to bed in. Now that it is starting to do so, it is clear that there are some creative and effective uses being made of the provision. But there is evidence of a lack of vision or ownership about how OA can be used, and of the impact of funding constraints. Senior managers, both in central government and in local authorities, are largely leaving it to practitioners to come up with ideas. While this has led to some highly creative responses, it means that implementation is patchy, unequal and lacking in strategy overall.
- 8.53 *We suggest that a national review of OA should be carried out by the Scottish Government, based on detailed reporting of its use in each area and the identification of examples of good practice. Insights from this work should be incorporated into any further training on CPOs and taken into account in consideration of funding requirements.*

Bringing greater clarity and consistency to key aspects of the reforms

- 8.54 There is a lack of clarity among practitioners in relation to some key areas and, in particular, about the appropriateness of different requirements in specific circumstances. At times, this appears to result from ambiguity in the wording of the legislation or NOS Practice Guidance; in other places, it seems to be rooted in misconceptions or local interpretation and practice. Whatever the cause, it can be concluded that, in these areas, there is a lack of the simplicity and coherence that were intended to be key features of the reforms.
- 8.55 Against this backdrop, it is not surprising there is considerable geographic variation in the use of the various CPO requirements and in other important areas, such as the use of breach. As already noted, some variation is to be expected on the basis of local characteristics. Moreover, the principle of

judicial independence places limits on the extent to which consistency in sentencing can be imposed. Individual courts – and smaller courts in particular – have their own cultures, sometimes in response to highly ‘independently-minded’ local Sheriffs. In planning for and delivering community penalties, CJSW staff clearly have to work with and respond to those local cultures and circumstances. Nevertheless, they also have a critical role to play in ensuring that approaches to the use of community penalties are *broadly* similar across Scotland as a whole.

- 8.56 The NOS Practice Guidance is very important here, and there is clearly a need to make sure that there is a shared understanding of that guidance across different areas.
- 8.57 *The evaluation suggests there would be value in the Scottish Government reviewing the wording of the guidance itself, and in improving national oversight of how it is implemented.*

Creating clarity around the actual and appropriate use of the ‘treatment’ requirements

- 8.58 There are particular ambiguities and uncertainties around the use of ATRs, DTRs and MHTRs. Specifically, CJSW staff and other actors lack a shared understanding of who exactly each of the requirements is aimed at, how eligibility is to be determined and what form of treatment is appropriate for inclusion within an order.
- 8.59 *As noted above, we suggest that the wording of the NOS Guidance – and, if necessary, the legislation – should be reviewed in order to identify, on a requirement by requirement basis, issues that seem to be creating uncertainty or misunderstanding.*
- 8.60 However, a more fundamental constraint on the ability of the courts to impose rigorous treatment requirements is simply a lack of available resources (and especially health-related resources). For these requirements to be used more widely, there will need to be explicit engagement from partners within the NHS, both in relation to the provision of (rapid) assessments but also the availability of and access to services. Put simply, it is difficult to see how widespread use of such treatments is possible without offenders being given greater priority in terms of waiting times.
- 8.61 *There is scope for greater clarity about the role and responsibility of partner agencies (especially within the NHS) to provide rapid access to assessment and services. If such involvement cannot be provided or resourced, the implications of this need to be reflected in the wording and guidance for the relevant CPO requirements.*
- 8.62 It may well be the case that – as many interviewees told us – offenders with drug, alcohol and mental health problems are accessing relevant help, support and services through other channels (for example, under the Supervision or Programme Requirement, or via existing service links). The

problem, however, is that we simply do not know for sure whether this is happening consistently or how. A separate study would be required to understand not only the character of those cases that are being dealt with under the treatment requirements, but also the volume and character of those cases involving similar issues that are being dealt with under other requirements. The current situation not only means that individual offenders with drug, alcohol or mental health problems may face variation by area in terms of the disposals on offer but that, at both an individual and an aggregate level, there is a lack of transparency about how particular types of cases are being dealt with. This, we would argue, runs counter to the objective of a simpler and more coherent framework for community penalties in general.

- 8.63 *The Scottish Government should seek to develop a fuller understanding of how the treatment requirements are being used – for example, by undertaking a review of cases in which a DTR, ATR or MHTR has been imposed, and an audit of such cases returned to court. Local authorities should perhaps be asked – as part of the annual CPO returns or a bespoke exercise – to provide numbers of offenders subject to a CPO who are in receipt of support or treatment for drug, alcohol or mental health issues via another requirement.*

Acknowledging the tensions involved in the widespread use of Supervision and OA

- 8.64 Some of the original objectives of the reforms are potentially in tension with each other, and such tensions need to be acknowledged if they are to be managed effectively. Perhaps the most fundamental is that which exists between the desire for flexibility and relevance, on the one hand, and transparency, visibility and coherence, on the other. For social workers to be able to work effectively with the diverse needs and circumstances of offenders, they need flexibility of the kind afforded by the Supervision Requirement and the ‘other activity’ element of the UPWOA Requirement – for example, to offer a range of options to different individuals, or to vary the management of an order in response to progress, emerging issues or changes in circumstances.
- 8.65 But it also needs to be recognised that how such work is conducted is not only decided at the discretion of CJSW case manager, but also that it is largely invisible to other actors, such as sentencers and victims. In many circumstances, this may be appropriate, but the increasing use of the UPWOA Requirement and the tendency to use Supervision in place of the more structured ‘treatment’ requirements mean that it is more difficult to sustain the commitment to a simpler, more visible framework for the delivery of community penalties as a whole. It also means there is less accountability around the delivery of such work; that the point at which offenders should be breached is less clear; and that it is more difficult to monitor and quality assure the effectiveness of the interventions delivered.
- 8.66 *The guidance could provide greater clarity about the circumstances in which the use of Supervision, in particular, is appropriate; and there would be clear*

benefits in improved monitoring of the extent and outcomes of work conducted under these more flexible provisions.

Managing the growing use of Level 1 orders

- 8.67 The evaluation makes clear that the Level 1 order has been widely welcomed and used by Sheriffs, often as a direct alternative not to prison but to a monetary penalty. There are clearly issues of capacity here, although these do not currently seem to be unmanageable – at least in the four case study areas. Equally important, however, is the question of the absence of a CJSW in such cases, since it has implications for the effective assessment of the suitability of offenders for UPW and the matching of individuals to relevant and appropriate placements. The management of risk is a key aspect of that.
- 8.68 *There is a need to build on and extend emerging good practice in this area – for example, encouraging Sheriffs to make enquiries at sentencing about individuals' suitability for UPW and making greater use of oral reports where appropriate.*

Providing Sheriffs with feedback about outcomes and sentencing practice in other courts

- 8.69 It is clear that Sheriffs tend to have only a limited sense of how their own sentencing practice relates to that of colleagues in other courts and areas. This is likely to contribute to the variation in the use of the different requirements observed in the four case study areas and elsewhere. Sheriffs also appear to receive little feedback about the outcomes of the sentences they impose. If judicial confidence is to be reinforced and the coherent and effective use of community penalties encouraged, these would seem to be potentially important feedback loops.
- 8.70 *Sheriffs might benefit from regular briefings about local and national use of the various requirements, and easy access to research and statistical evidence about outcomes and effectiveness. There needs to be discussion about how such information might be made available, and by whom.*

Encouraging communication between Sheriffs and CJSW

- 8.71 The evaluation highlights the extent to which Sheriffs vary in terms of their closeness of their relationship with local CJSW practitioners and the perception they have of their role beyond the sentencing process. But regardless of the degree of professional overlap and alignment between CJSW staff and the local bench, for any sentencing framework to operate effectively, there need to be clear expectations and a shared understanding between the two groups. In smaller courts, this is easier to achieve, though should not be assumed. In the larger courts, it is likely to require a conscious attempt to bring together the different perspectives outside the everyday work of the court.

- 8.72 *Court user groups and other cross-professional fora should be encouraged to look specifically at expectations and experiences of the various aspects of the reforms. Possibilities should be explored for the discussion of such issues in informal settings that might be conducive to the effective exchange of information, ideas and concerns.*

Engaging the public

- 8.73 The research suggests that sentencers often remain doubtful about the acceptability of community penalties to members of the general public, and that – at some level – those ‘perceptions of perceptions’ continue to influence thinking about the appropriateness of particular disposals. It is also clear that the notion of community consultation remains under-developed in most areas. There is a need to manage this process to enable communities, voluntary organisations, partner agencies and others to generate creative ideas which are manageable, capable of being delivered using the optimum amount of resource, and deliver a combination of offender engagement with the community and skills development.
- 8.74 *Local authorities should be required to provide clear plans for the prospective management of community consultation, rather than just retrospective examples. Again, consideration should be given to how – and by whom – Sheriffs might be provided with summaries of research evidence about public attitudes in this area.*

An expanded logic model and a commitment to continuous improvement

- 8.75 It was noted in Chapter 1 that attempts to maximise the potential of community penalties have faced the dual challenge of developing a coherent, flexible and above all *effective* framework for the implementation of such disposals, and of persuading the public (and sentencers) that they represent an appropriate and acceptable alternative to prison.
- 8.76 There are signs that in a number of important respects – such as the consistency of CJSWRs, the range and flexibility of disposals on offer, and the monitoring and enforcement of compliance – the reforms have moved community penalties in Scotland in the first of those directions. There are also some indications, outlined in the sections above, of how that direction of travel might be maintained (and indeed the speed of travel increased).
- 8.77 For that to happen, however, there is a need not only to revisit but to expand the scope of the existing logic model in order to address systematically the causal links between the implementation of the reforms and achievement of some of its critical short-term outcomes. That would involve, for example, an explicit engagement with the bases of judicial confidence in community sentences – one which focuses specifically on issues which appear to limit such confidence, such perceptions of the degree of public support for community penalties, of the seriousness with which they are treated by offenders, and the speed, visibility and rigour with which they are imposed

and enforced. It would identify the specific mechanisms through which offenders might be expected to take CPOs seriously or become motivated to change. These would again include an explicit focus on the speed and rigour or punishment, but also the extent to which they are genuinely tailored to individual needs and circumstances. And it would focus on exactly how social workers might be equipped to prepare reports that inform effectively the sentencing process.

- 8.78 In closing, then, the evaluation suggests that the reforms offer a framework capable of delivering the kind of short, medium and long-term outcomes that were originally hoped for. However, that end point cannot be assumed, and the ultimate objectives of the reforms – in terms of reduced reoffending, increased reintegration and reduced ‘churn’ in the prison population – will only be realised through careful and ongoing analysis and calibration of exactly how all three elements are working on the ground, coupled with a system-wide commitment to partnership working and continuous improvement.

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