

JUSTICE COMMITTEE PRESUMPTION AGAINST SHORT SENTENCES SUPPLEMENTARY SUBMISSION FROM DR KATRINA MORRISON ON BEHALF OF HOWARD LEAGUE SCOTLAND in response to the request to confirm:

***‘whether one in four community sentences do not have an unpaid work element. Please would you provide details of the community payback orders for different sentence lengths’***

- [Official CPO figures](#) show that in 2017/18, 17,834 CPOs were issued, and out of these, 13,299 had a requirement for unpaid work which is indeed  $\frac{3}{4}$ .
- [Official criminal justice social work statistics](#) (inferred from Table 12 of the bulletin) shows the following breakdown of the 17,834 orders imposed in 2017-18
  - Unpaid work and no supervision – 7,707
  - Supervision and no unpaid work – 4,535
  - Both unpaid work and supervision – 5,592
- The average lengths for unpaid work was 125 hours per order (Table 13)
- The average lengths for orders with supervision requirements was 15.4 months (Table 14).

In reading these figures it is important to understand the following points:

1) The intention of CPOs (as first articulated by the Prisons Commission) is not that CPOs must always have an unpaid work requirement. As the Prison Commission argued, we need to take a holistic view of ‘paying back’ - working towards rehabilitation (through supervision and programmes) still ‘pays back’ to communities and victims:

‘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. Perhaps surprisingly, offender rehabilitation is often a major concern of crime victims who want to make sure that no-one else suffers victimisation and who see the offender’s rehabilitation as the surest way to secure this outcome’ (Prisons Commission, 2008: 27).

Thus, the claim that CPOs which do not have an unpaid work requirement involve no ‘paying back’ are incorrect.

2) The argument that CPOs are not ‘punishment’, or equate to being ‘let off’ completely misses their penal nature. Community penalties (with or without unpaid work) are experienced as a punishment by those subject to them. Crucially, this extends beyond periods of unpaid work or supervisory meetings to affect all of life, an experience recently conceptualised as a ‘pervasive punishment’

(McNeill, 2019). Recent research with subjects serving community sentences in Scotland, England and Germany identified different effects of probation including 'constraint', 'lost or suspended time', 'waste', 'judgement' and more positively, and growth or hope (Fitzgibbon et al, 2017) . Similarly, Durnescu (2011) identified deprivations of time and the other practical and financial costs of compliance, limitations on autonomy and privacy, the pain of the 'forced return to the offence' and the pain of a life lived 'under a constant threat' of breach or revocation and with it further punishment, in research examining probation in Romania. Finally, Hayes (2015) identified pains of rehabilitation, of liberty deprivation, of welfare issues and of external agency interventions, as well as process pains and pains associated with stigma, in research examining probation supervision in England.

Together, this research shows that claims that community penalties do not 'punish' – even without unpaid work requirements, are simply wrong. They may be far more benign than short custodial sentences, but community penalties must still be regarded as *penal* in nature, no matter how benevolent their intention (Hayes, 2015; McNeill, 2019). Any claim that those sentenced to community penalties instead of prison sentences have not been 'punished' are therefore incorrect.

#### References:

Durnescu, I., (2011). Pains of probation: Effective practice and human rights. *International Journal of Offender Therapy and Comparative Criminology*, 55(4), pp.530-545.

Hayes, D., (2015). The impact of supervision on the pains of community penalties in England and Wales: An exploratory study. *European Journal of Probation*, 7(2), pp.85-102.

McNeill, F., (2019). *Pervasive punishment: making sense of mass supervision* First., Bingley, UK: Emerald Publishing Limited.

Fitzgibbon, W., Graebisch, C. and McNeill, F. (2017) 'Pervasive Punishment: Experiencing Supervision' pp. 305-319 in Carrabine, E. and Brown, M. (eds.) *The Routledge International Handbook of Visual Criminology*. London: Routledge.

Prisons Commission (2008) available <https://www2.gov.scot/Publications/2008/06/30162955/0>.