



Where did it all go wrong?

A study into the use of community sentences in
England and Wales

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Foreword

by Lord Falconer of Thoroton

This report from Crest is both timely and important. Our prisons are overcrowded and increasingly unsafe. Whilst prison will always be the right place for dangerous and violent offenders, there remain a significant number of offenders who would be better dealt with by an intensive sentence in the community. With the government committed to cutting the justice budget by a further 15% before the end of this parliament, the need for rigorous alternatives to custody is unarguable. But over a decade on from the creation of the ‘Community Order’, it is clear that these sentences in the community need a radical overhaul.

The evidence is clear: community sentences can be more effective than a short custodial sentence, provided they are swift, intensive, punitive and tailored to the needs of the offender. Sadly, the reality is very different. Currently, community sentences take too long, fail to properly punish wrongdoing and are not intensive or demanding enough to properly rehabilitate them. In that context, it is hardly surprising that magistrates have lost confidence in such sentences and that their use has halved over the last decade, whilst the numbers being sentenced to prison have continued to rise.

The recommendations in this report represent a dose of common sense: reforms to make community sentences more robust and intensive; to ensure that breaches are properly enforced; to provide magistrates with better quality training and advice pre-sentence; to require probation to provide proper feedback post-sentence. Only then will we start to see a reduction in the use of short custodial sentences and begin taking pressure off our overcrowded prisons.

With Brexit consuming every waking hour of the government and political classes, it is perhaps unsurprising that criminal justice reform is less politically salient than it once was. We can’t afford to be that complacent. Keeping the public safe and preventing the next generation of criminals from wreaking havoc in their communities is one of the most important, if not the most important, functions that a government can play. I hope they will listen to the conclusions of this report.

Lord Falconer of Thoroton



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Executive Summary

Despite overall crime falling, our criminal justice system remains under pressure. Nowhere is that more apparent than in our prisons, which are, in the words of the former Chief Inspector, “in their worst state for a decade”, with violence, overcrowding and self-harm higher than at any point on record.¹

Policymakers have long understood that a key part of the solution to an overstretched prison system lies in a more effective regime of community sentences, able to secure the confidence of magistrates and the public. As far back as 2003, Pat Carter (whose review presaged the creation of the National Offender Management Service) was calling for sentences in the community “to be made more demanding” as a way to re-balance the system.² And in November 2016, the Lord Chief Justice called for more offenders to be sentenced to “tough” and “visible” alternatives in the community, in order to reduce the numbers sent to prison.³

The notion that community sentences can be a more effective, cheaper alternative to prison is supported by a strong body of evidence. At their best, sentences served in the community can offer a powerful tool for addressing the root causes of offending behaviour, reducing the rate at which an offender reoffends and thus lowering demand on the system overall.

Yet despite their obvious potential, community sentences (community orders and suspended sentence orders)⁴ are being used less than at any point over the last 15 years. Since 2004, the numbers sentenced to community orders have halved, and overall numbers of sentences served in the community are down 25%, whilst the numbers sentenced to custody have remained relatively stable. Not only is this fuelling unnecessary pressure on our prisons, it is impacting the financial viability of community rehabilitation companies, who are struggling to cope with a lower than anticipated volume of paid work.⁵

This report is the first systematic attempt in over a decade to understand what lies behind this phenomenon. It reveals that community sentences:

- **are implemented in a way that bears little resemblance to the evidence of what works:** they are neither intensive, swift, nor punitive enough to act as a proper deterrent.⁶ Most importantly, offenders are not held properly to account for complying with their sentence. The Probation Inspectorate (HMIP) has found that in a third of

¹ Nick Hardwick in HMIP annual report 2014-15

² Reducing crime, changing lives: a new approach; the Carter Review, 2003

³ See <http://www.telegraph.co.uk/news/2016/11/30/lord-chief-justicecommunity-service-not-tough-enough-needs-visible/>

⁴ For the purpose of this report, the term ‘community sentences’ refers collectively to the combination of statistics and/or perceptions of both community orders and suspended sentence order. When referring to only one of the sentences, this is made explicit

⁵ CRC business volumes were found to be between 6% and 35% lower than predicted, NAO Transforming Rehabilitation, 2016

⁶ See interim CRC data, MoJ statistics



cases where the offender breached their order, “insufficient effort was made by the CRC responsible officer to re-engage them”⁷;

- **are failing to transform lives, acting as little more than a stepping stone on the path to prison:** 35% of those sentenced to custody have received at least five previous community sentences;
- **have lost the confidence of magistrates:** a new survey of magistrates commissioned for this report reveals that over a third of magistrates (37%) are not confident that community sentences are an effective alternative to custody, and two thirds (65%) are not confident that community sentences reduce crime.⁸

These problems are the result of long term structural issues relating to the operation of the criminal justice system, which largely pre-date recent changes to the mix of crimes and government policy reforms. In particular, there appears to have been a long term decline in:

- **the quality/depth of advice provided to the court to guide sentencing decisions - in the form of ‘pre-sentence reports’ (PSR):** there has been a transition over the past decade from PSRs being detailed, written reports to speedy, short, written and oral reports. Almost half (42%) of reports in 2015 were delivered orally, with no information recorded, compared to just 5% in 2006;
- **the level of information/training provided to magistrates:** meaning they are unable to make the most effective use of community sentences and/or to take into account probation providers’ capacity to deliver. Over a third (36%) of magistrates do not feel that the training has adequately prepared them for dealing with community sentences and their requirements;
- **probation’s ability to deliver personalised sentences that address the underlying causes of an offender’s behaviour and hold the offender to account for compliance:** our qualitative research has revealed a deep-seated sense of decline amongst probation staff about the quality of services being provided and the ability to enforce breaches, which has been exacerbated by recent government policy changes. Four in ten magistrates (39%) are not confident that community sentences can be tailored to suit the individual needs of an offender.

This report puts forward proposals to tackle these failures, including:

- Introducing primary legislation to guarantee prolific offenders receive a swift and robust response to breaching sentences in the community
- A new presumption to sentence young adult offenders (18-25) to intensive community orders (successfully piloted in Greater Manchester), rather than short custodial sentences

⁷ HMIP, Transforming Rehabilitation 5, May 2016

⁸ The survey was commissioned by Crest Advisory for this study with the support of the Magistrates Association. Reduction of crime took into account the effect of deterrence



- Encouraging magistrates' courts to regularly review the sentences of prolific offenders
- Providing magistrates with the ability to deliver more innovative community sentences that are tied to the offender/offence
- Publishing local data on the nature of unpaid work so communities can see justice being served

These proposals come at a time of significant change to the way offenders are managed in the community. Whilst it is too early to be definitive, there is emerging evidence that the government's flagship reform programme - Transforming Rehabilitation (TR) - will exacerbate the problems identified above, reducing dialogue between probation and the courts, reducing incentives to deal swiftly with breaches and stifling innovation in the delivery of services to prevent reoffending. There is also little doubt that the fiscal context, with funding having declined since 2010 and set to continue falling, will add to the pressures identified in this report.

Our report seeks to learn the lessons of the recent past, in order to influence the future of sentencing and probation reform. The research was informed by a large number of interviews with police and crime commissioners, magistrates, probation staff, police and policymakers. We also commissioned a new survey of magistrates through the Magistrates' Association.

Sentences in the community need to improve if they are to have any meaningful impact on reoffending rates. The reforms set out in this paper are a roadmap for how we can make community sentences a powerful crime prevention tool that stops reoffending and keeps communities safe, whilst reducing the pressure on our overstretched prisons.



1. Introduction

Scope of this report

This project examines the reasons behind the dramatic fall in the use of community sentences⁹ over the last decade. It also considers the emerging and future impact of probation policy reform during this period, including 'Transforming Rehabilitation', on sentencing behaviours. It follows previous work by Crest to understand the drivers of the recent rise in the prison population. For a summary of that work, see the [Crest Advisory website](#).

Why this matters

Sentences served in the community have a vital role in the effective functioning of the criminal justice system:

- They have the potential to be a powerful tool for addressing the root causes of offending behaviour
- They offer a more cost-effective way to cut reoffending - with our prisons overcrowded and underfunded, community sentences can achieve lower reoffending rates at just over one tenth of the cost of a prison place¹⁰
- They enable justice to be brought closer to communities, improving trust and confidence in the system

Yet despite the transformative potential of community sentences, there is evidence that, in practice, they are not successfully changing lives:

- 33% of offenders serving community orders are caught reoffending within a year of being sentenced¹¹
- 76% of those sentenced to immediate custody in 2014 had received at least one community sentence - almost 40% had served five or more - illustrating that sentences in the community have become a stepping stone on the path to prison¹²

This appears to have been reflected in the behaviour of sentencers, who since 2005 have overseen a huge decline in community orders (COs). It is true that since 2012 there has been a

⁹ For the purposes of this project, the term community sentences pertains to the combined figures of community orders and suspended sentence orders

¹⁰ Based on outcomes figures published in the 2013/14 NOMS Business Plan, the average overall cost of a prison place equates to £36,808 compared to the average cost per CO/SSO of, at its most expensive, £4,204

¹¹ This reoffending figure applies to the combination of offenders on suspended sentence orders *and* community orders, using adult proven reoffending data from: [MoJ. Proven reoffending statistics for October 2013 to September 2014. July 2016](#). The reoffending rates for adults on community sentencing was 34.4%; for suspended sentence orders with requirements it was 30.0%; and for suspended sentence orders without requirements it was 35.7%

¹² www.parliament.uk/written-questions-answers-statements/written-question/commons/2015-06-23/3658



steady rise in the use of suspended sentence orders (SSOs) - effectively a CO with the threat of immediate custody hanging over the offender - but this has not offset the decrease in COs. The combined numbers of SSOs and COs is still lower than the total number of community sentences in 2000.¹³

With the Ministry of Justice (MoJ) needing to find 15% additional savings by 2020 (equivalent to £600m) - over 50% of which is accounted for by prison costs - it will be crucial for the government to find ways of reducing the prison population.¹⁴ Designing and delivering community sentences that are effective and retain the confidence of magistrates and judges must be a vital part in that jigsaw.

Approach

Various explanations have been postulated about the apparently declining relevance of community sentences:

- A loss of confidence by sentencers and the public in the effectiveness of community sentences
- Changes in crime patterns, meaning a more serious mix of offenders is coming before the courts, for whom community sentences are less appropriate
- Risk aversion within the National Probation Service in recommending community sentences in pre-sentence reports
- The impact of the Transforming Rehabilitation reforms, including the design of Community Rehabilitation Company (CRC) contracts and the introduction of through the gate support for short term prisoners

Our aim here is to test these assertions, anchoring the debate about community sentences in an understanding of what the evidence does and doesn't tell us. We have undertaken a mixture of quantitative and qualitative research to understand the key drivers of sentencing behaviour, including new analysis of sentencing trends¹⁵; a new survey of magistrates' concerns; in-depth structured interviews with magistrates, CRCs and the police (including 'deep dives' in Norfolk and Greater Manchester); and a model illustrating the effect of different sentencing scenarios on the flow of offenders throughout the systems, and costs incurred.

Our aim has been to look beyond the immediate, to explore the deeper, structural causes of sentencer behaviour over the last decade, whilst taking into account the impact of recent policy changes to probation. Ultimately our aim is to influence policy and practice, so this report concludes with a series of policy recommendations for reforming and strengthening alternatives to custody.

¹³ There were 155,500 community sentences handed out in 2000. Home Office, [Criminal Statistics](#), 2000

¹⁴ HM Treasury, 2015

¹⁵ Carried out by Manchester Metropolitan University



Overview of report

The rest of this report is divided into six chapters. Chapter 2 explores the history and purpose behind today's community sentences. Chapter 3 considers the evidence about the effectiveness of community sentences. Chapter 4 charts long term trends in sentencing behaviour and the use of community sentences. Chapter 5 looks at levels of confidence in the use of community sentences. Chapter 6 explores the drivers of decline - testing the initial hypotheses laid out in this introduction. It draws on new analysis of police and probation data in two areas in England and Wales conducted by Manchester Metropolitan University; a new survey of magistrates' attitudes; and interviews with magistrates and probation officers in three areas in England and Wales. Finally, Chapter 7 provides options for reform to incentivise the use of community sentences, and models the impact of these reforms in terms of prison numbers and costs to the CJS as a whole.



2. History and purpose of community sentences

Chapter summary:

- The community sentences (community orders and suspended sentence orders) in use today were introduced in 2005, but subsequent policy reforms since 2010 have affected the way offenders are managed in the community and how community sentences are used in practice.
- Technically, though both sentences are served in the community, COs are non-custodial sentences and SSOs are sentences of imprisonment served in the community. Both COs and SSOs can be comprised of one or more of 13 possible conditions, or 'requirements' to enable the sentence to be tailored to the needs of the offender.
- Whilst in theory, Community Orders (COs) and Suspended Sentence Orders (SSOs) are identical (in terms of the requirements they can impose) SSOs tend to be less onerous, since the threat of incarceration is deemed a punishment in and of itself.
- In 2016 just over 100,000 COs and 56,000 SSOs were given out, compared to almost 200,000 COs and 22,000 SSOs in 2006.¹⁶

The development of community sentences

The community order (CO) and the suspended sentence order (SSO) as they are recognised today became available in 2005, having been introduced by the Criminal Justice Act 2003, and were designed to provide more credible alternatives to short term custodial sentences and a solution to the rising numbers in prison.

The new CO replaced and standardised the range of pre-existing community sentences (known as community penalties) that had previously developed erratically, and simplified the order by combining all other former community sentences, meaning magistrates and judges could more easily tailor sentences according to the particular nature of the offence and the offender.

The SSO revived an older style of sentence that was rarely implemented due to stipulations under the former legislation that it could only be used in "exceptional circumstances"¹⁷. These stipulations were scrapped in the 2003 legislation, giving new life to the suspended sentence.

Since 2010 the government has introduced a number of reforms to the way we manage offenders in the community. During the last parliament there were three big policy developments:

¹⁶ MoJ, Criminal justice statistics quarterly update to June 2016

¹⁷ The "exceptional circumstances test" was brought in through amendments made under the Criminal Justice Act 1991.



- 2012 Legal Aid, Sentencing and Punishment of Offenders Act (LASPO), which reformed SSOs
- 2013 Crime and Courts Act, which reformed COs
- 2014 Offender Rehabilitation Act, which:
 - a. introduced the Rehabilitation Activity Requirement (displacing supervision requirements); and
 - b. introduced the so-called 'Transforming Rehabilitation' reforms to probation

Figure 1: Key changes and impacts of sentencing policy reforms on community sentences since 2010

Legal Aid, Sentencing and Punishment of Offenders Act

- Gave courts greater discretion in using SSOs by extending the maximum length of custodial suspension to two years and providing courts with discretion as to whether or not to impose community requirements (e.g. unpaid work) with standalone orders
- Widened the eligibility criteria of SSOs, making them available to a wider range of potentially more serious defendants (e.g. to include Category 1 ABH)
- Widened judicial discretion to breach (e.g. whereas previously a breach had to result in either instant custody or amendment of any community requirement, now a fine of up to £2,500 can be imposed)¹⁸
- Magistrates are now more incentivised to use SSOs than they used to be
- The impact of these changes has been reflected in sentencing trends: SSOs made up 14% of sentences for indictable offences in 2015, compared to 10% in 2011

Crime and Courts Act

- Intended to make COs more punitive, in theory to ensure the offender is punished, victims feel justice and the public feels confident in the system¹⁹
- Made it compulsory for all COs to include a punitive element²⁰ (but not SSOs) from December 2013 onwards (or alternatively a fine)
- The reform has not reversed the declining trend in the use of COs. In 2011 30% of offenders received a CO; in 2015 only 21% did

Offender Rehabilitation Act

- Made changes to the sentencing and releasing framework - extending probation supervision after prison release to offenders serving short term sentences (through the gate support) and creating greater flexibility in the delivery of sentences served in the community

Rehabilitation Activity Requirement (RAR)

- This new requirement for COs and SSOs replaced the old 'activity' and 'supervision' requirements
- RAR was designed to allow flexibility over what services/interventions offenders could receive

¹⁸ <https://www.justice.gov.uk/downloads/legislation/bills-acts/legal-aid-sentencing/ia-sentencing-punishment-laspo.pdf>

¹⁹ Then Justice Minister, Jeremy Wright, said "Hard-working taxpayers expect those convicted of committing crime to be punished accordingly. Victims must be confident that offenders will pay a price for their crimes, which is why we are toughening up community sentences.... Offenders should not leave court feeling like they have got off the hook after receiving a community sentence. Step by step we're overhauling sentencing and sending a clear message to criminals - if you break the law, you will be punished"

²⁰ 'Punitive' elements include unpaid work, curfews and requirements aimed to be a direct restriction of activity, i.e. prohibited activities and exclusions from specified locations



whilst serving community sentences

- The court now specifies a maximum number of days the participant must complete, and the participant's Responsible Officer decides the activities (based on individual need and community safety)
- RARs make up an increasing proportion of total community sentences: 22% of the total requirements for COs and 18% for SSOs in 2015

Transforming Rehabilitation

- Completely restructured probation in 2014: privatising the probation services for low and medium-risk offenders by setting up 21 CRCs; establishing a new National Probation Service (NPS) to take responsibility for assessing the risks offenders pose; producing PSRs; and managing high-risk offenders.
- CRCs are now contracted to deliver probation services for those given COs or SSOs by the courts and for those who require supervision upon release from custody
- Extended statutory rehabilitative support to all prisoners serving custodial sentences of under 12 months
- Restructured the prison estate to facilitate 'through the gate' support with a network of resettlement prisons
- Changed the sentencing framework, replacing supervision and specified activities requirements with the RAR

The general thrust of reforms since 2010 has been to make community sentences more robust and rigorous (thus driving up confidence), whilst making it easier for sentencers to craft an appropriate intervention for a particular offender. However, it is far from clear that they have achieved their intended purpose, as the next sections of this report will show.

Punishment and the principles of sentencing

Sentencing in criminal cases is designed to perform a number of interrelated functions. First it is intended to punish a wrongful act. Secondly, the prospect of punishment is, in turn, intended to deter offending - thus reducing crime. Thirdly, imprisonment and, to a lesser extent, other penalties, incapacitate offenders by depriving them of their liberty - protecting the public. Fourthly, some sentencing options provide the opportunity of rehabilitation to tackle the causes of an offender's behaviour. Finally, sentences may offer the prospect of reparation to individuals or communities by requiring offenders to make amends for their crimes.

In accordance with these declared principles the use of prison remains the right sentence for dangerous offenders (for example, those who have committed serious violence or sexual offences) who need to be incapacitated to protect the public from harm. But prison is an expensive resource, best saved for such cases where public safety outweighs all other factors.

Equally, for minor infractions, most obviously in the case of less serious motoring offences, where the main purpose is simply to punish crime in order to ensure compliance, fines are an



appropriate sanction. Conversely, fines do nothing to incapacitate or rehabilitate offenders and so are an inappropriate response to complex and/or prolific offenders.

Community sentences theoretically fall somewhere in between those two stools - potentially offering the prospect of a sentence that combines both punishment *and* rehabilitation of offenders. The reality (at least within England and Wales) has proved somewhat different: despite numerous reforms, community sentences continue to fail on almost every count - offering neither an effective punishment/deterrence, nor an effective means of rehabilitating offenders or paying back to the community.

How community sentences are currently comprised

Whilst both community orders and suspended sentence orders are served in the community, and in theory look identical (in terms of the requirements imposed), technically a community order is a non-custodial sentence whilst a suspended sentence order is a sentence of imprisonment served in the community. Generally, SSOs should therefore be used for more serious offences and offenders. According to sentencing guidelines, SSOs can be implemented when the crime warrants custody and the judge is considering a custodial sentence of a minimum of 14 days and a maximum of 12 months. This allows a judge to suspend a prison sentence for between six months and two years.

Both community orders and suspended sentence orders can be accompanied by single or multiple requirements depending on the nature of the offence, and the circumstances and risk factors pertaining to the offender. Since 2014, fourteen requirements have been available for magistrates and judges to stipulate (thirteen of which are currently in use.) These are listed on the following page.



Figure 2: Community sentence requirements and their suggested main purpose²¹

Requirement	Punishment	Reparation	Rehabilitation	Protection	Diversion (from custody)	Reducing reoffending
Unpaid work	✓	✓	✓			
Supervision requirement			✓			
Accredited programme			✓			
Curfew	✓			✓		
Drug rehabilitation			✓			
Alcohol treatment			✓			
Prohibited activity	✓			✓		✓
Mental health treatment			✓			
Attendance centre requirement	✓				✓	✓
Activity requirement		✓	✓			
Exclusion	✓			✓		✓
Residence at a specified address	✓		✓	✓		
Rehabilitation Activity Requirement (RAR)		✓	✓			
Foreign travel prohibition	✓			✓		

The requirements are identical for COs and SSOs, although it is recommended that the suspension aspect of SSOs is such a deterrence that requirements imposed should be less onerous than for COs. Guidelines suggest that: “a court wishing to impose onerous or intensive requirements on an offender should reconsider its decision to suspend sentence and consider whether a community sentence might be more appropriate”. In practice, it is unclear where and how the line is drawn by judges and magistrates between COs and SSOs.²² We explore this in more depth in Chapter 4.

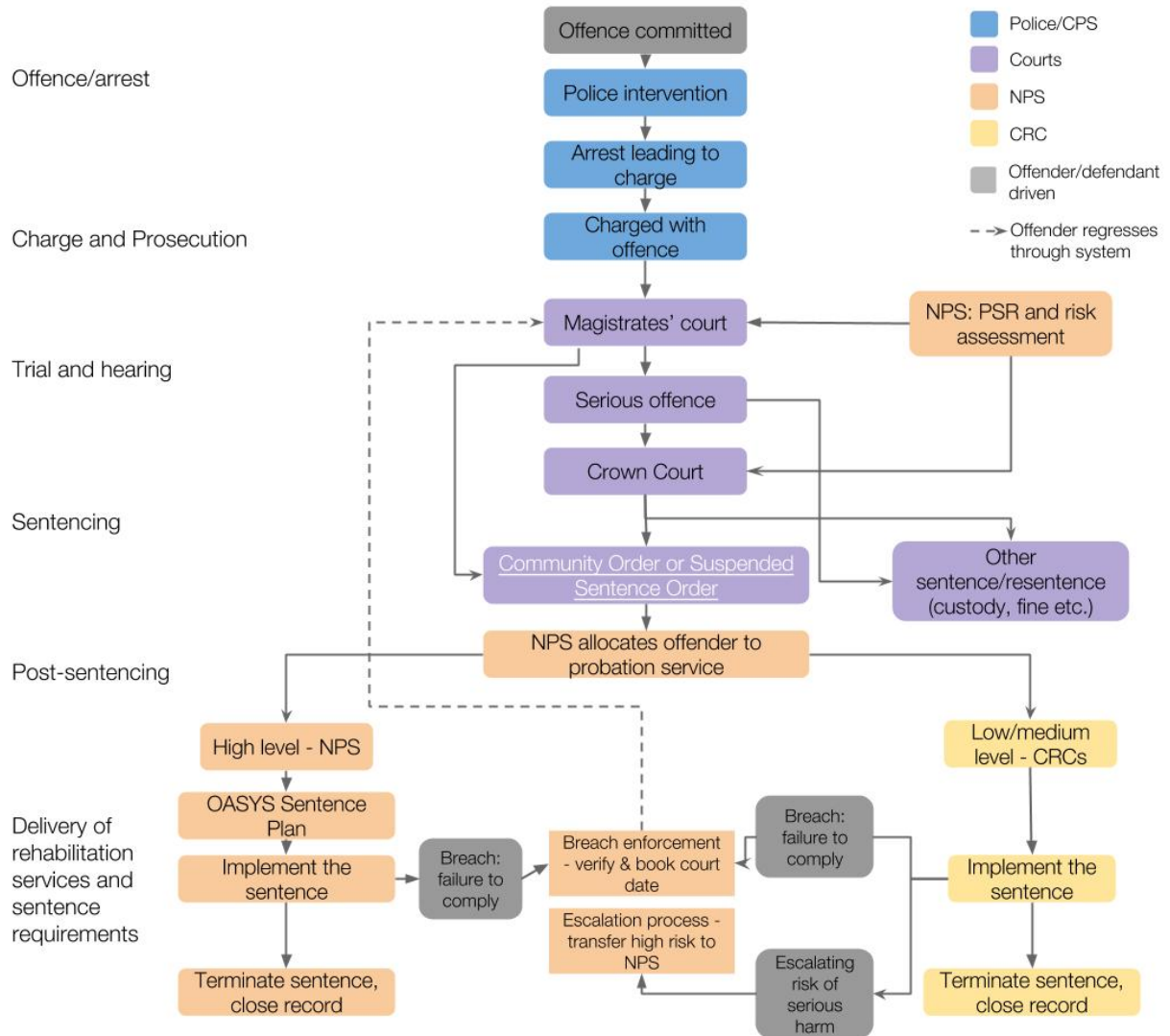
Figure 3 on the following page provides an overview of how community sentences pass through the different justice agencies, illustrating the offender journey, from offence to community sentence.

²¹ These suggestions are based upon guides produced by CRCs, including Thames Valley Community Rehabilitation Company - [Bench Guide 2014/15](#) - and Derbyshire, Leicestershire, Nottingham & Rutland CRC - [Probation Service Guide, June 2016](#).

²² In 2015, the average length of a CO was 10.6 months whilst for an SSO was 16.4 months. The average number of requirements for a CO was 1.6 compared to 1.8 for an SSO. These figures have remained fairly consistent for the past decade.



Figure 3: The simplified offender journey from offence to community sentence



3. A summary of the evidence on community sentences

Chapter summary:

- Community sentences can be more effective in reducing reoffending than short term custodial sentences
- Our summary of existing evidence on what works in sentencing suggests that the most effective types of sentences in the community consist of elements of one or more of the following six core components:
 - Appropriate
 - Consistent
 - Punitive
 - Intensive
 - Purposeful
 - Swift, certain and fair

A wide body of research has found that community sentences can be more effective in reducing reoffending than short term prison sentences and can provide greater opportunity for rehabilitation.²³ MoJ figures show that offenders serving community orders and suspended sentence orders reoffend up to 3 and 7 percentage points less respectively than those who serve a short term prison sentence and cost around half as much.²⁴ Primarily this is because the factors most likely to reduce reoffending - stable employment, decent accommodation, personal relationships etc - are more able to be factored into a community sentence than a prison term. Moreover, the literature on desistance from crime suggests that approaches which emphasise people's assets, rather than deficits, are more likely to be successful in changing their behaviour, particularly where there is a focus on building and maintaining strong social bonds and positive personal relationships.^{25 26 27} Again these are potentially more achievable as part of a community sentence than with a prison term.

In practice, the effectiveness of community sentences depends upon how they are implemented. Our summary of the existing research suggests there are six core components of an effective community sentence: appropriate; consistent; punitive; intensive; purposeful; and

²³ Mews, Aidan et al. (2015), The impact of short custodial sentences, community orders and suspended sentence orders on re-offending, MoJ; Bales, W.D. and Piquero, A.R. (2012) Assessing the impact of imprisonment on recidivism, *Journal of Experimental Criminology*, 8(1), 71-101; Armstrong, S., McIvor, G., McNeill, F. and McGuinness, P. (2013) International Evidence Review of Conditional (Suspended) Sentences; Morris, M., (2016) A whole system approach to offender management (2016), IPPR

²⁴ The impact of short custodial sentences, community orders and suspended sentence orders on re-offending, MoJ (2015). In 2011, MoJ estimated that the cost of a short prison sentence (under six months) is around £11,000 p.a., compared to the average cost of an 'Intensive Community Order' (around £5,000 p.a.)

²⁵ <http://www.sccjr.ac.uk/publications/changing-lives-desistance-research-and-offender-management/>

²⁶ <http://www.gov.scot/Resource/0047/00476574.pdf>; McNeil, F. and Whyte, B. (2007) Reducing Reoffending: Social Work and Community Justice in Scotland. Willan Publishing

²⁷ <http://www.gov.scot/Resource/0047/00476574.pdf>



swift, certain and fair.

- **Appropriate.** Sentences in the community should take into account the risk factors that can perpetuate a life of crime, and how these apply to an individual offender. Providing appropriate practical support for offenders to be able to tackle relevant factors can decrease the likelihood of further reoffending. These factors include:
 - employment and skills: finding a job
 - relationships: strengthening bonds, finding a long term partner or having a child
 - religion, community and social groups: finding purpose in life and being part of a supportive social group (and equally not associating with those who will lead one astray)
 - substance misuse: giving up alcohol or drugs
 - health: addressing mental health problems and emotional well-being
 - accommodation: having a stable place to live
 - finances: securing a steady income and good financial management.²⁸

Case study 1: The Women 4 Work programme (W4W), Victoria

As part of the Better Pathways strategy, Melbourne City Mission (MCM) has been funded to deliver the Women 4 Work (W4W) programme since 2006. W4W is a voluntary employment programme providing pre and post release employment support for women leaving prison and those with community orders. Their employment service within women's prisons uses one-to-one meetings to encourage women to find jobs, work on CVs, practise for interviews, and meet potential employers. This programme has proven to be successful: in 2009-10 none of the participants returned to prison, all remained in stable accommodation, and none of their children were taken into child protective services.

- **Consistent.** The person/unit that delivers support to offenders serving community sentences and the manner in which it is provided can be just as important as ensuring the actual requirements stipulated are appropriate for the offender. Building a trusting relationship with probation professionals is important for fostering a change in attitude and move away from crime. Ensuring this contact is with the same probation worker is essential for building trust with the offender, and helping them to navigate a large number of services provided by different agencies.²⁹

Case study 2: Sentencer supervision

The supervision of offenders by sentencers, post-sentence, has the power to further increase compliance and reduce the reoffending of prolific and drug offenders. One example is a court review. The idea behind court reviews is a simple one: that on a periodic basis, offenders

²⁸ Prison Reform Trust, 2015

²⁹ Farrall S and Calverley A (2006), Understanding desistance from crime, Crime and Justice Series, Open University Press: London; Partridge, S. (2004), Examining Case Management Models for Community Sentences, Home Office, London



who are given a sentence in the community come back before the court to report on the progress of their sentence, and to be held to account by the court. It allows sentencers to spot trouble brewing during a sentence and take a problem-solving approach to dealing with offenders, hold probationers to account, and ensure there is a clear and joined-up plan of how to tackle offending behaviour. In this way it uses courts' natural authority to better hold offenders to account. Reviews also help courts maintain confidence in the delivery of the sentences they hand out by providing them with feedback, such as whether requirements were started on time, and how well offenders are engaging with their sentences.

There is a growing body of evidence that court reviews can increase compliance and reduce reoffending, especially when they see the same magistrate or judge each time. Much of this evidence comes from the introduction of drug, alcohol and domestic violence courts in the USA, Australia and the UK. A review of the domestic violence courts in San Diego, which produced a reduction in the one year re-arrest rate from 21 per cent to 14 per cent, suggests that the most substantive policy change which may explain the decrease was the introduction of court reviews. A review of 24 Domestic Violence Courts in New York (96 per cent of whom engaged in court reviews) found they reduced re-arrests for convicted offenders on any charge, especially for further domestic violence charges.³⁰

- **Punitive.** Not only is punishment one of the principles behind sentencing, and is also touted for its role in deterring future crime, community orders that involve a punishment element have been found to be more effective at preventing reoffending than those focused on rehabilitation alone.³¹

Case study 3: Creative justice in Ohio

In some jurisdictions in the United States, judges have a great deal of discretionary power that allows them to sentence outside of the typical sentencing categories. A municipal court judge in Ohio, Judge Michael Cicconetti, gives out creative punishments to a small number of first-time, low-level offenders in order to deter repeat offences. The punishments are always accompanied by an alternative sentence - usually custody, a community sentence, a fine, or a combination thereof, to ensure compliance.

Some of the punishments handed out include:

- Giving a woman who failed to pay a taxi fare the choice between jail time or paying \$100 compensation and walking 30 miles - the distance of her taxi ride. She chose to walk and was fitted with a GPS tracker
- In January 2013, the judge ordered a drunk driver to visit a morgue in a bid to prevent him from repeating the offense

³⁰ Centre for Justice Innovation, Testing the Effects of New York's Domestic Violence Courts, 2013

³¹ The impact of short custodial sentences, community orders and suspended sentence orders on re-offending, MoJ (2015); Policy Exchange, Fitting the Crime, 2010



The Judge claims that whilst the national recidivism rate is over 75%, the rate from his court is just 10%, and, although unevaluated, other benefits to this approach have been cited by experts, including encouraging an offender to interact more closely with the community they have harmed.

- **Intensive.** Community sentences that are less intense show higher rates of non-completion. Allowing an offender to see a specific project through to completion in a short space of time, rather than drawn out over several months, creates a sense of achievement and also, theoretically, could afford the offender fewer opportunities to commit further offences. Completion rates rise when the same number of hours is required to be completed in less time.

Case study 4: Intensive community orders (ICOs), Greater Manchester

In 2014/15 in Greater Manchester, a programme of ICOs was rolled out for 650 young adult offenders per year aged 18-25, for whom the custodial sentence would have been less than 12 months. The aim was to provide an order that was more onerous than the standard sentence, and it must include three to five requirements, typically:

- Offender management supervision for at least nine months
- Unpaid work (community payback)
- Electronic tagging (curfew)
- Input from a range of partner organisations.
- It may also include a requirement to go to an Attendance Centre at the weekend.

It also aims to specifically address the most common risk factors associated with young adults who commit crime, with:

- Specialised Offender Management - tailored to the typical needs of the cohort
- Fast track breach processes - ensuring rapid enforcement when necessary
- Education, training and employment mentoring - targeting the prevention of future reoffending
- Family/community involvement - to improve the offender's compliance
- Close monitoring - to ensure swift and certain enforcement

The results for the first cohort were very positive; the 2014/15 programme led to 27% of offenders involved gaining employment, and more than 50% reduction in the severity and frequency of offending. It was also found that rolling out the programme could save around £58 million per year by 2020, principally from lower costs of criminal justice and policing. This programme was extended for a further 12 months, to the end of 2016, across Greater Manchester.



- **Purposeful.** Research has found that community sentences need to provide offenders with a sense of achievement if they are to be effective in preventing future reoffending. With particular reference to unpaid work, the most effective schemes either instil a sense of relevance to the community ('giving back') or provide the offender with new skills, or, better still, both.

Case study 5: Task penalty, the Netherlands

A task penalty is a community-based sanction that has been in use in the Netherlands since 2001 - designed to target those at risk of short custodial sentences, and used in place of prison sentences of up to three months. It requires up to 480 hours of a work order, training order, or a combination of both to be completed within 12 months, and must provide a tangible benefit to the community. A training order requires an offender to learn specific behavioral skills and is often imposed on offenders who need to improve their communication skills or social abilities. The task penalty does appear to have proved an effective replacement for short sentences, reducing the flow of offenders into prison - albeit on a relatively minor scale.³²

- **Swift, certain and fair.** Sanctions are more effective when based on principles of swiftness (administered soon after the offense occurs), certainty (imposed in response to every infraction), and fairness (suited to the circumstances, but severe enough to be undesirable). A review of the Red Hook Community Justice Centre in New York also found that the prominent role played by the judge there likely increased offenders' perception of fairness - a higher rate of which we know is linked to higher levels of compliance.

Case study 6: Swift and Certain programmes in the US

A new, more effective way of managing offenders under community supervision has been introduced across the United States. 'Swift and certain' (SAC) Programmes have been implemented in around 20 states and evidence suggests they have had a positive effect on compliance and reoffending rates where they have been implemented in full.³³ While there are differences between the programmes, they share three core elements:

- **Swiftness** - lack of compliance is dealt with immediately i.e. when offenders breach they are quickly seen by a judge, often on the same day, and receive their sanction immediately.
- **Certainty** - sanctions are clearly communicated and are carried out every single time a breach is detected. This is combined with a certainty that every detected breach is

³² CJA, Reducing the use of imprisonment, 2012

³³ See, for example, McEvoy K, National Institute of Justice, Journal No. 269, March 2012, HOPE: A Swift and Certain Process for Probationers



sanctioned. This requires the use of hard data, such as that provided through logs of office visits, GPS tracking and drugs tests, to determine whether a breach has taken place, rather than the subjective view of a probation officer.

- Fairness - requires that sanctions are proportionate. An approach where a minor infraction, such as turning up five minutes late for a meeting, leads to a fairly long prison sentence is often seen as disproportionate by offenders. SAC programmes make sure that the sanction fits the breach. Fairness also requires consistency. As Angela Hawken, Associate Professor of Public Policy at Pepperdine University, puts it: “offenders do not see it as fair if someone they know gets a different sanction for the same breach”.

So far the evidence from every place SAC programmes have been introduced in full has been positive. A randomised control trial of Hawaii’s HOPE Programme showed offenders were 61 per cent less likely to skip appointments with their supervisory officer and 55 per cent less likely to be arrested for a new crime. Similarly, a study of Texas’ SWIFT Programme found that 59 per cent of offenders reduced their technical violations of supervision after entering the programme, and just eight per cent of offenders have had their sentence revoked due to breaching the terms of their sentence and nine per cent for reoffending. Compared to a matched comparison group, SWIFT participants were half as likely to be convicted for new crimes.

Case study 7: Hertfordshire Constabulary’s Choices and Consequences (C2) programme, Hertfordshire

The C2 programme was launched in 2007, with the ultimate aim of offering an alternative to custody to non-violent, prolific adult offenders wanting to turn their lives away from crime. The programme offers willing participants (adult prolific offenders) who “demonstrate their desire to rehabilitate” the chance to defer a custodial sentence and instead undertake a three-year long community order, delivered by a range of services and providers to tackle the individual needs of the offender.³⁴

The order is an extensive rehabilitation regime that may include requirements such as drug treatment, life skills training, education and employment. Stipulations are attached to the sentence, such as not reoffending or relapsing into addiction, which, if breached, result in the offender being resentenced for the original crime. Since 2011, GPS trackers have also been introduced to the programme.

Initial evaluations of the programme found that after two years the C2 Scheme had:

- made a positive impact on police detection rates (adding 8% to Burglary and 5% to Vehicle Crime detection rates);

³⁴ Hertfordshire Constabulary, ‘[C2 Programme](#)’.



- saved the prison service £29,000-£35,000 per annum for offenders in the community rather than in prison;
- saved the police £2,147 per detected offence;
- made potential annual savings of £206,000 per offender in crimes prevented in the wider community;
- encouraged cross-agency collaboration between the police, CPS, probation service and courts, providing an effective, integrated approach.³⁵

³⁵ Realise Group case study, <http://www.realisegroup.com/pdfs/C2FINAL.pdf>



4. Trends in the use of community sentences

Chapter summary:

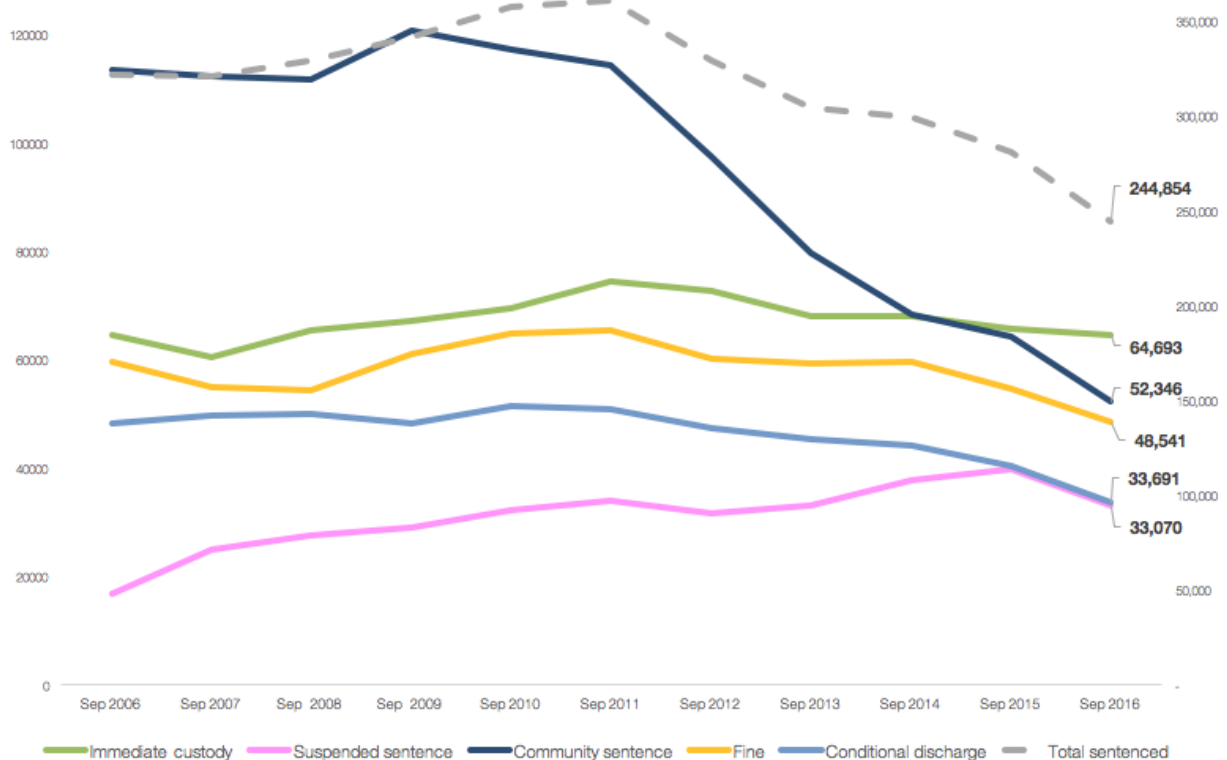
- The number of community orders has essentially halved over the past decade, with an increasingly sharp decline from 2011 onwards, whilst custody and fines have remained relatively stable. The rising use of suspended sentence orders has not offset this trend
- The use of community sentences has declined fastest for theft and drugs offences
- There appears to be little difference between the makeup of offenders on COs and SSOs, based on their harm and reoffending risk evaluations
- Unpaid work is typically the most common requirement commenced under a community sentence, and since its introduction in 2015, the RAR has become the second most common
- Delays are common between sentencing and commencing a requirement, and vary between regions and type of requirement
- The majority (70%) of offenders undertaking a community sentence go on to complete their sentence, however:
 - 30% of community sentences fail for the committal of an additional offence, or for breach of sentence stipulations
 - reoffending rates have remained relatively flat over the past decade and vary between disposals: custody stands at 45% (rising to 60% for short custodial sentences); COs at 35%; and SSOs at 31% (which has decreased from 37% a decade ago)
 - reoffending performance varies between CRCs, with interim reoffending rates ranging from 26% to 43% for community sentences
 - prolific offenders (those with 15 or more previous convictions or cautions) make up an increasing proportion of those sentenced; for community the proportion has risen from 15% in 2005 to 25% in 2015.
 - 75% of offenders sentenced to immediate custody for an indictable offence in 2014 had previously served at least 1 community sentence



Court sentencing

Trends in court sentencing over the last decade paint a stark picture. Against a backdrop of falling sentences overall, the number of offenders sentenced to community sentences has fallen dramatically (essentially halving), particularly since 2011, whilst those sentenced to immediate custody have remained relatively stable. Just over 100,000 community orders and 56,000 suspended sentence orders were given out in 2016, compared to almost 200,000 COs and 22,000 SSOs a decade ago.³⁶

Figure 4: Offenders sentenced at all courts, triable either way offences, 2006-16³⁷



These figures are even more dramatic if we look at the last five years: during which time there has been a staggering 78% decline in the number of community sentences.³⁸ In 2010, a report by the think tank Policy Exchange described the so-called “unprecedented expansion of community sentences” as “the untold story of the criminal justice system over the last twenty years”.³⁹ Seven years on, it is their almost disappearance that is the untold story of the CJS.

³⁶ Across all offences and all courts, MoJ, Criminal justice statistics quarterly update to June 2016

³⁷ MoJ, Criminal justice statistics quarterly, years ending June and October 2016; please note the use of two axes

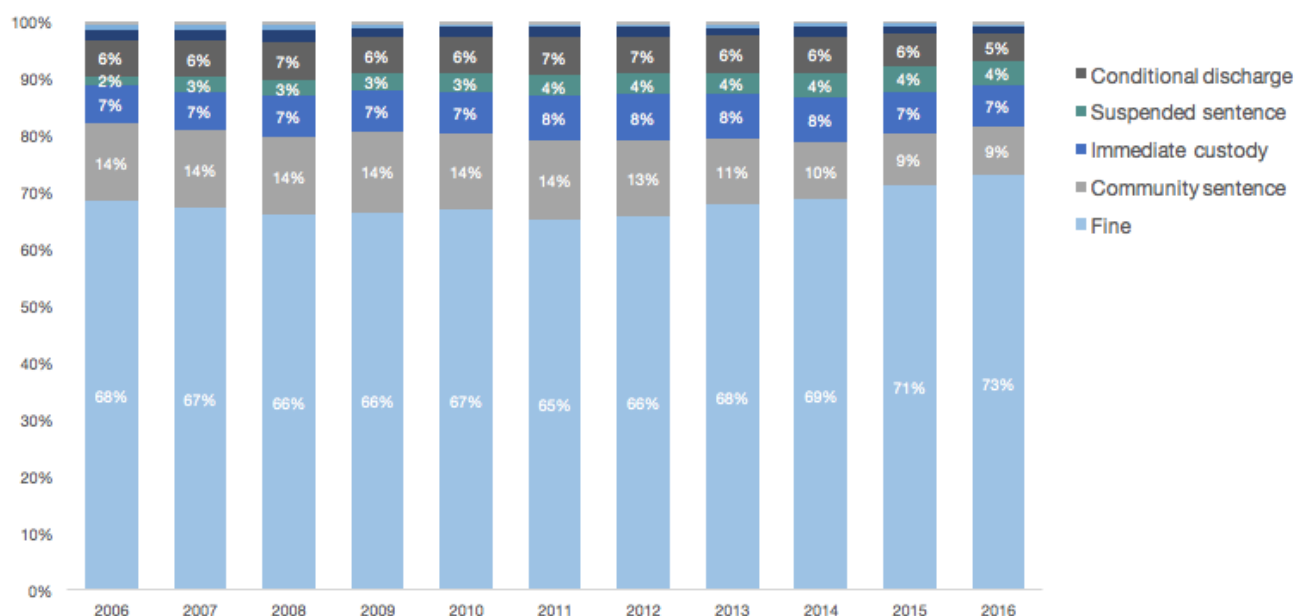
³⁸ Figures from September 2011 to September 2016, MoJ

³⁹ Policy Exchange, Fitting the crime, 2010, p.24

<https://policyexchange.org.uk/wp-content/uploads/2016/09/fitting-the-crime-nov-10.pdf>



Figure 5: Proportion of sentences handed out across all courts, 2006-2016



Mix of offenders and offences receiving community sentences

Mix of offenders

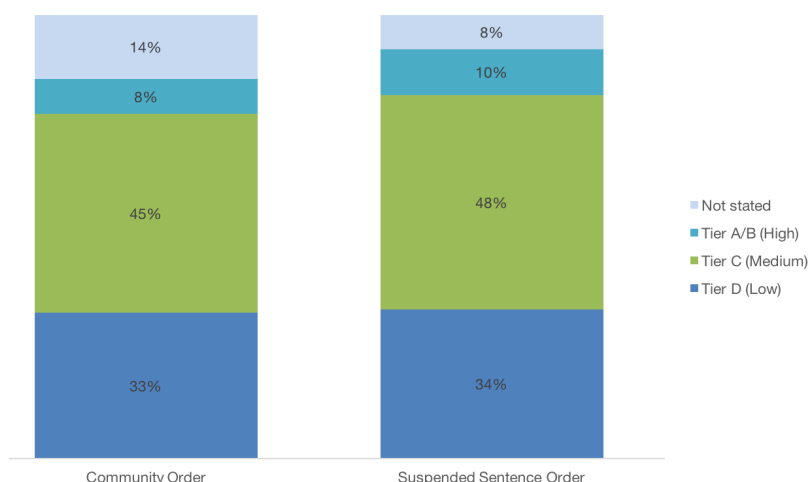
As described in Chapter 2, sentencing guidelines make clear that community orders and suspended orders are designed for different cohorts of offenders. Analysis of available data suggests that offenders on suspended sentence orders are slightly more prolific than those on community orders.⁴⁰ There is little difference in the proportion of first time offenders on the two community sentences (in 2016 16% of those sentenced to suspended sentence orders had no previous convictions/cautions compared to 19% on community orders) although prolific offenders (with 15 or more previous convictions and cautions) made up 28% of offenders on suspended sentence orders compared to 19% on community orders.⁴¹ However, in terms of their risk of harm/offending, the makeup of offenders on both community orders and suspended sentence orders are virtually indistinguishable - 58% of offenders on suspended sentence orders were deemed medium or high tier offenders compared to 53% on community orders (see figure 6 on the following page).⁴²

⁴⁰ MoJ, number of previous cautions/convictions by disposal, 2006-2016

⁴¹ For any fewer previous sentences there is little difference in proportions; for example 20% of offenders on suspended sentence orders had between three and six previous cautions/convictions, compared to 22% on community orders

⁴² A new tiering framework was introduced by the National Probation Service in June 2016

Figure 6: Offenders supervised by the probation service under COs and SSOs by tier, 2016⁴³

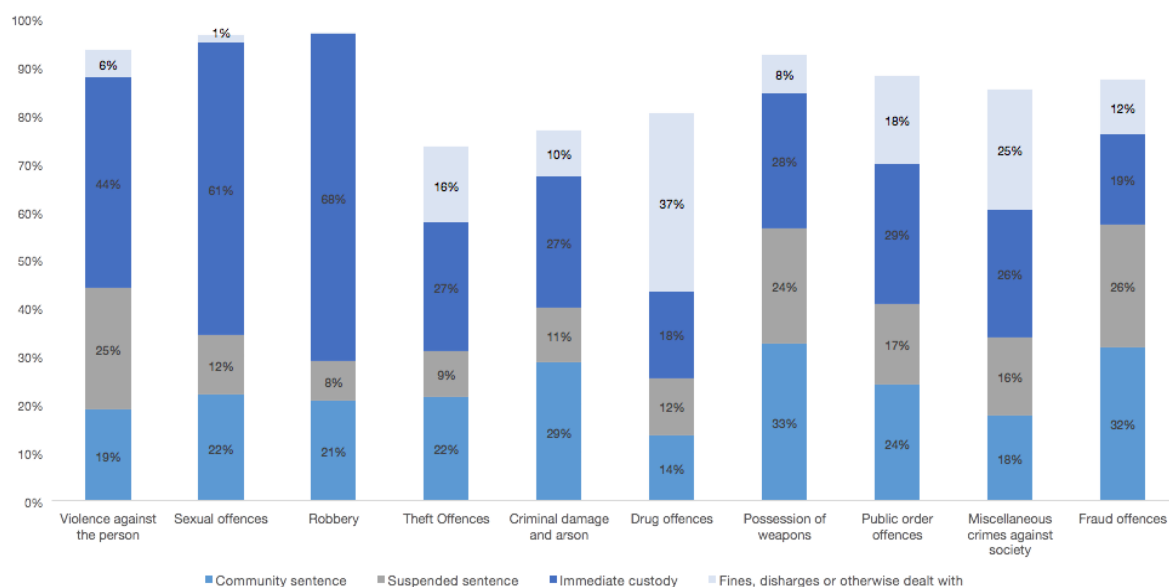


The fact that the cohort of offenders serving community orders appears to be so similar to the cohort serving suspended sentence orders raises questions about whether and how the ‘custody threshold’ is applied by judges in practice.

Mix of offences

The following chart sets out sentencing outcomes across ten key offences.

Figure 7: Proportion of sentenced offenders receiving COs, SSOs, immediate custody and fines for selected offences



⁴³ The tier indicates the level of risk of serious harm and likelihood of reoffending presented by the individual, combined with the complexity of the sentence requirements, with tier D being the lowest and tier A the highest. Figures are from Q1 2016, from MoJ, Offender Management Statistics Quarterly, January 2017, Table 4.6.

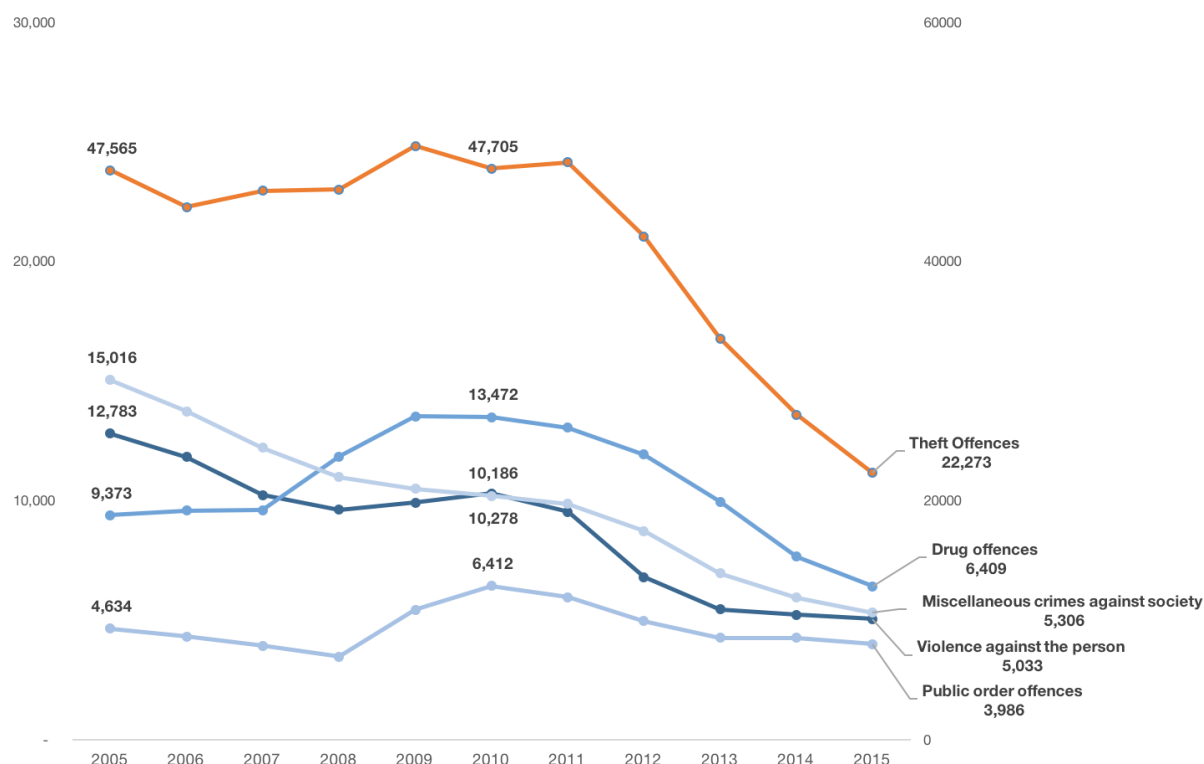


The five offence groups that make up the highest number of community orders are:

- Theft (22,273 - comprising over a fifth of all community orders)
- Drugs offences (6,409)
- Miscellaneous crimes against society (5,306)
- Violence against the person (5,033)
- Public order offences (3,986)

All have displayed downward trends in the number of community orders handed out, particularly since 2010 (see figure 8). In particular, the number of community orders handed out for theft and drug offences more than halved between 2011 and 2015 (with a 54% and 51% decline respectively).

Figure 8: Trends in the number of community sentences handed out for the most frequent offence groups, 2005-15⁴⁴



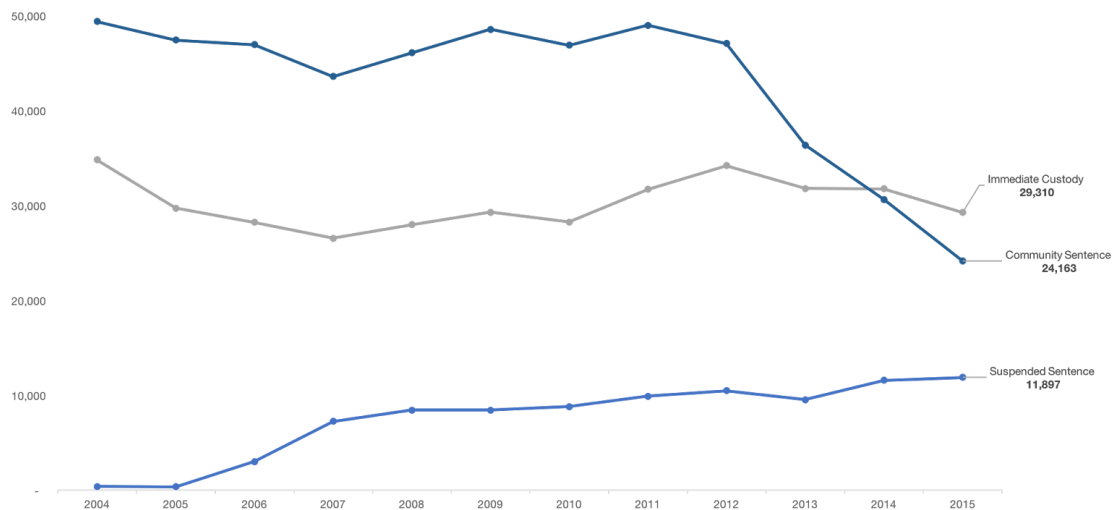
If we just take theft offences (which make up the highest proportion of community sentences) we see that whilst the use of community orders has declined sharply, the use of immediate custody has remained flat. Suspended sentence orders have risen, but not enough to offset the

⁴⁴ Please note, two axes are in use for the purpose of illustrating the downwards trend across all offence types. Theft offences correspond to the secondary axis on the right, with the other four offence groups corresponding to the primary axis on the left.



fall in COs (see figure 9).

Figure 9: Numbers of custodial and community sentences handed out for theft offenders 2004-15



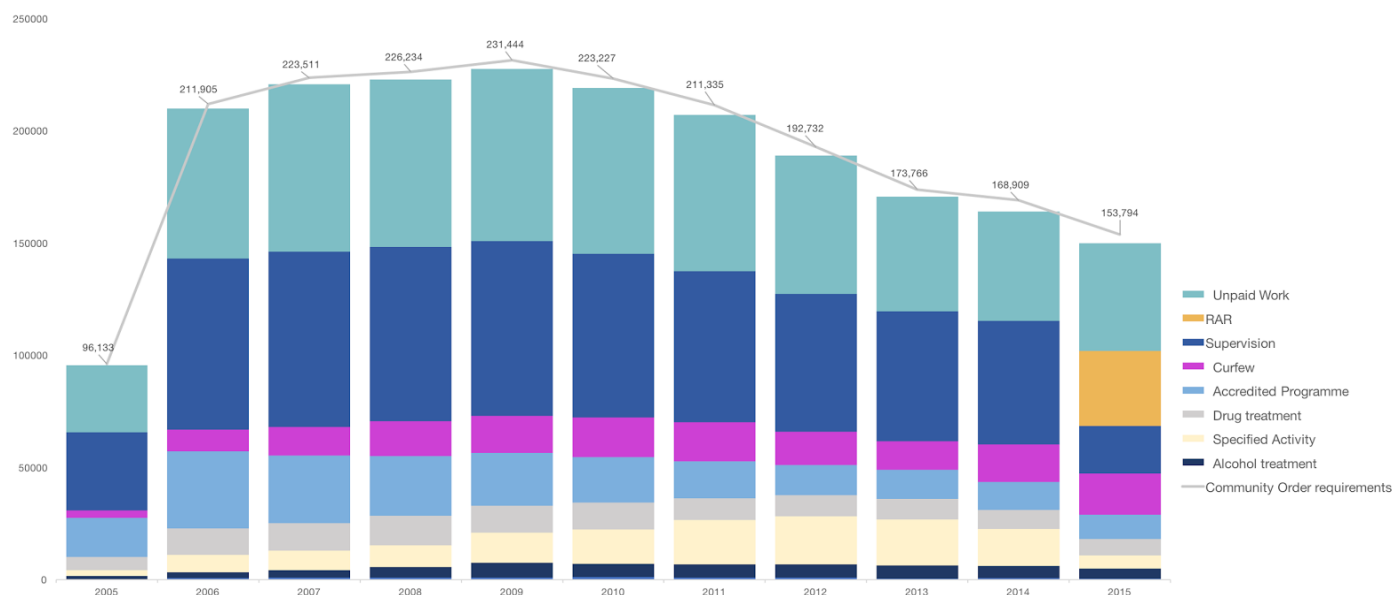
These figures suggest that the fall in community sentences is unlikely to have been primarily driven by a rise in more serious offences coming before the courts. Whilst the proportion of recorded serious offences, such as violence against the person and sexual offences, has risen over the last five years, the fact that the use of community sentences has fallen so rapidly, relative to custody, for less serious offences (such as theft) suggests there may be other factors driving this phenomenon.

Trends in the composition of community sentences

Unpaid work has consistently been, and remains today, the most frequently used requirement commenced under a community order, followed by Supervision (now displaced by the new 'Rehabilitation Activity Requirement' - see below) and Curfew. Unfortunately, there is very little publicly accessible data on what constitutes 'unpaid work' - the kind of work involved, how intensive it is and where it takes place.



Figure 10: Requirements commenced under community orders 2005-2015⁴⁵



As the National Audit Office (NAO) has noted, the fact that ‘accredited programmes’ represent a falling proportion of requirements commenced has significant implications for the financial viability of CRCs, who are paid according to the number of offenders completing such programmes (as opposed to ‘RARs’, for which they are required to pick up the costs), which CRCs have linked to the declining quality of PSRs. (In response, the NPS and CRCs have begun working on an ‘Effective Sentencing Framework’, which will seek to address this issue by guiding report writers toward the appropriate sentence.⁴⁶)

Looking in detail at the mix of requirements commenced under community sentences it appears that COs became slightly more punitive between 2012 and 2015 (45% of sentenced included requirements deemed as principally punitive⁴⁷ in 2015 compared to 41% in 2012) - following changes introduced through the Crime and Courts Act. However, this is still some way short of the government’s intended ambition that every CO includes a punitive element.

Timeliness of community sentences

There are often long delays between the start of a sentence and the offender commencing the requirements they have been allocated (see table 1 on the following page.)

⁴⁵ MoJ, Offender management statistics quarterly, probation, 2016

⁴⁶ This has been piloted in Greater Manchester – with early signs that it is beginning to have a positive impact on the takeup of ‘accredited programmes’

⁴⁷ See page 14



Table 1: Length of time before requirement started following the commencement of the CO, 2014⁴⁸

Period since CO started	Drug Rehabilitation Requirement %	Unpaid work %	Accredited programme %	Supervision %
Within a month	80	84	4	97
One to three months	18	12	25	2
Three to six months	1	4	35	0
More than six months	1	1	36	0

This particular cohort study conducted by the MoJ in 2014 found that a fifth of the offenders studied were still waiting for part of their CO to commence four months after their sentence had begun (i.e. a part of a requirement or a full requirement). Lack of availability or administrative issues were cited as causes of delays; a quarter were waiting for a place to become available and just under a fifth (17 per cent) were waiting for an element to be organised.⁴⁹

Although some delays may be unavoidable (for example, where there is a need to undertake 'pre-work' and/or further assessments), the fact that waiting times before requirements commence following sentence vary so widely across regions suggests there is scope for performance improvement. For example, Freedom of Information requests (FOIs) of Probation Trusts (the precursor to CRCs) by the Centre for Social Justice in 2014 found that waiting times before accredited programmes commenced ranged from four and a half months in Kent to a few days in Staffordshire and the West Midlands.^{50 51}

Given the fundamental importance of swiftness and certainty in the effectiveness of sanctions, it is not difficult to see why delays like this undermine confidence in community sentences. Indeed in our interviews for this report we were told of cases where an offender can be back in front of the court after a breach, before the original sentence has even begun.

Effectiveness of community sentences

As a result of changes to the structure of probation under the TR programme in 2014, the way performance data is captured and measured has changed, making comparisons between the effectiveness of community sentences pre and post-2014 difficult. For the purposes of this report, we have looked at the performance of community sentences post-2014, focusing on

⁴⁸ Cattell, J et al. (2014), Implementation of Community Orders Results from the Offender Manager Community Cohort Study, MoJ

⁴⁹ Ibid., p.19.

⁵⁰ The former probation trusts covered in this analysis are Kent, Wiltshire, West Mercia, Norfolk and Suffolk, Northumbria, Cheshire, Gloucestershire, Derbyshire, York and North Yorkshire, Wales, London, Greater Manchester, South Yorkshire, and Staffordshire and West Midlands.

⁵¹ CSJ, Sentences in the Community



three standard measures:

- Completion rates
- Enforcement of breaches
- Reoffending rates

Completion rates

Historically, one of the ways in which central government has measured the effectiveness of sentences has been the proportion of offenders who complete the sentence. Official statistics suggest that 70% of community sentences in 2015 overall were completed successfully, which represents a rise of around 20 percentage points since 2006 (see figure 11).

Of the 21,380 community orders completed in 2015:	Of the 9,603 suspended sentence orders completed in 2015:
<ul style="list-style-type: none">✓ 50% ran their full course✓ 20% were terminated early for good progress	<ul style="list-style-type: none">✓ 51% ran their full course✓ 19% were terminated early for good progress
However:	However:
<ul style="list-style-type: none">✗ 11% were terminated early for failure to comply with requirements✗ 11% were terminated early for conviction of an offence✗ 8% were terminated early for other reasons	<ul style="list-style-type: none">✗ 9% were terminated early for failure to comply with requirements✗ 17% were terminated early for conviction of an offence✗ 5% were terminated early for other reasons

Breaches

Over the past year, there has been a fall in the proportion of community sentences that are breached: for the first three quarters of 2016, 17% of COs and 29% of SSOs were terminated early because they were breached (for failing to comply with requirements or for reoffending). This is broadly in line with longer term trends with breaches having fallen steadily since 2006 (from 38% to 17% for COs and from 53% to 29% for SSOs).



Figure 11: Completion and breach rates for COs and SSOs 2006-16⁵²



However, neither completion rates nor breaches are necessarily a good measure of success, since they measure activity rather than outcomes. For example, in 2015 there was a sharp increase in sentences recorded as having been terminated early for ‘good progress’ (from 12% in 2014 to 19% for community orders) - however, this may have been a result of changes in data definitions after 2014 rather than a genuine improvement in performance.⁵³

Similarly, the fall in unsuccessful terminations may reflect a growing failure to report and enforce breaches, rather than evidence of success. Though it is very difficult to evidence, a recent HM Inspectorate of Probation (HMIP) report into TR concluded that “enforcement of breach was the most problematic issue for CRCs”.⁵⁴ It also reported that “a number of responsible officers said that they had been told not to recommend ‘revoke and resentence’, because it would lead to a financial penalty for the CRC”.⁵⁵

Reoffending rates

Overall reoffending rates have generally remained flat since 2006 (figure 12). The custody

⁵² MoJ Offender Management Statistics Quarterly 2016, please note figures from 2016 are an average of data from Quarter 1-3, all other years are complete

⁵³ Ibid, Table A4.23

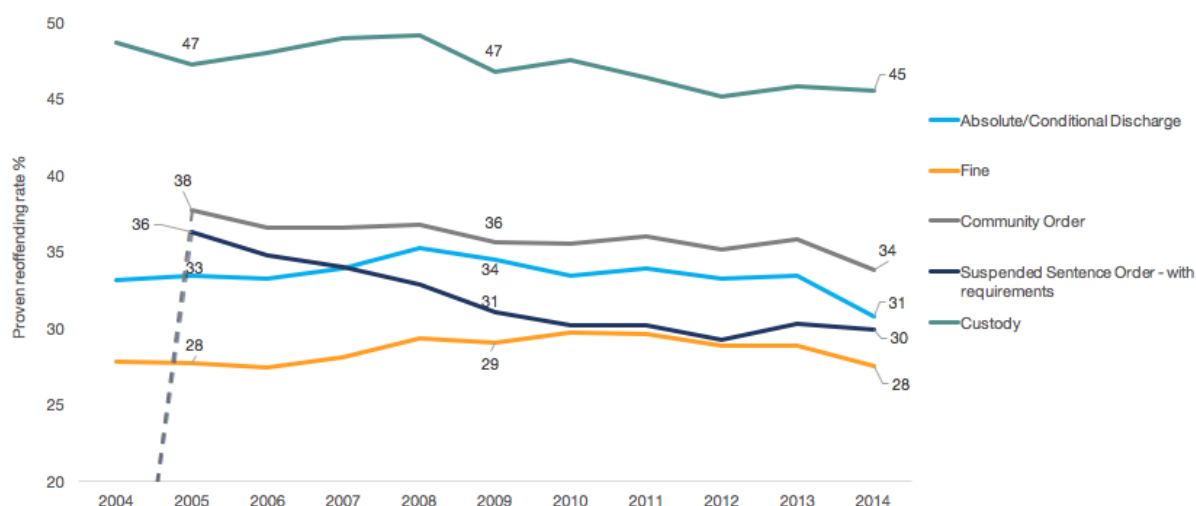
⁵⁴ HMIP, Transforming Rehabilitation 5, May 2016, p.20

⁵⁵ Ibid, p.20



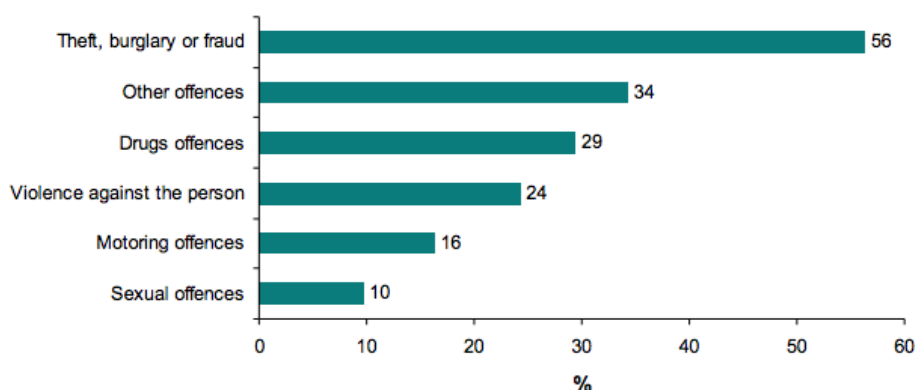
reoffending rate has remained broadly stable at around 45% over the past five years. The reoffending rate for community orders has slowly decreased since the introduction of the sentence in 2005 (from 38% to 34% in 2014), as has the rate for suspended sentence orders, which have seen a decreased reoffending rate from 37% to 31%, although this has crept up over the last year.

Figure 12: Adult proven reoffending by index disposal (%), 2004-14



Previous cohort studies conducted by the MoJ suggest that the effectiveness of COs varies by offence type.⁵⁶ A study published in 2015 found that reoffending rates were highest for offenders serving sentences for theft, burglary and fraud (56%). (This is particularly pertinent given that theft offences are currently the most likely to attract a community order - see page 28.)

Figure 13: Proportion of offenders serving community orders in MoJ cohort study, in each offence category who reoffended by index offence⁵⁷



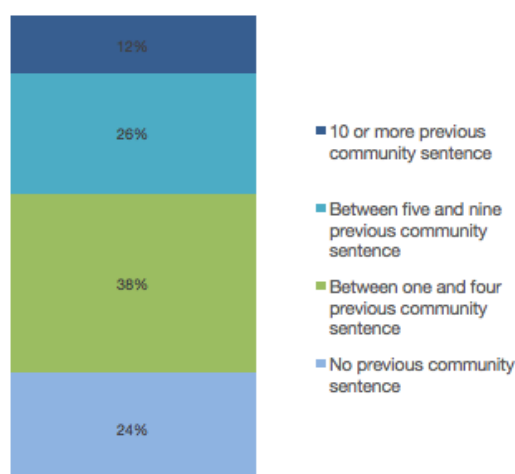
⁵⁶ Wood et al. (MoJ), Re-offending by offenders on community orders, Results from the Offender Management Community Cohort Study, 2015

⁵⁷ Ibid.



Recent FOI data suggests COs are largely ineffective in addressing the causes of offending. Data released in a parliamentary written question revealed that three quarters of offenders sentenced to immediate custody for an indictable offence in 2014 had previously served a community sentence.⁵⁸ Almost 40% had served five or more - an astonishing illustration of failure.

Figure 14: Offenders sentenced to immediate custody for an indictable offence by proportion of previous community sentences received in England and Wales, 2014



Early reoffending data (including those on community sentences and licence recall) indicates there is great variation in reoffending rates between the CRCs. The average reoffending rate (as of January 2017 data) has been measured at 40%, however these vary between 26% and 43% across the 21 CRCs (see table 2).

⁵⁸ See www.parliament.uk/written-questions-answers-statements/written-question/commons/2015-06-23/3658

Table 2: Interim reoffending rates by CRC 2016⁵⁹

CRC name	Proportion of offenders who reoffend (%)
Durham Tees Valley	43%
South Yorkshire	38%
Humberside, Lincolnshire & North Yorkshire	37%
Northumbria	36%
Wales	36%
Bristol, Gloucestershire, Somerset & Wiltshire	35%
Warwickshire & West Mercia	35%
Thames Valley	35%
West Yorkshire	34%
Norfolk & Suffolk	34%
Bedfordshire, Northamptonshire, Cambridgeshire & Hertfordshire	33%
London	33%
Dorset, Devon & Cornwall	33%
Derbyshire, Leicestershire, Nottinghamshire & Rutland	32%
Staffordshire & West Midlands	32%
Hampshire & Isle of Wight	32%
Essex	31%
Cumbria & Lancashire	31%
Kent, Surrey & Sussex	30%
Cheshire & Greater Manchester	30%
Merseyside	26%

⁵⁹ MoJ, Interim Proven Reoffending Statistics for the Community Rehabilitation Companies and National Probation Service, T1, results for the January to March 2016 payment by results cohorts, January 2017



5. Confidence in community sentences

Chapter summary:

- Sentencers lack confidence in community sentences: over a third of magistrates (37%) are not confident that community sentences are an effective alternative to custody and two thirds (65%) are not confident they reduce or deter crime
- Analysis of polling of magistrates conducted in 2003 suggests confidence may have declined, though the two surveys are not directly comparable
- The public are broadly supportive of the principle of community sentences over custody for low level offences, but have concerns about the way community sentences work in practice

Loss of confidence by magistrates

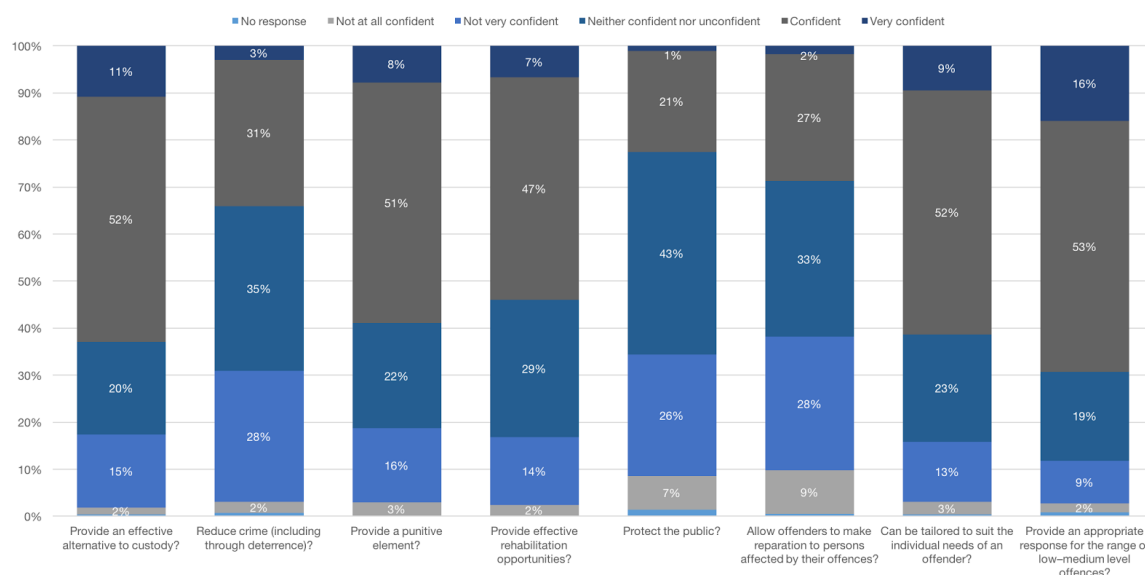
Interviews conducted with magistrates for this report found that there is a high confidence in the *principle* of community sentences and what they are designed to achieve. However, a new survey by Crest shows that magistrates lack confidence in the *practical effectiveness* of community sentences. Our survey shows that:⁶⁰

- Over a third of magistrates (37%) are not confident that community sentences are an effective alternative to custody
- Two thirds (65%) are not confident that community sentences reduce or deter crime
- 45% are not confident that community sentences effectively rehabilitate offenders
- Three quarters (76%) are not confident that community sentences protect the public
- Half (49%) are not confident that community sentences can be tailored to suit the individual needs of an offender
- Just under a third (30%) are not confident that community sentences provide an appropriate response to the range of low-to-medium level offences they cover

⁶⁰ The survey, commissioned by the Magistrates Association, surveyed 582 magistrates in England and Wales



Figure 15: magistrates' confidence in community sentences



By any objective standard, these are extremely worrying findings. If magistrates do not believe that community sentences can deliver on their stated purpose, it is little wonder that the use of such sentences has declined so steeply over the last decade. The last time a survey of magistrates was carried out, in 2003, magistrates appeared to show much higher levels of confidence in the ability of community sentences to punish and rehabilitate offenders.⁶¹

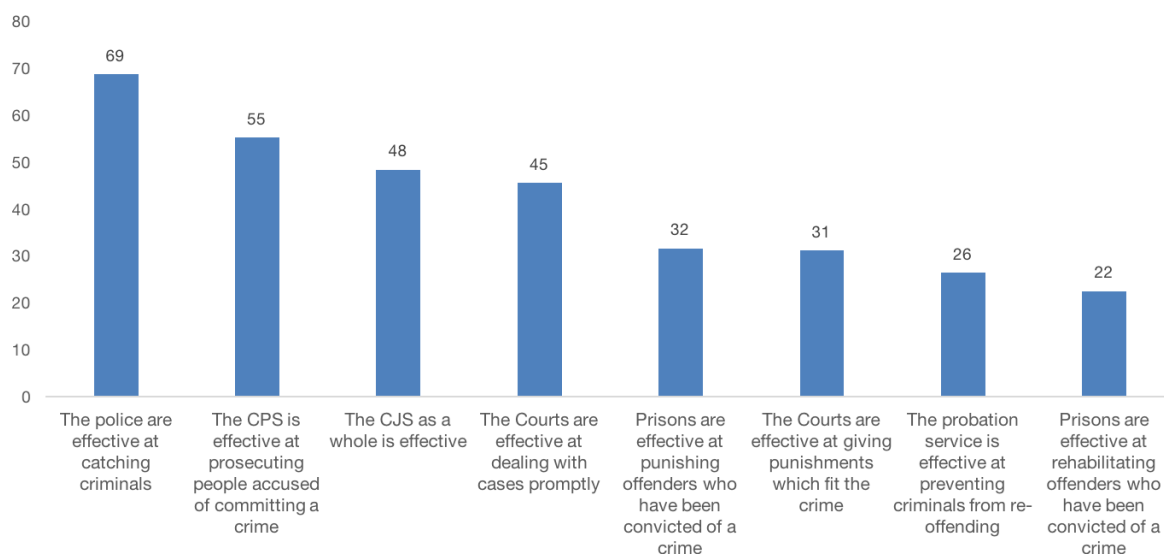
Public confidence

In recent years, the government has published fewer measures of confidence and invested less in surveying members of the public about sentencing. However, what little data we have suggests that public confidence in both sentencing decisions and the ability of the probation service to deliver those sentences is low: just under a third of people think the courts are effective at giving punishments which fit the crime and just over a quarter think the probation service is effective at preventing reoffending.

⁶¹ In 2003 the probation service commissioned MORI to conduct a survey of 5000 magistrates' views of the probation service. The questions asked were not exactly the same as those asked in our survey but nonetheless provide a valuable reference. The full results can be accessed [here](#): In 2003 82% of magistrates agreed that community sentences were punishment for offenders, compared to 19% in 2016; in 2003, 70% of magistrates agreed that community sentences helped to rehabilitate offenders; compared to 54% in 2016



Figure 16: proportion of the public that are confident in different aspects of the CJS, 2013/14

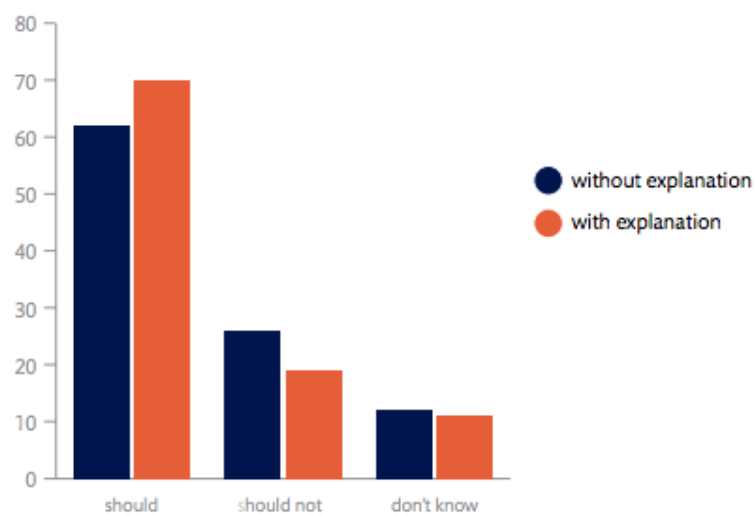


A 2012 study by Victim Support and Make Justice Work⁶² found that victims were – like the public – broadly open to the use of community sentences in dealing with lower level offences and believe they offer an opportunity to deal with the cause of offending behaviour. However, they were not confident that community sentences can deliver the justice they want in practice. In fact, victims – like the public – had serious doubts over the practicality and effective delivery of community sentences. There was scepticism over whether offenders properly engage with community sentences and how well they will be held to account if they do not. There were also doubts in relation to the practicality and effectiveness of specific aspects of community sentences, including restorative justice, unpaid work and tagging, as well as their ability to punish and deter offenders for wrongdoing. On the other hand, the research showed that when the public were given more information about community sentences, their confidence tended to increase: those who were more informed about community sentences were more likely to support their use over prison for low level offenders than those who were less informed (see Figure 17).

⁶² Out in the open: what victims really think about community sentencing, Victim Support and Make Justice Work, 2012



Figure 17: 'Do you think community sentences should or should not be used as an alternative to prison for 'lower level' offences?', by those who were and were not given information on community sentences ⁶³



⁶³ Victim Support, Populus poll for Victim Support/Make Justice Work, 2012. Unweighted bases: total 2,098; with explanation 1,078; without explanation 1,020



6. Drivers of decline

Chapter summary:

Our key conclusions:

- The primary driver of is declining confidence in community sentences, which relates to long term structural issues to do with the operation of the CJS
- In particular, the lack of information accessed by magistrates (pre- and post-sentence) and the declining quality of advice pre-sentencing from probation seem to have been key factors
- It is possible that the number of community sentences may have fallen due to a change in the cohort of offenders, in particular, with a rise in prolific offenders, but this is unlikely to have been the primary driver of changes in sentencing behaviour
- These trends pre-date recent policy changes, such as TR, though TR is likely to exacerbate the problems. In particular, the split between CRCs and the NPS, and the structure of CRC contracts is in all likelihood going to reduce confidence even further
- Longer term, the biggest barrier to confidence is likely to be the continuing evidence (and perception) of low effectiveness

As the National Audit Office and Public Accounts Committee have noted,⁶⁴ the availability of national data on probation performance is variable. In order to augment the available data, we therefore conducted ‘deep dives’ within two police force areas (Greater Manchester and Norfolk) to enable a closer analysis of the causes of falling community sentences and the impact of recent reforms such as Transforming Rehabilitation.⁶⁵ In doing so, we have explored three distinct groups of drivers:

- Lack of information/awareness amongst magistrates (both pre and post-sentence)
- Risk aversion within the probation service in their pre-sentencing advice
- Changes in crime patterns, meaning a more serious mix of offenders is coming before the courts, for whom community sentences are less appropriate

We have also analysed the emerging impact of recent policy reforms, including the design of CRC contracts and the introduction of through the gate support for short term prisoners.

⁶⁴ NAO, Transforming Rehabilitation, 2016; PCA, Transforming Rehabilitation report 2016

⁶⁵ This encompassed a combination of focus groups and interviews with CRC and NPS staff, police, third sector providers and magistrates, polling of magistrates, analysis of local data to map the flows of offenders through the system from arrest to sentence



The role of magistrates

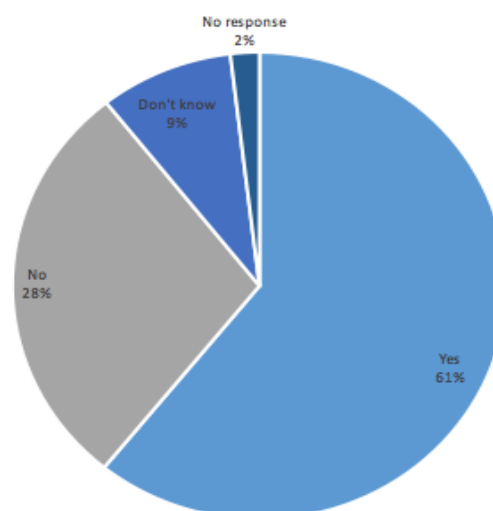
This section draws on qualitative and quantitative research to identify the key drivers of magistrates' lack of confidence in community sentences.

Lack of training/awareness of community sentences

Our survey of magistrates found:

- Fewer than half (46%) receive in-person training about community sentences and their requirements, with less than 20% receiving a brief information session upon arrival at court
- Over a third (36%) do not feel that the training has adequately prepared them for dealing with community sentences and their requirements

Figure 18: Do you feel that the training you have received has adequately prepared you for dealing with community sentences and their requirements?



These findings were supported in interviews with magistrates and probation staff. For example, whilst magistrates felt they had adequate levels of training in order to confidently sentence community sentences, a number of them pointed out they receive nowhere near the level of training they used to. According to the Judicial College, expenditure on magistrates' training has more than halved in recent years, falling from £72 per sitting magistrate in 2009/10 to £30 in 2013/14, a downwards trend which, according to the Justice Select Committee, is continuing.⁶⁶

⁶⁶ Justice Select Committee, The role of the magistracy inquiry, 2016



Lack of confidence/knowledge in local probation provision

Our survey of magistrates found that:

- Two thirds (66%) are not confident that the CRC in their area can provide adequate support for offenders
- Nearly half (47%) say they do not have sufficient information about requirements available in the area
- Nearly half (46%) say they do not know whether mental health treatment requirements are available in their local area

Figure 19: Confidence that the CRC in the magistrate's area provides adequate support to offenders

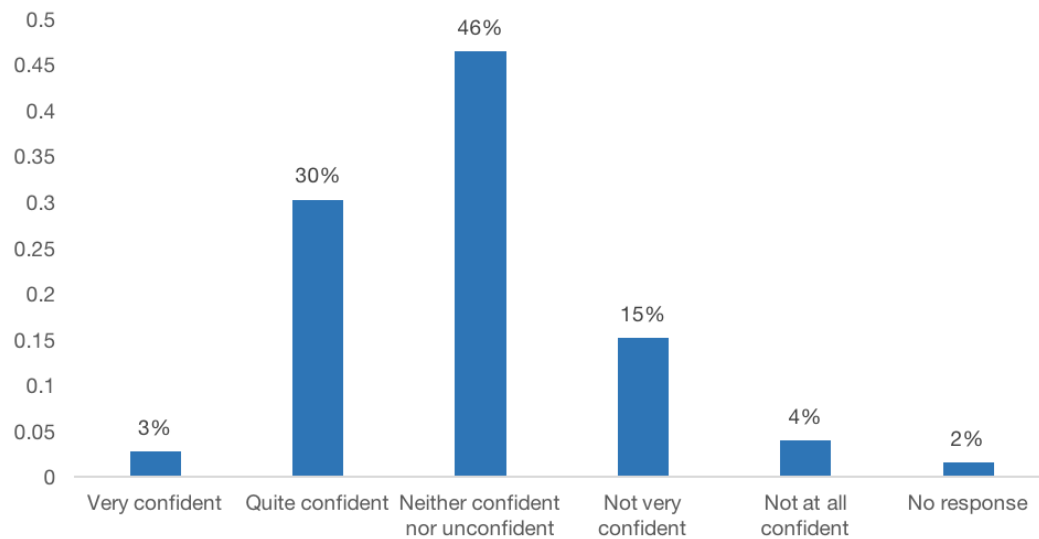
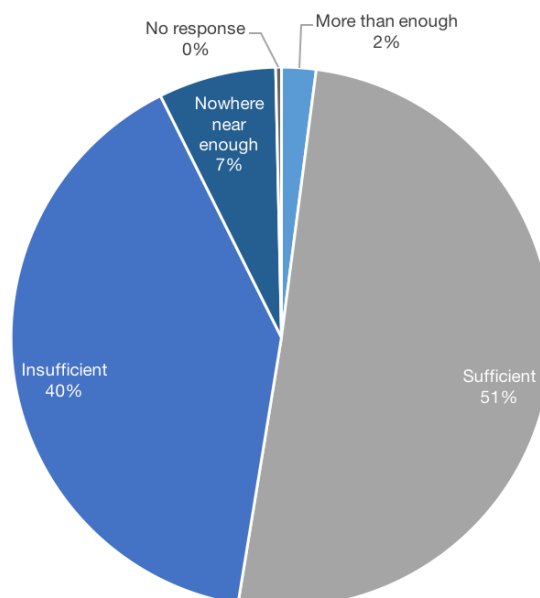


Figure 20: What level of information do you feel sentencers have about what requirements are available in your local area?



These findings were reinforced in our interviews with magistrates and offender managers.⁶⁷ In particular, the magistrates we spoke to expressed frustration with the lack of information from the CRC about the provision available in the area. In general, levels of awareness were extremely low.

“It may be wonderful what is going on but we want to know what’s going on.”

- Magistrate

Lack of feedback about what works

Our interviews with magistrates illustrate that many feel in the dark about what is working, with the only feedback being when an offender breaches. Probation staff pointed out that judges tend to view success/failure as binary (i.e. where they reconvicted or not) whereas the reality is often more nuanced and needs to be measured in terms of ‘distance travelled’.

“As time has gone along, you’ve seen these different political ideologies - tough on crime, tough on the causes of crime, pressure from the press, higher levels of accountability - and I think cases are going back to the court and I would imagine people are saying ‘what have you done to actually rehabilitate this person’, and I think that [impacts] the confidence of the judiciary and the magistracy.”

- Offender manager

⁶⁷ Conducted in Norfolk and London (see annex II for more detail)



The RAR was a considerable source of dissatisfaction for the magistrates we spoke to, with many of them highlighting the lack of information that is passed on from the CRC about what the RAR is.

“Because we are not allowed to give any input into the RAR of what we want to see happen, we have very little knowledge. We are just recommended a RAR and the sort of number of days that are required, and this is why we feel very much at arm’s length from it.”

- Magistrate

“From what I’ve seen [magistrates] don’t understand RARs, they don’t understand what supervision is anymore and whether [probation] is going to see them.”

- Offender manager

The role of probation

Another possible explanation for the decline in community sentences is an increasing risk aversion within the probation service in recommending community sentences in PSRs.

A growing target-driven culture

Many of the probation staff we interviewed felt that the move to a more target-driven culture in probation (which began around 2003-04) had had significant implications for the provision and delivery of community sentences. Historically, the stated role of the probation service had been to ‘advise, assist and befriend’ offenders until the establishment of NOMS in 2004, when the emphasis shifted toward a focus on punishment, rehabilitation and public protection. Focus group participants were in agreement that the combined impact of these changes had been to drive an emphasis on process, rather than outcomes, leading to greater risk-aversion across the system and, crucially, reducing the amount of time officers spent with offenders.

Focus group participants suggested that probation has been heavily influenced by changes in political ideology, meaning that the service provision, at least in the time the participants had been in probation (for most, over a decade), was in constant flux. This, they suggested, meant that offenders were now confused by the system - making it less likely that they would complete their requirements and harder for probation officers to fulfil their duties.

Reduced quality of advice, pre-sentencing

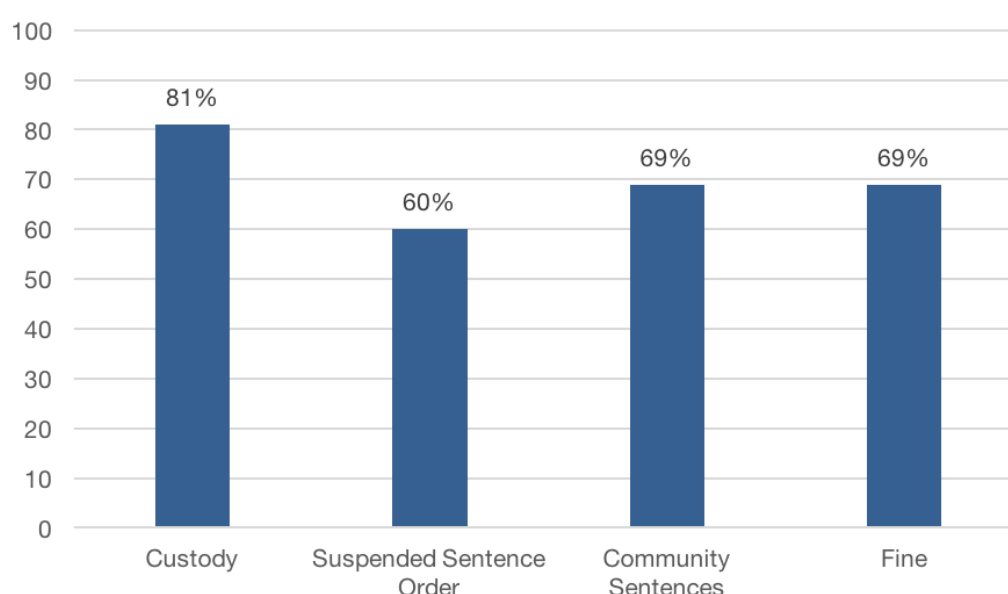
Before imposing a custodial or community sentence, the court is required to obtain a PSR unless the court is of the opinion that a report is unnecessary in all the circumstances of the case. PSRs are prepared by probation officers for consideration pre-sentencing, both in the



magistrates' courts and in the Crown Courts. They are designed to give information to the sentencer about the circumstances and context of the case and the offender. Some reports can be prepared on the day by NPS court officers. These reports are for cases already known to the probation service, or if the case is straightforward ('Oral' and 'Fast Delivery' reports). Others require a fuller assessment carried out by a probation officer ('Standard Delivery Reports').

Nationally, only 69% of the PSRs that proposed a community sentence are followed by a community sentence being given, compared to 81% of PSRs that propose custody.

Figure 21: Concordance between sentences proposed and given where a PSR was prepared, 2015⁶⁸

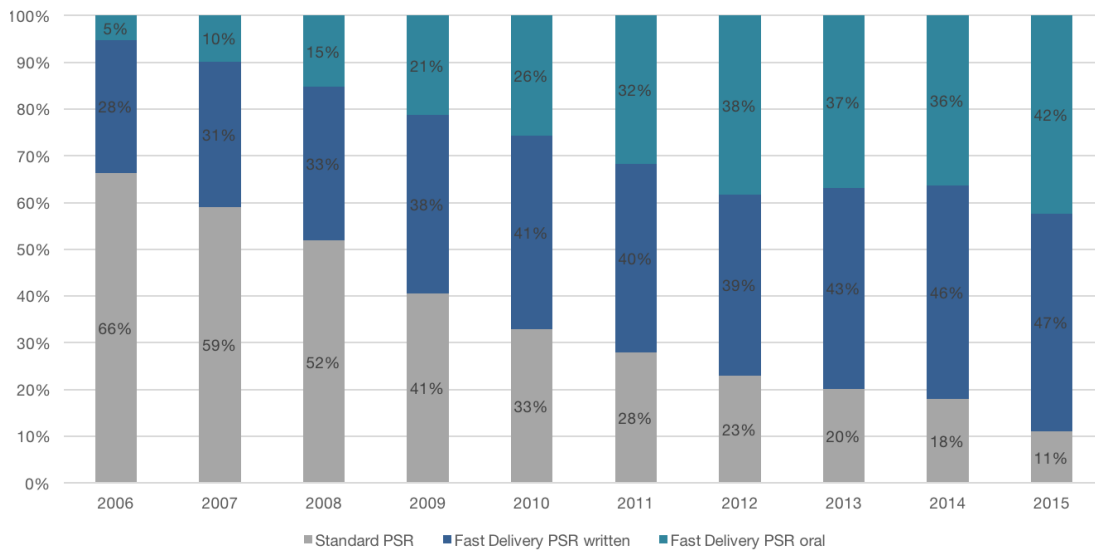


The types of report prepared for magistrates have also changed dramatically over the last decade. In 2006, standard written reports made up the majority of PSRs (66%) - in 2015 they made up 11%. By the same token, almost half of reports in 2015 were delivered orally, compared to just 5% in 2006.

⁶⁸ MoJ Offender Management Statistics Quarterly, Probation: 2015, Table 4.12



Figure 22: Magistrates' court reports prepared by the probation service by type of report, 2006-2015



This change in PSR is indicative of a conscious policy transition from standard PSRs (which can take up to 15 working days to prepare) toward fast oral reports (which can be prepared in 20 minutes). The guidelines published by the sentencing council recommend that "ideally a pre-sentence report should be completed on the same day to avoid adjourning the case".⁶⁹ A recent report into efficiency in the criminal justice system recommended a move to dispense with PSRs where possible or replace them with oral reports in cases which do not require a PSR, i.e. a community order which includes a single requirement that does not necessitate the involvement of probation (e.g. a curfew order).⁷⁰

Our interviews with probation staff⁷¹ supported these findings. Many held the view that the changing nature of PSRs meant that they now lack detail, which could mean that requirements being handed out as a result of report recommendations are not always appropriately tailored to the individual offender. Some participants felt that these effects had been exacerbated by TR, with NPS staff lacking the time/resources to draft PSRs of the requisite quality and detail. As a result, offenders were increasingly being handed a community sentence that would not address the root causes of their behaviour, would not allow probation to effectively do their job, and result in the offender coming back in front of the courts. Whilst efficiency and speed are to be sought after in the delivery of justice, it is not evident that the appropriate balance with quality has been struck.

The impact of politics and the media

Many have argued that the punitive nature of the national debate on criminal justice has

⁶⁹ Sentencing Council, Imposition of Community and Custodial Sentences, 2016

⁷⁰ Review of Efficiency in Criminal Proceedings, The Rt Hon Sir Brian Leveson, January 2015

⁷¹ CRC staff in Norfolk



contributed to a growing risk aversion amongst probation staff and magistrates when it comes to recommending/handing out community sentences. Sometimes a picture is worth a thousand words. The photograph below, reprinted by several national newspapers in 2011, depicts an offender reacting to having been handed a suspended sentence order following his conviction for an attack that left his victim hospitalised for a month.

Figure 23: Daniel Chaprowski leaving Manchester Crown Court after receiving a suspended sentence order⁷²



Yet with public concern about crime having recently fallen in salience since 2007-08 - it recently fell to its lowest ever level on the MORI issues index tracker⁷³ and played little part in the 2015 general election - it seems unlikely that politics and the media can have been the primary driver behind the recent fall in community sentences.

Changes in the cohort of offenders

The rise in prolific offending

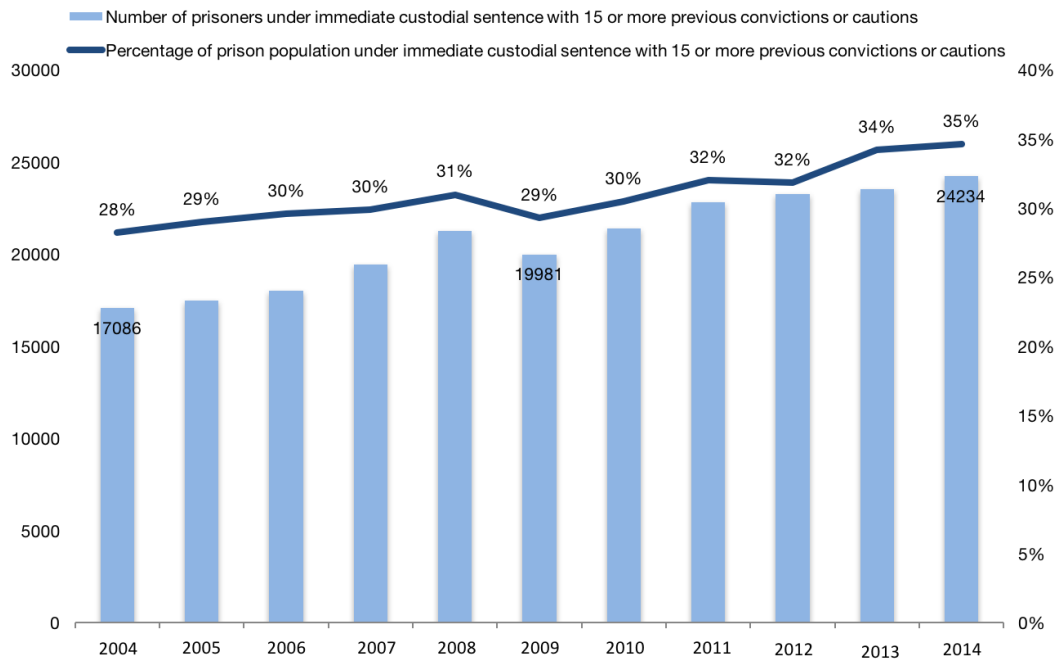
Overall levels of crime have fallen over the past two decades. Fewer criminals are being detected and processed through the courts. However, since 2005 the number of prolific offenders (defined as offenders having at least 15 previous convictions or cautions) has increased by 26 per cent from 114,782 to 144,795 - and there are now more prolific offenders in prison than at any time in the last ten years. MoJ statistics show that one in three adults convicted of indictable offences in 2015 had long criminal records compared to just over a quarter ten years ago.⁷⁴

⁷² Reprinted by The Sun, Mail Online, Daily Mirror newspapers

⁷³ Public concern about crime has been at its lowest levels since records began in March 1991, at 8% since April 2016, according to the Ipsos MORI Issues Index

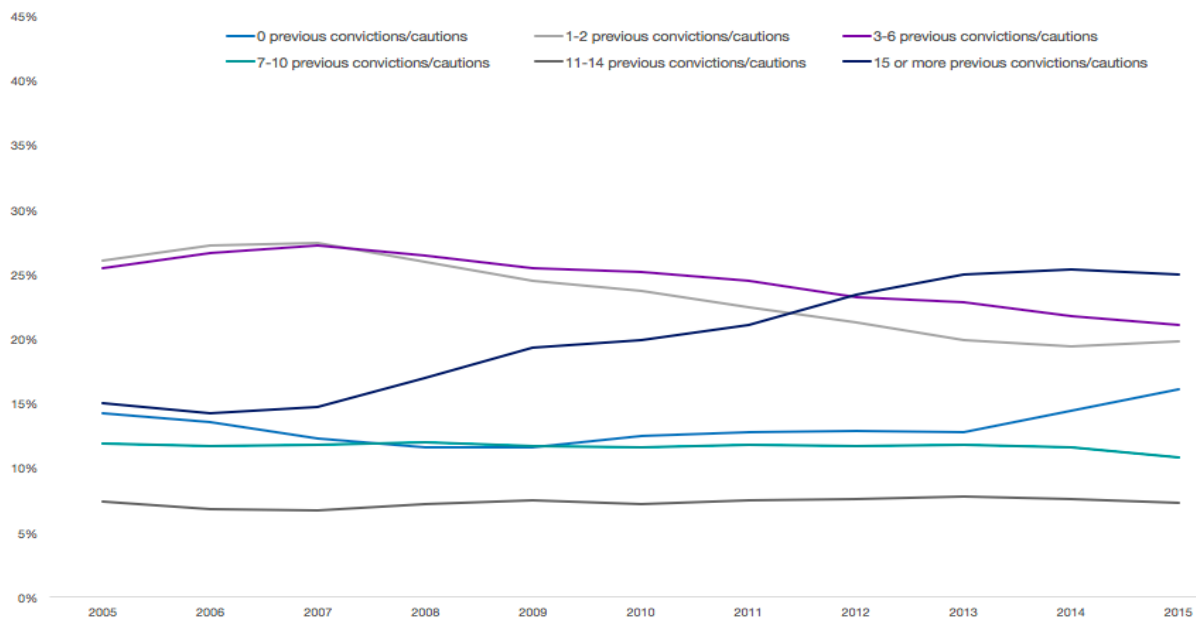
⁷⁴ MoJ (2015), Criminal Justice Statistics Quarterly Update to June 2015

Figure 24: Number and proportion of prolific offenders in prison, 2004-14⁷⁵



Prolific offenders also make up an increasing proportion of those given a community sentence, up from 15% in 2005 to 25% in 2015.

Figure 25: Proportion of offenders given a community sentence by number of previous convictions/cautions



⁷⁵ MoJ (2015), Prison Population: 31 December 2015, Table A1.18



Deepdives

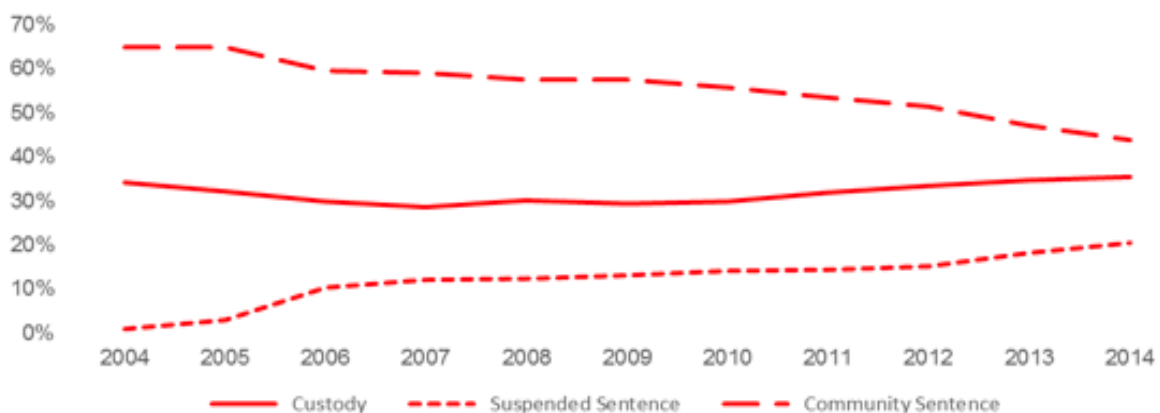
Analysis of quantitative data across two police force areas, Norfolk and Greater Manchester, suggests that changes in the way offenders are charged and sentenced have impacted the numbers of offenders going onto community sentences. These are explored below.

Changes in crime and cohorts in Norfolk

Key findings:

- Across all offences in Norfolk, the proportion of sentences being handed out which are COs has decreased; custodial sentences have increased slightly; and SSOs have increased
- Offenders in Norfolk are most likely to receive a CO for the offences of theft; criminal damage and arson; drug offences; possession of weapons; fraud and public order offences
- For the five most common crime offences in Norfolk, offenders are less likely to be charged now than they were five years ago (criminal damage; drug offences; other theft offences; violence without injury and violence with injury)

Figure 26: Proportion of sentences (custodial, SSO, CO) handed out for all offences in Norfolk, 2004-2014



Changes in crime and cohorts in Greater Manchester

Key findings:

- In Greater Manchester, community orders make up a slowly decreasing proportion of disposals overall (from 55% in 2014 to 45% in 2016)⁷⁶
- The analysis of four years' (2013-16) worth of CRC-held probation data suggests that, in Greater Manchester, fewer high risk offenders are receiving community orders, and

⁷⁶ See Annex I for more detail. Analysis courtesy of Manchester Metropolitan University



- fewer offenders overall are being charged
- There has been a notable decline in the number of theft offenders going onto community orders, which, given that such offences have historically made up a large proportion of COs, helps explain why COs are falling (at a time when the use of immediate custody for theft has been stable)⁷⁷
- This decline has been increasing since 2014, which coincides with the extension of statutory monitoring and supervision to offenders serving short term custodial sentences up to 12 months
- We tested this conclusion with data from four other CRCs, which support the general trend that low to medium risk offenders are less likely to receive a community order (see Annex I)

In conclusion, it is possible that the rise in prolific offenders may have impacted upon the number of community sentences given by the courts, but this appears unlikely to have been the primary driver of community sentences having fallen over the last decade. Our analysis of national sentencing data (see Chapter 4) and local data in Norfolk and Greater Manchester suggests that declining use of community sentences has been consistent across most types of offence and offender, with low to medium risk offenders less likely to receive a community sentence than before.

The impact of recent policy reform

There is little doubt that the problems surrounding community sentences pre-date the roll-out of TR, and until data on reoffending are compiled in late 2017, judgements about the overall performance of probation services must remain partial. However, evidence compiled by the NAO and from our focus groups suggest that TR may have exacerbated long term problems that have been affecting the system in certain ways.⁷⁸ These are set out below:

Communication between probation and the court

Under the terms of TR, CRC staff are not allowed in the court, despite retaining responsibility for 70% of offenders serving community sentences. There is emerging evidence that this has reduced levels of communication between sentencers and probation, whilst reducing the quality of the PSR. For example, in our interviews with magistrates and probation staff, nearly all participants felt that the split (between CRCs and the NPS) as a result of TR had increased the distance between magistrates and probation staff, as they no longer had any direct interaction with the people that worked with these offenders.

“We feel more at arm’s length from probation.”

- Magistrate

⁷⁷ With OGRS scores of 75+

⁷⁸ MoJ, Transforming Rehabilitation, April 2016, www.nao.org.uk/wp-content/uploads/2016/04/Transforming-rehabilitation.pdf



The range/quality of locally available rehabilitation provision

The volume of work that CRCs are paid for, as measured by the payment mechanism, has been much lower than expected and promised in the original contracts from the MoJ. This reduced funding, combined with rising caseloads (following the introduction of statutory supervision, which is unpaid) has impacted upon the ability of CRCs to commission innovative/new provision i.e. anything which is not on an agreed 'rate card'.⁷⁹ It is also clear, as indicated in Table 3, that CRCs' ability to deliver the core requirements of community sentences varies greatly across the country. As far as existing data suggests, in the worst performing CRCs, three in ten programme requirements are not successfully delivered, and one in five unpaid work requirements is not fully completed.

Table 3: timeliness measures for CRC community sentence provision

Delivery of requirements	Measure	National	Range
Initial offender contact	Contact with offenders is 'sufficiently timely'	96%	92-99%
Plan completion	Plan is completed 'early in the sentence'	92%	72-98%
Arrangement of unpaid work	Within 28 days of the NPS allocating offender	96%	89-100%
Priority of arrangement of unpaid work	Attendance at first session arranged within seven days of allocation	79%	37-99%

The impact of TR on local delivery

To understand how TR has impacted on the confidence and perceptions of sentencers and service users, qualitative research was undertaken in Greater Manchester and Norfolk. The aim was to test whether TR has exacerbated existing factors that have contributed to the decline in community sentences, and ascertain whether further decline can be expected. The findings are explored below.

Inflexibility of the TR model to tailor provision to local needs

The one-size-fits-all TR model commissioned at the national level is too rigid to be adapted for all offenders and all contexts at the local level:

- The model doesn't necessarily fit with Greater Manchester's vision for managing women offenders, who, according to TR, must be assessed by a probation officer in custody, rather than at a women's centre
- Rigid scrutiny from central government, with three separate MoJ teams regularly

⁷⁹ The rate card includes unpaid work and 'accredited programmes', pre-approved by MoJ



demanding input/engagement from CRC staff, generates a significant amount of work. The sentiment from CRC staff is that they feel like they are ‘feeding the machine’ rather than actually delivering for local communities.

Contract specifications and payment schedules are based around processes and volumes, rather than outcomes

Whilst the MoJ operating model talks about TR as an outcomes-focused programme, with maximum flexibility for providers, the reality, post-award, is that CRCs are being micro-managed and innovation is being stifled:

- CRCs are measured according to 16 separate service levels (including the number of starts on unpaid work; how many plans are completed in 10 days; timeliness for recalling people to prison etc). There are financial penalties attached for not meeting these service levels.
- The completion rates for behavioural programmes have generally been much lower than anticipated. Even though the pipeline of participants is not in the CRC’s gift (it is the NPS that makes advice to the court on those programmes), it is the CRC that ends up being financially penalised by the MoJ. This creates a vicious circle whereby the overall fee for service falls, discretionary funds are reduced and the CRC becomes more risk averse about innovating/commissioning new things.

CRCs are supposed to be rewarded for reducing reoffending through a system of ‘payment by results’ (PbR). However, PbR doesn’t really feature in the CRCs’ day-to-day work as it is simply too far away to drive behaviours. This has led to CRCs chasing the short term fee for service.

The rate card does not incentivise new services to be commissioned

There is little evidence of new commissioning, as a result of:

- The economics – unless the CRC can guarantee a certain volume of referrals, it will not go to the effort of commissioning new services
- Lack of responsiveness – all CRCs have a standard rate card with a fixed price; there is no mechanism to vary the price and make it more attractive to the purchaser (e.g. a drink and drivers’ programme should cost a tenth of what it costs to deliver a violence reduction programme, yet it costs the same price)
- Central government control – even when the CRC and NPS have managed to work together in co-commissioning a new discretionary service/product for ex-offenders, they have been unable to progress it to implementation because the MoJ insists on signing off on any new services added to the rate card – a process which has proved to be lengthy and bureaucratic.



Contracts do not incentivise breach enforcement

In addition to the problems identified above, there is some anecdotal evidence to suggest that breaches are less likely to be enforced as a result of TR. It has been suggested to us that the way in which the contracts for CRCs have been designed has created perverse incentives to disengage with an offender if the breach process is triggered. Once an offender breaches their conditions, the MoJ issues a financial penalty on the CRC, as an offender is only eligible for PbR the first time they commence an eligible sentence, meaning that those who breach their sentence are no longer eligible for payment, regardless of the support the CRC may have already provided.

HM Inspectorate of Probation has found variability in enforcement processes across the CRCs, with some experiencing high rejection rates from the NPS for their breach recommendations. HMIP found that many recommendations were returned because of minor spelling and grammatical errors, and the NAO also identified an “inherent risk that offender managers may avoid ‘breaching’ offenders where this would affect CRC performance against targets for successful completion of orders if the court order is subsequently revoked”.⁸⁰ A recent Justice Inspectorate report followed these earlier warnings, and stated “we were disappointed to find, in a third of cases where the individual was breached, insufficient effort was made by the CRC responsible officer to re-engage them and encourage their commitment to continued engagement”.⁸¹

⁸⁰ NAO, Transforming Rehabilitation, April 2016 p. 35

www.nao.org.uk/wp-content/uploads/2016/04/Transforming-rehabilitation.pdf

⁸¹ HMIP, Transforming Rehabilitation - Early Implementation 5, p. 20., see

www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2016/05/Transforming-Rehabilitation-5.pdf



7. Policy recommendations

Chapter summary:

The report recommends eleven policy changes, to do with sentencing reform, the role of magistrates, the role of probation and justice devolution. These are set out in more detail below:

1. A 'Project Hope' for England and Wales
2. Greater flexibility for magistrates to administer innovative punishments tailored to the offender/offence
3. Amend sentencing guidelines to introduce a presumption of intensive community orders for young adult offenders facing custodial sentences of 12 months or less in magistrates' courts
4. Amend sentencing guidelines to remove the assumption that suspended sentence orders are less onerous than community orders
5. Extend the power to undertake regular court reviews for prolific offenders serving short custodial sentences and/or COs to all magistrates' courts
6. Enhance magistrates' training to improve their understanding of community sentences
7. Improve the quality of pre-sentencing advice
8. Provide feedback about the outcome of sentences to magistrates
9. Support greater transparency of community sentences, particularly the nature of unpaid work
10. Require a new target to ensure that the NPS allocates cases to the CRC on the same day as the sentencing, and that requirements are commenced the week afterwards (or at least no later than a month after sentencing for specialist requirements)
11. Enable PCCs and mayors to co-commission offender management services locally

Policy recommendations

Sentencing reform

1. **A 'Project Hope' for England and Wales** - focusing initially on the most prolific drugs and theft offenders (two of the five biggest drivers of custody numbers)

All theft and drugs offenders (with more than six previous convictions) currently serving sentences in the community would be entered onto the programme - amounting to a total of 24,679 offenders per year.⁸²

⁸² Using MoJ Offender Management statistics quarterly from 2016, 11,958 theft offenders were serving a CO and 8,219 were serving an SSO; 2,533 drug offenders were on a CO and 1,969 were on an SSO.



Specific judges would need to be designated for the programme in each area, and be charged with ensuring that hearings were conducted within 24 hours of a breach. Sanctions would include 1-2 days in prison, with punishments escalating in cases where offenders regularly breached. Similar to the HOPE Programme, good behaviour would also be incentivised, with punishment reduced should gaps between breaches increase.

Introducing this programme in England and Wales will require enabling changes to be made to primary legislation (the Criminal Justice Act 2003) and to the sentencing guidelines. To begin with, the programme could be piloted by a PCC in a single force area so as to demonstrate workability.

2. Greater flexibility for magistrates to administer innovative punishments tailored to the offender/offence - for first time, low level offenders

Magistrates should have flexibility to deliver community sentences that are personalised to the offence/offender, as they are by Judge Cicconetti in Ohio (see page 19). Such sentences would only be available for a small proportion of first time, low level offenders and would be offered as an alternative to community orders and fines.

3. Amend Sentencing Guidelines to introduce a presumption of intensive community orders for young adult offenders facing custodial sentences of 12 months or less in magistrates' courts - based on the successful 'ICO' scheme in Greater Manchester

The government should substantially restrict the availability of short custodial sentences to magistrates. If a young offender and/or an 18-25 year old offender is to be sentenced to custody, the minimum amount of time they should spend in detention is 12 months. Otherwise, there should be a presumption that offenders will undergo intensive community orders, which provide a more onerous sentence than standard community sentences and would need to include at least three or the following five requirements:

- Offender management supervision for at least nine months
- Unpaid work (community payback)
- Electronic tagging (curfew)
- A requirement to go to an Attendance Centre at the weekend

There would be an assumption that those offenders not in employment, education or training would normally undertake at least five full days of activity a week.



4. Amend sentencing guidelines to remove the assumption that suspended sentence orders are less onerous than community orders - ending the current assumption that a suspended custodial sentence is a sufficient punishment in and of itself

In practice, it is not clear that the threat of a suspended custodial sentence is a sufficient punishment in and of itself for offenders serving SSOs. Sentencing guidelines should therefore be amended to make clear that the number/intensity of requirements commenced under COs and SSOs can be equally onerous. Over time, the MoJ should consider abolishing the SSO altogether, so that there is one single community sentence available to sentencers, with a suspended custodial sentence reserved for the most serious offences.

Role of magistrates

5. Extend the power to undertake regular court reviews for prolific offenders serving short custodial sentences and/or COs to all magistrates' courts - by extending section 178 of the Criminal Justice Act 2003

Some magistrates already technically have the power to review an offender's progress on a community sentence, yet such reviews are rarely implemented or recommended as part of a PSR.⁸³ Government should publish guidance and if necessary amend secondary legislation (S178 of the Criminal Justice Act 2003) to ensure these powers are available to all magistrates and that those who already have those powers feel equipped to use them.

PCCs should also be given explicit powers to monitor the outcome of court sentences, as well as to co-invest in court-based services and fund/manage court-based pilots of approaches such as sentencer supervision.

6. Enhance magistrates' training to improve their understanding of community sentences - doubling the funding available for magistrates' training (£700,000) and giving PCCs the power to co-invest in court-based services⁸⁴

Magistrates' training should be beefed up to ensure that there is adequate provision to understand the range of requirements available. Training should also include modules on: "what powers of review are available"; "the evidence base for reviews"; and "how reviews are best conducted". We estimate the cost of doubling the amount of training that magistrates receive to be around £700,000 - an amount that would be more than covered by the savings gained from sending fewer people to custody (see below).

⁸³ The power to provide for court reviews is currently open to magistrates sitting across 14 magistrates' courts

⁸⁴ HMCTS does not provide public figures on the amount spent nationally to train magistrates. However, published FOI returns indicated that in 2014/15 the Judicial College spent £74,740 on the training of lay magistrates and HMCTS provided £632,201 for funding each Magistrates' Area Training Committee (MATC), combined equating to £706,941.



Role of probation

- 7. Improve the quality of pre-sentencing advice** - the MoJ should undertake a review into the quality of PSRs and consider giving PCCs the power to order an Inspectorate review into the quality of PSRs in an area.

Our report suggests that the quality of PSRs has declined over the last decade which is likely to have impacted confidence in community sentences, yet currently there is no single agency responsible for assessing the impact of PSRs. The government should review their effectiveness on a national level and consider giving PCCs greater powers to intervene locally if necessary.

- 8. Provide feedback about the outcome of sentences to magistrates** - requiring the NPS and CRCs to provide quarterly data to courts detailing the outcome of sentences, including breaches, reoffending-related outcomes, and progress against individual requirements imposed by the court.

Magistrates' courts lack basic information to make evidence-based sentencing decisions. To ensure they have all the information they need to sentence effectively, probation should be required to provide regular feedback to the courts on whether those they sentenced breach and/or make progress against requirements.

- 9. Support greater transparency of community sentences, particularly the nature of unpaid work** - requiring CRCs to publish data on the nature of community sentences and the type of unpaid work that is carried out, to improve confidence amongst sentencers and the public

There is very little data on the composition of community sentences, including the nature of unpaid work carried out as part of a CO. For example, anecdotally, we know that in practice, many hours worked on community sentences remain out of public view - including in charity shops and helping out with lunch clubs. Visible group work placements remain the exception. However, there is a lack of empirical evidence to test this. The NPS should be required to collect and publish data on the nature of community sentences, including the characteristics of unpaid work and the number/intensity of hours undertaken, and publish it online. PCCs would then be empowered to use such data to build confidence in the CJS and reassure victims that justice is being done.



10. Require a new target to ensure that the NPS allocates cases to the CRC on the same day as the sentencing, and that requirements are commenced the week afterwards (or at least no later than a month after sentencing for specialist requirements)

If an offender is sentenced to custody, they are taken from court straight to prison. In contrast, if they are sentenced to a community sentence, it can be several weeks before the process for commencing the requirements of their order even begins. This undermines confidence in the entire process. In future, the NPS should be required to allocate cases to the CRC on the same day as sentencing, with an assumption that requirements are commenced the week afterwards and, for specialist programmes, no longer than a month after sentencing.

Justice devolution

11. Enable PCCs and mayors to co-commission offender management services

locally - enabling local areas to invest in more intensive/innovative alternatives to custody and put in place system reforms to break down the silos between probation staff and sentencers, both pre and post-sentence

Vesting part of the responsibility for the commissioning of offender management in the PCC/mayor would enable them to invest in community punishments which genuinely involve intensive, visible work valued by the local community. It would also enable PCCs to co-invest in stronger rehabilitative pathways for offenders serving community sentences. The quid pro quo for greater devolution would involve the MoJ relaxing the terms/conditions of CRC contracts, enabling PCCs/mayors to remove some of the perverse financial incentives that currently exist around breach and focus more on outcomes, rather than processes.

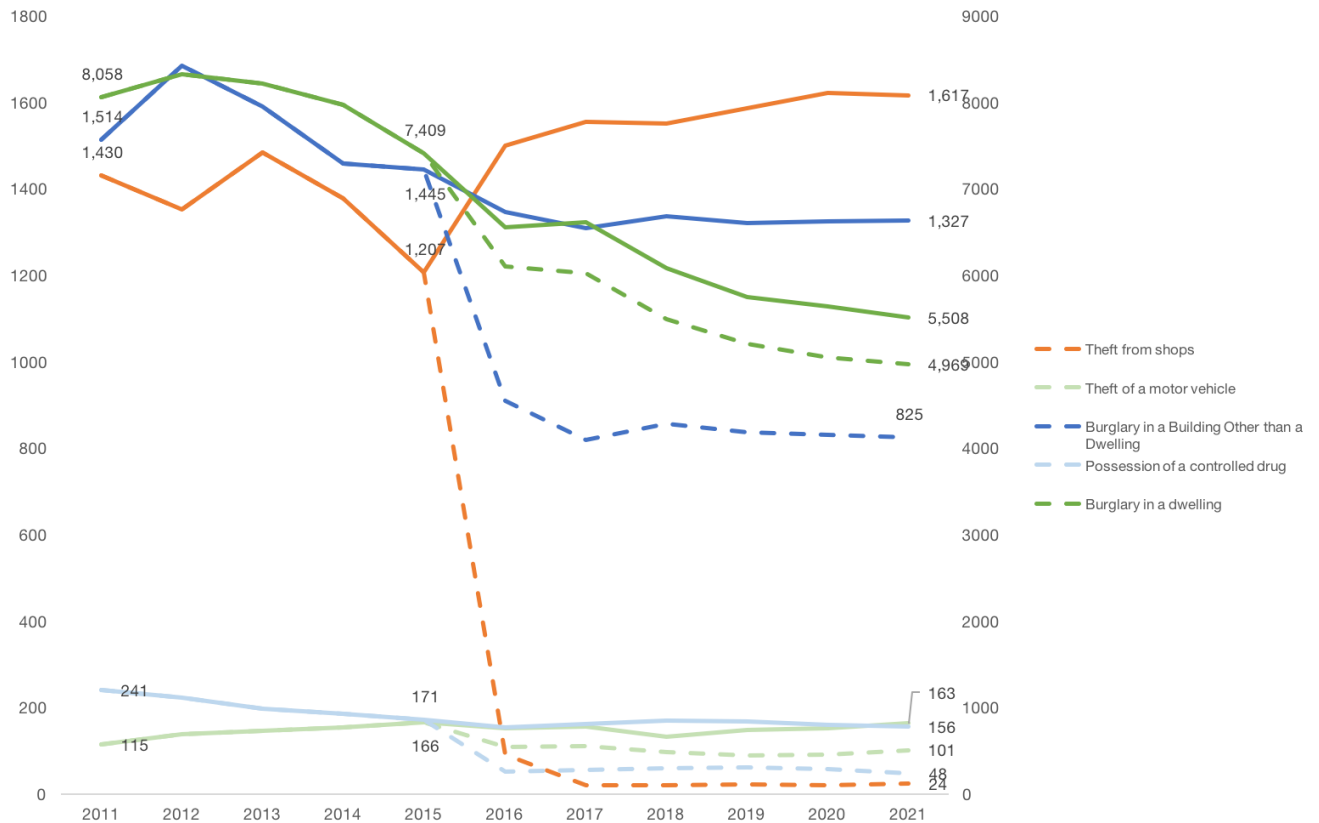
Modelling the impact of sentencing reform

In order to measure the impact of the reforms proposed above, we modelled the impact these could have on the prison population. The model commissioned for this project provides the option to model the impact on the prison populations by adjusting one or more of the following:

- The proportion of non-custodial sentences used
- The length of custodial sentences handed out
- The proportion of a custodial sentence that is served
- The reoffending rate of community sentences
- The presumption of custodial sentences diverted to community sentences (by the custodial sentence length)



Figure 27: Modelling the impact on the prison population of abolishing less than 12 month custodial sentences for five selected offences (dotted lines indicate impact of policy change on status quo)



Five offence types were selected to illustrate the immediate impact that implementing a policy change would have on the prison population, in this case diverting all of those who would receive a short custodial sentence (less than 12 months) to a community sentence from 2016 onwards.

According to our modelling, this policy change would reduce the numbers going to prison for these five offence groups by 2,441 in the first year (from 9,703 assuming no policy change to 7,263 with the change put into effect). The reduction in prison numbers would be greater over a longer period, reaching a total reduction of 4,431 by 2021. In particular, enacting this policy change for shoplifters would lead to an immediate reduction of 99% in the numbers of offenders going into prison.

Diverting these 2,441 offenders from potential custodial sentences would equate to an estimated £31 million in prison places.⁸⁵

⁸⁵ Using NAO cost estimates, and assuming crudely that 25% were imprisoned for 12 months (£36,808 per place) and 75% for six weeks (£4,500), the reduction in 2,441 would equate to £30,703,832.



The prize

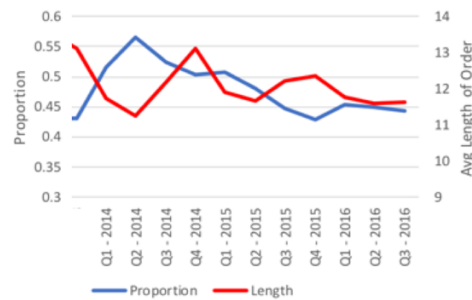
If community sentences are strengthened in this way, the prize would come from diverting offenders - particularly prolific offenders - from a cycle of increasing offending that leads to the drift into custody and costs the taxpayer millions of pounds a year. Community sentences would begin to gain the confidence of sentencers and the public - as an effective alternative to prison, enhancing public safety and reducing crime.



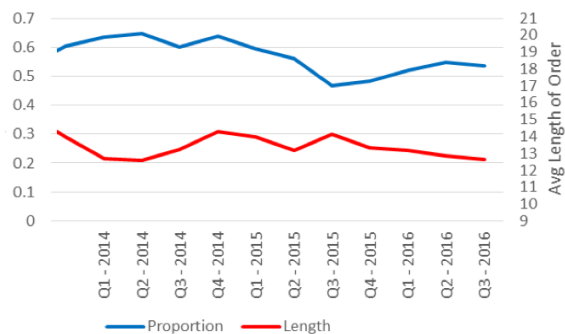
Annex I: CRC data analysis

Analysis carried out by Manchester Metropolitan University looked at data across different CRC regions. Across the five regions analysed, community orders looked to be making up a shrinking proportion of sentences handed out and were getting shorter.

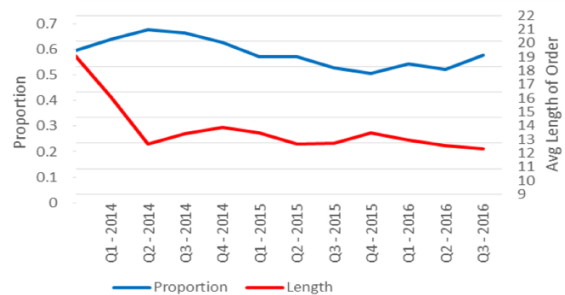
Greater Manchester and Cheshire



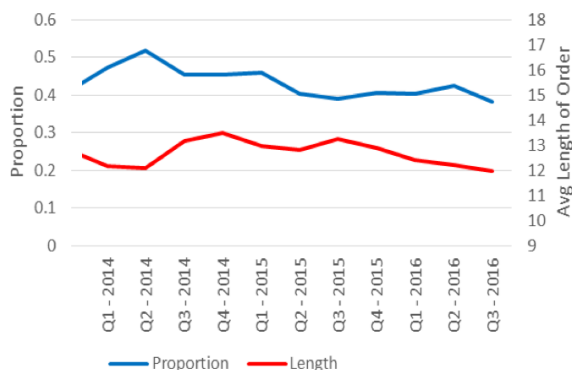
Hampshire and Isle of Wight



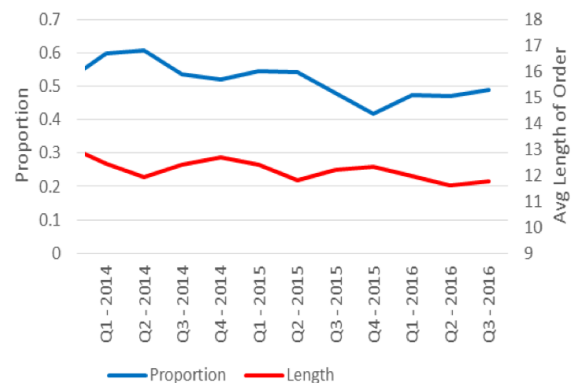
Humberside, Lincolnshire and North Yorkshire



Merseyside



West Yorkshire



Annex II: Magistrates' interviews

Using a combination of face to face interviews, telephone interviews, and online surveying, 11 participants (ten magistrates and one Crown Court judge) were approached with questions that covered:

- Knowledge and perception of community sentences
- The sentencing decision making process
- Levels of awareness of impacts to community sentences since probation reforms
- Confidence in the purpose and process of community sentences
- Confidence in the probation service
- Key areas of concern and suggestions for addressing these

Thanks to all who volunteered their time, as well as the Norfolk Office of the Police and Crime Commissioner for their support.

Annex III: Probation interviews

Interviews with probation staff from a range of roles were aimed at ascertaining levels of confidence in community sentences (including their purpose, design and implementation) and causal factors for the decrease in their use over time amongst members of the privatised probation service. This included a focus group with members of CRC staff (all of whom had considerable experience in probation, meaning they had worked in the service pre-Transforming Rehabilitation), as well as interviews with individuals of executive level and staff from third-party providers.

Thanks to all who volunteered their time and shared their experiences and views.



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