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## An examination of the community service order in Ireland: recommendations for change

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**UNIVERSITY *of* LIMERICK**

**OLLSCOIL LUIMNIGH**

**An Examination of the Community Service Order in  
Ireland: Recommendations for Change**

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Supervisors: Professor Shane Kilcommins and Dr Susan Leahy

A Thesis Submitted to University of Limerick in Fulfilment of the  
Requirements for the Degree of Ph.D.

University of Limerick, School of Law

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## **Abstract**

This thesis explores what a Community Service Order (CSO) is in Ireland and how it operates in practice. It identifies issues and problems with the sanction in its current form and suggests changes that could be made to enhance its use and divert a greater number of offenders away from sentences of imprisonment.

The thesis begins by providing clarity as to what a CSO was when it was first introduced in Ireland. It does this by first describing the original concept of community service as a penal sanction and then by showing how the sanction that became operational in Ireland differed from the original concept. Once it has set out what the CSO was when it was first introduced in Ireland, the thesis goes on to examine all of the operational and legislative changes that have been made to the sanction over the years in order to set out what the CSO has now become. It also examines, in detail, how the sanction currently operates in Ireland, from when a CSO is first contemplated by a judge right through to the completion of the order. This allows for issues and problems with the sanction in its current form, and as it currently operates, to be identified. This part of the thesis is informed by interviews with Probation Officers and Community Service Supervisors.

The thesis then examines community service sanctions that are operational in England and Wales, Scotland, and Northern Ireland. This is done for the purpose of identifying possible solutions to the issues and problems with the Irish CSO and also to highlight approaches that should be avoided when reforming the CSO in Ireland. Based on this analysis as well as international criminological research on desistance and recidivism, the thesis concludes by making a series of recommendations as to how the Irish CSO could be amended to increase its use and its ability to divert a greater number of offenders away from prison.

# Declaration

I declare that this thesis has been composed by myself and that it has not been submitted, in whole or in part, in any previous application for a degree or professional qualification. Except where stated otherwise by reference or acknowledgment, the work presented is entirely my own.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

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## **Abbreviations**

CSO	Community Service Order
CO	Community Order (England and Wales)
SSO	Suspended Sentence Order (England and Wales)
CPO	Community Payback Order (Scotland)
CO	Combination Order (Northern Ireland)
ECO	Enhanced Combination Order (Northern Ireland)

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# **Introduction**

## **Context and Purpose of Thesis**

Community Service Orders (CSOs) were first introduced in Ireland in 1983 as a direct alternative to imprisonment. At the time Ireland's prison population was expanding at a rapid pace and it was hoped that by introducing the CSO, this trend could be halted and possibly even reversed. However, despite the initial enthusiasm amongst policy-makers the use of the sanction did not reach the heights proponents of the sanction had anticipated and the prison population continued to increase (O'Donnell et al 2005).

At the time, and throughout the 1980s and 1990s, there was very little criminal justice research conducted in Ireland. The Department of Justice did not have a research unit and prior to 1998 it did not even have a research budget. As for external academic research, up until 2000 there was no dedicated Institute of Criminology in Ireland (O'Donnell et al 2008). Sources of data were underdeveloped and good quality empirical research necessary to guide policy decisions were scarce (O'Donnell 2005). This was particularly true in relation to the CSO. It meant that for a long time we did not know which parts of the CSO were working well and which parts were not. The net result of this was that the sanction remained static and unchanged for the best part of three decades.

Following the financial crisis and the fall of the Irish economy into recession in the late noughties, the desire to reduce the use of imprisonment intensified and once again CSOs were looked to as a solution. By this time some evaluations and reviews of the sanction had been conducted (Walsh and Sexton 1999; Dept. of Justice, Equality and Law Reform 2009) and this allowed for a number of operational improvements to the CSO to be identified and implemented within the Probation Service. Policy-makers also introduced legislation in the form of the Criminal Justice (Community Service) Amendment Act 2011 in the hope of further increasing the use of the CSO as an alternative to prison sentences. Section 3 of this Act imposed a requirement on judges to 'consider' using a CSO in all cases where they would previously have imposed a prison sentence of 12 months or less. While the use of the CSO did initially increase in 2011, the following year the use of the CSO began to decline once again and by 2014 was back to the level it was at prior to the implementation of the operational

changes in 2011 and the introduction of the 2011 Amendment Act. During this time the prison population continued to rise.

For many years policy-makers in Ireland have been stumbling in the dark when trying to increase the use of the CSO and divert a greater number of offenders away from sentences of imprisonment. Their efforts, for the most part, lacked guidance from research studies as to how best to achieve this goal and as a result they have had limited success. Even when some positive results were achieved, there was a lack of understanding as to how they were achieved so as to allow for the positive results to be maintained and enhanced. While in recent years there have been some studies conducted that have focused on the CSO and have provided important data and insight about the sanction (Dept. of Justice, Equality and Law Reform 2009; Riordan 2009; O'Hara 2016), there is still so much that we do not know about the Irish CSO. It is submitted that, amongst other things, there remains a significant degree of uncertainty and confusion as to what exactly a CSO is in Ireland (what it was designed to achieve and how it operates in practice). Yet despite this, policy-makers continue to put forward the CSO to be used as a primary tool in their efforts to reduce the number of people being sentenced to prison each year.

The purpose of this thesis is to fill in some of the existing knowledge gaps and to enhance our understanding of the Irish CSO by conducting a comprehensive analysis of the sanction. Based on this analysis as well as an examination of community service sanctions in other jurisdictions and the most up to date research on recidivism, the thesis will sketch a path for the sanction into the future.

### **Research Question**

The research question adopted in the thesis is the following: *How do Community Service Orders operate in Ireland and what changes can be made to the sanction to increase its use and to divert a greater number of offenders away from sentences of imprisonment?*

To answer this question the thesis will be broken down into four parts. The first part will identify the roots of the Irish CSO in the original concept of community service as a penal sanction and it will examine what this concept was when it first emerged. As well as providing a detailed description of the original concept of community service as a penal sanction it will also provide a starting point for the analysis of the Irish CSO. The second part will outline

what a CSO was when it was first introduced in Ireland. As will be shown, there was, and there continues to be, a widely held belief that the CSO which was introduced in Ireland was almost identical to the CSO which was operating in other jurisdictions at that time. This part of the thesis will highlight that there were in fact significant differences between the sanctions and it will provide clarity as to what exactly the Irish CSO was at the outset. This will be achieved firstly by examining the social, political, cultural and economic factors that existed in Ireland prior to the emergence of the CSO, which would have contributed to the development and introduction of the sanction. It will also be done by examining the legislation that introduced and governed the CSO in Ireland as well as by examining how the legislation was implemented. Together this will allow for the assumptions and commitments inherent within the sanction to be identified and the core elements of the Irish CSO to be outlined. It will clarify what the core elements of the CSO were when it was first introduced in Ireland and this will then be used later in the thesis as a base upon which to highlight how the sanction has developed and changed over the years.

The third part will set out what a CSO now is in Ireland. It will be shown that there continues to be a significant degree of uncertainty and confusion in Ireland as to what a CSO actually is, i.e. what it is designed to achieve and how it operates in practice. This uncertainty and confusion makes discussions about the CSO and its potential role in reducing the number of people being sentenced to prison very difficult. This part of the thesis will build on the analysis in part one and two. It will trace the development of the sanction from when it was first introduced to its current day operation. It will also detail the existing processes that are in place from when a CSO is first contemplated by a judge right through to the completion of the order. Together this will allow for a clear understanding as to what a CSO currently is in Ireland. Once this is done the thesis will then progress to identifying and discussing the issues and problems with the Irish CSO in its current form.

The final part of this thesis will involve an examination of the operation of community service sanctions in other jurisdictions as well a review of international research on recidivism in order to find ways to overcome the issues and problems identified with the CSO in part three. The thesis will conclude by making a series of recommendations as to how to improve the CSO and increase its ability to divert a greater number of offenders away from sentences of imprisonment.

## **Methodology**

This thesis will combine a number of methodological approaches. A law reform methodology will be used to structure the research and to act as the base around which other methodologies will then be used. Law reform or reform orientated research is research which ‘intensively evaluates the adequacy of existing rules and which recommends changes to any rules found wanting’ (Pease et al 1987, 17). While pure doctrinal research identifies and analyses the current law, law reform or reform orientated research recommends change (Hutchinsons 2015). When it is said that a law reform methodology will be used in this thesis, what is meant is that the research will incorporate key structural features and processes that are used in many law reform studies and in Law Reform Commission reports in Ireland and in many other common law jurisdictions around the world (Law Reform Commission of Ireland, 2007, 2009, 2013; New South Wales Law Reform Commission, 2012, 2014; New Zealand Law Commission, 2008, 2010; Victorian Law Reform Commission, 2009). That is, the research will include a history of the law/sanction; it will set out what the law/sanction now is; it will identify issues and problems with the law/sanction in its current form, in considering and assessing reform options; it will examine the operation of similar laws/sanctions in other jurisdictions; and it will conclude by making recommendations for change.

Traditionally, when used by Law Reform Commissions, this methodology tended to be predominantly doctrinal and has often been criticised for that reason. Authurs (1983, p.70), for example, stated that the basic problem with much law reform research is that it is located towards the doctrinal end of the methodological spectrum and consequently fails to confront most problematic issues. In modern times, however, Law Reform Commissions have adopted a more interdisciplinary approach and have included some non-doctrinal methods, mainly public consultations (Hutchinsons 2015, p.8). While the present study will not include a public consultation, it will be informed by interviews with Probation Officers and Community Service Supervisors and the traditional law reform methodology will also be enhanced by incorporating two other methodological approaches.

The first is policy analysis. This involves the examination of a particular policy problem in an effort to determine how it should be overcome. It can incorporate ‘multiple methods of inquiry and arguments to produce and transform policy-relevant information that may be utilised in political settings to resolve policy problems’ (Dunn 1981, p.35). The law reform methodology, when used by Law Reform Commissions in particular, focusses almost exclusively on legislation and on legal doctrine. A policy analysis approach, on the other hand,

is much broader. The analysis, and thus the solutions, are not exclusively focused on and confined to statutes. In the present study, while there will be a strong focus on the law and on statutes throughout, by incorporating a policy analysis approach, it will ensure that they will not be the sole focus of the research. Incorporated into the examination of CSOs past, present and future, will be the broader penal policies within which the CSO is situated as well as the specific internal operational policies of the Probation Service (the body responsible for operating the CSO). For example, when looking at what a CSO was when it was first introduced in Ireland, the research project will not only examine the legislation that introduced and governed the CSO but will also examine why the sanction was introduced, how it fitted within the penal policy approach of the Government at the time, how the CSO was set up and how it operated in practice within the Probation Service. This will be done at all of the stages throughout the thesis and will allow for a more comprehensive analysis of the CSO than if the focus was solely on legislation.

A socio-legal approach will also be incorporated. One of the major criticisms of the law reform methodology is that it does not examine laws/sanctions in context. A socio-legal approach is an approach that views law as a social phenomenon (ESRC 1994). Thus law is not viewed as an autonomous force to which society is subjected but rather as one which shapes and is shaped by broader social, political and economic logics, contexts and relations (O' Donovan 2017, p.109). 'It views law as a component part of the wider social and political structure . . . and can therefore only be properly understood if studied in that context' (Thomas 1986). This thesis will incorporate a socio-legal approach by situating and examining the CSO within the broader social context. For example, when looking at what the original concept of the CSO was, this thesis will examine the social, political, cultural and economic factors that existed at that time and would have contributed to the development and introduction of the sanction. By engaging in this type of analysis it will allow for the assumptions and commitments inherent within the CSO to be identified which in turn will allow for a much greater understanding of the sanction. Similar to the policy analysis approach, this will be used throughout the thesis. All of the examination and analysis of the CSOs past and present will take place in the proper context and all recommendations for change will be made with the current social, political and economic landscape in mind.

## **Research Methods Used**

### *Desk Research /Textual Analysis*

As part of this research project a wide range of texts were sourced, read and analysed. A number of different techniques were used to source these texts and they were analysed in different ways for a variety of different purposes. For example, when looking at the origins of the CSO and what the original concept of the CSO was, Government reports, parliamentary debates and legislation from England and Wales were analysed. This was done firstly to provide a basic outline of the CSO that was introduced in England and Wales. It was also done to understand how and why the sanction was introduced. Government reports and parliamentary debates, in particular, were used to begin to explore and identify some of the social, political, cultural and economic factors that existed at that time. Previous academic studies which have examined this process and have identified some of these factors were also read to inform the author of the existing scholarship on this topic. Additional documents (books, academic articles, newspaper stories, reports) were sourced to further highlight the presence of particular factors at the time when the CSO was being developed and introduced. Once these were identified the Government reports, parliamentary debates and the legislation were analysed again to show how these factors had impacted on the development of the CSO and how they are vital to understanding the assumptions inherent within the CSO and thus to understand the original concept of the CSO. Home Office and academic studies were then examined in order to understand how the sanction operated after it was introduced. They were examined to identify key facts and figures relating to the use and impact of the sanction and also to show how the Government and others at that time viewed the sanction.

When examining the introduction of the Irish CSO, Irish Government reports, parliamentary debates and legislation were analysed for similar reasons as outlined above for England and Wales. Other documents were also used to support and enhance the analyses and to allow for a clear picture to be drawn as to why and how the Irish CSO was developed and introduced. These included crime and prison statistics, reports and studies from state bodies, PhD and Master's theses, reports from community organisations, conference papers, newspaper articles as well as academic books and articles. When setting out what exactly the Irish CSO was when it was first introduced, an internal Probation Service document which showed how the CSO was to be set up within the Probation Service was sourced and reviewed. The contents of this document is hugely important in understanding the sanction that ultimately came into being in Ireland.

Government reports, parliamentary debates and legislation were again used when tracing the development of the Irish CSO from its introduction to its present day operation. An array of other documents were also used. These included academic studies, Government commissioned research, conference papers, PhD theses, crime statistics, annual reports of the Irish Prison Service and the Probation Service, reports from state bodies, transcripts of speeches, political party manifestos and programmes for Government. These additional documents allowed for the non-legislative operational changes that were made to the CSO to be identified. They provided context to all of the developments, both legislative and non-legislative, and allowed for an exploration as to why these changes were made and how the wider social, political and economic factors impacted these developments. They also allowed for an analysis of the use and impact of the CSO from when the first order was made to its present day operation.

A similar process was used when examining the operation of community service sanctions in other jurisdictions. The researcher first examined the legislation and any supplementary rules and regulations to describe the community service sanctions in each of the jurisdictions that were being explored. A wide range of additional documents were then used to describe how the sanctions are currently operating. Evaluations and reviews of the sanctions were read, as were studies which examined particular aspects of each of the sanctions, for example, their ability to address the needs of female offenders, their suitability for those living in rural areas and their ability to address addiction and mental health issues. This allowed for aspects of the sanctions which were working well to be identified. It also highlighted aspects of the sanctions which were giving rise to negative outcomes and therefore should be avoided when developing the Irish CSO. Finally, the most up to date research on recidivism was used in combination with all of the findings from the preceding chapters of this thesis when making recommendation for change in Ireland.

### *Interviews*

A number of interviews were conducted as part of this research project. The primary purpose of these interviews was to inform and guide the research, to bring to the attention of the researcher any issues that may not have previously been considered and to identify possible variances between what is in the literature and what happens in practice. Interviews were carried out with four active Probation Officers and three active Community Service Supervisors. An informal conversation also took place with a retired member of the probation service in order to gain some insight into how the CSO was introduced within the Probation Service and how the sanction operated in its early years.

Ethics approval was sought from the University of Limerick Faculty of Arts, Humanities and Social Sciences Research Ethics Committee on the basis that empirical research that involves people has the potential to raise complex ethical issues. The ethics application set out the process that would be followed when organising and conducting the interviews as well as the process for analysing and storing the data that was collected. It also highlighted a range of ethical considerations that may arise and set out how they would be addressed. After careful consideration of the researcher's application, the University of Limerick Faculty of Arts, Humanities and Social Sciences Research Ethics Committee granted the researcher ethics approval to conduct the empirical research.

Prior to conducting the interviews, the researcher followed an approach set out by Robinson (2014). This approach outlines that a researcher should define the sample, decide on the sample size, select a sample strategy and identify the sample sourcing (Robinson 2014). He suggests that the extent to which these four concerns are met and made explicit in a study has implications for its coherence, transparency, impact and trustworthiness. In this thesis the sample was defined as Probation Officers and Community Service Supervisors working in Ireland. In deciding the sample size the researcher considered access, time, resources and the purpose of the interviews and concluded that 6-8 interviews would suffice. The sampling method used was stratified purposeful sampling. This is a type of nonprobability sampling in which the researcher decides what needs to be known and sets out to find people who can and are willing to provide the information by virtue of knowledge or experience (Etikan 2016, p.2). The sample is made up of suitable people that meet certain criteria and who are available at a given time and are willing to participate in the research. While there are limitations to this method (discussed below), if used correctly it can provide a researcher with valuable data that can enhance their study and that would otherwise not have been available to them. In this thesis the researcher wanted to understand how CSOs operated in practice. In choosing participants, the researcher sought to ensure that there was a geographical spread that included Probation Officers and Community Service Supervisors working in large cities, smaller cities and rural areas. As for sample sourcing, this was done through the Probation Service.

In arranging the interviews, contact was first made with a member of the Probation Service's senior management via email. In the email a brief summary of the research project was outlined and a request was made to arrange a meeting to discuss the research and the possibility of the Probation Service facilitating interviews with Probation Officers and Community

Service Supervisors. This was agreed to and a meeting was arranged in the Probation Service's head offices.

Following this meeting a more detailed outline of the research project was submitted to the Probation Service, to be considered by an internal research board. The board reviewed the project and decided that the Probation Service would facilitate the research. Another member of the Probation Service's senior management was then assigned to oversee the Probation Service's participation in the research. A meeting was arranged with this person in order to put a plan in place for the proposed interviews. It was agreed at the meeting that the researcher would decide on the locations where the interviewees would come from (to maximise the representativeness and geographical spread of the sample) but that the Probation Service would make the initial contact with the potential interviewees. Senior Probation Officers who oversee the locations chosen by the researcher would be contacted by the Probation Service member overseeing the research. The Senior Probation Officers would be given an outline of the research project. They would then pass it on to their Probation Officers and Community Service Supervisors and ask them if they would be willing to participate in the study. Contact details of the Probation Officers and Community Service Supervisors who agreed to participate would then be sent to the researcher in order for arrangements to be made to conduct the interviews.

Two locations were chosen. One location covered a large city and the other covered a smaller city and a rural area. For the first location four names were given to the researcher. Contact was made with each of the four people to arrange a time for an interview. Two were Probation Officers and two were Community Service Supervisors. The interviews were conducted over two days and took place in a meeting room at the offices of the Probation Service for that location. For the second location three names were provided. Interviews were then arranged with the individuals, two of which were Probation Officers the other a Community Service Supervisor. Again the interviews were conducted over a two day period and took place in a meeting room in the Probation Service's offices for that particular location. The duration of the interviews ranged from 30 to 45 minutes.

Prior to each of these interviews, the interviewee was sent a brief summary of the research project and a consent form to read over and sign prior to the interview taking place. It was stated in this form that the names of the interviewees and the location where they work would not be contained in the written thesis, nor would any comment that might identify them. This

was done to encourage an open and honest interview and to reduce concerns that any comments, particularly those critical of the current system, could be directly attributed to them. It was made clear however, that because the interviews were arranged through the Probation Service that absolute anonymity in terms of their participation in the study was not possible.

It was decided that a semi-structured format would be used in these interviews. It was felt that an unstructured interview could result in key topics not being discussed and the interview veering too far from its primary focus. A structured interview on the other hand would not allow for issues raised by the interviewees, which may not have been anticipated, to be teased out and explored further, which could result in important and relevant information remaining undiscovered. In semi-structured interviews an interview guide is used but the researcher can ask open ended questions and is free to explore issues as they spontaneously arise (Berg 2009). The researcher can vary the order and wording of the questions depending on how each interview is progressing and the researcher can also ask additional questions if necessary (Corbetta 2003; Doody and Noonan 2013). A semi-structured interview format therefore, would allow for the right mix between having a structure to ensure that all of the key topics are discussed and having flexibility to allow the researcher to explore, in greater detail, particular points of interest that may arise during the interviews. Two separate interview guides were written up and used, one for Probation Officers (Appendix 3) and one for Community Service Supervisors (Appendix 2). Each contained a list of the key topics to be covered and key questions that were to be asked during the interviews.

All of the interviews were recorded using a digital audio recorder. These were then transcribed and anonymised by the researcher (all references to names, locations or any content that would identify the interviewees were removed from the transcripts). The transcripts were numbered and on a separate document those numbers were linked to the names of the interviewees. This was done to comply with data protection regulations and to ensure that if an interviewee wished to withdraw from the study that the researcher could identify their interview and immediately delete it. Once the transcripts were anonymised they were stored on a password protected computer and the audio recordings were deleted. The document with the identifying codes was encrypted and stored in a password protected folder on a different password protected computer. Upon completion of the study the anonymised transcripts were stored in a password protected folder on a password protected computer, where they will remain for a period of 7 years after which they will be deleted along with the identifying codes.

As for the informal conversation with the retired member of the Probation Service, this was arranged by contacting the person directly and asking if they would meet with the researcher to provide some insight into how the CSO was introduced within the Probation Service and how the sanction operated in its early years. The meeting took place in a coffee shop and lasted about an hour. There is little or no research on this period of the CSOs' history. It was thought that this conversation, along with sourcing additional documentation relating to this period, would go some way towards filling this knowledge gap.

There are, however, a number of limitations with the empirical research which must be clearly outlined. The first is the relatively small number of interviews that were conducted and the fact that the interviewees came from just two probation districts. This means that the views expressed in the interviews cannot be said to be representative of Probation Officers and Community Service Supervisors nationwide. Also, it cannot be said with any certainty that practices that were highlighted or issues with the operation of the CSO that were identified by interviewees, exist throughout Ireland. The same is true in relation to the informal conversation with the retired member of the Probation Service about the introduction and early operation of the CSO. There is a high risk that what is being expressed is the personal perspectives of the individual and not an accurate reflection/portrayal of the reality of the topic that is being discussed.

The second limitation is that the initial contact with interviewees was made from within the Probation Service. Interviewees could not, therefore, be guaranteed absolute anonymity in terms of their participation in the study. This could have impacted their willingness to be completely open and could have resulted in them holding back or being more reluctant to discuss controversial issues. This method of the Probation Service making the initial contact could also have resulted in the Probation Service filtering out people who they may not have wanted to participate in the research study. The researcher is not suggesting that this did happen but rather that it cannot be ruled out and therefore it is a limitation that must be acknowledged.

Despite these limitations the empirical research can still be of significant value provided it is used correctly. In this thesis it is used in a way that avails of its value while acknowledging its limitations. It is used to inform and guide the researcher. It is used in addition to the existing literature to fill in gaps, provide additional insights and inform the researcher of the possibility of a particular practice or issue with the operation of the CSO. It is not relied upon as the sole

method or source of information in describing the introduction of the CSO in Ireland, in outlining how CSOs operate in Ireland or in suggesting that a particular practice or issue with the CSO exists nationwide.

### *Comparative Analysis*

According to Whelan (1990, p.20) 'it is now almost inconceivable . . . that any attempt at reforming national law should not be preceded by an examination of foreign solutions to the same problem.' Rising prison committals is not a problem unique to Ireland. Many jurisdictions around the world have experienced this and have over the last number of decades sought to reduce the number of people being sentenced to imprisonment by trying to increase the use of non-custodial sanctions.

A comparative analysis was included in this research study in order to identify different approaches that have been taken in other jurisdictions to the issues and problems that have been identified with the current operation of the CSO in Ireland. As well as identifying the successes of other jurisdictions, the comparative analysis was also conducted in order to identify the mistakes of others jurisdictions so that they can be understood and then avoided when making recommendations for change in Ireland. The importance of this aspect of comparative research was stressed by Gutteridge when he wrote that 'we can profit from the experience of other systems, even if we merely learn in this way how to avoid the mistakes which they have made' (Gutteridge 1971).

In this thesis three other jurisdictions were examined: England and Wales, Scotland, and Northern Ireland. These jurisdictions were chosen because each of them originally operated a CSO similar to that which was introduced in Ireland but over the years have developed and changed it, with each jurisdiction now taking its own unique approach to community service and non-custodial sentencing. They were also chosen because they are the jurisdictions that are most closely linked to Ireland. They are Ireland's neighbouring jurisdictions and each of them have strong social, political, cultural and economic links to Ireland.

There are, however, a number of dangers in conducting a comparative analysis which must be highlighted. The first of these is the 'danger of dilettantism' (Eser, 1997). In comparative legal research this is where a foreign law or legal system is not sufficiently mastered by the researcher, leading to an increased risk of a misunderstanding when analysing the foreign law or legal system. A legal researcher will generally not have the same level of knowledge of the laws and practices of foreign jurisdictions as they would of their home jurisdiction. In this

study the danger arises when analysing community service sanctions operating in other jurisdictions and when attempting to understand the wider criminal justice system within which the sanctions operate. Furthermore, the researcher's more limited knowledge and distance from the other jurisdictions can also create difficulties when attempting to understand how the sanctions operate in practice (Eberle 2009). A researcher, will generally have to rely on research studies that have been conducted in the foreign jurisdictions, some of which may be a number of years old and may not portray a factual and complete picture of the sanctions. In this research project these risks were mitigated somewhat by the researcher first conducting extensive research on the wider criminal justice system of the jurisdictions that were being examined and then ensuring that all available evaluations and reviews of the sanctions or particular aspects of the sanctions were read and analysed. Particular attention was given to ensuring that the most up to date studies were sourced. It was further mitigated by analysing jurisdictions that the researcher is familiar with and that have many similarities to Ireland and its criminal justice system (the researcher's home jurisdiction). This enhanced the researcher's ability to analyse the foreign sanctions and reduced the risk of a misunderstanding when doing so.

Another danger is that sanctions do not operate in isolation and just because a sanction or an aspect of a sanction is achieving a certain result in one jurisdiction does not mean that if transposed into another that it would achieve similar results. There are so many factors that impact the outcome of a sanction. These can include, for example, other laws and legislation that interact with the sanction, the amount of funding that is allocated to organisations and bodies responsible for operating the sanction, how the sanction is used by the judiciary, how the sanction is viewed by the general public as well as many more known and unknown factors. Great caution therefore, needs to be taken when using the outcome of a sanction from one jurisdiction as a basis for suggesting reform in another jurisdiction. In this research project significant attention was given to understanding why a sanction or a particular aspect of a sanction was achieving its results before then assessing whether similar results could be achieved if introduced in Ireland. The researcher incorporated into this analysis the wider penal, social, political, cultural and economic context, both of the jurisdiction where the sanction was operating and of Ireland.

While there are, no doubt, some limitations with comparative analysis which must be acknowledged, if used correctly, with sufficient regard to context and with appropriate levels

of caution, it can be an extremely beneficial tool for identifying best practice and meaningful reform.

### **Contribution to Existing Scholarship**

This thesis contributes to the existing scholarship in a number of ways. Firstly, it provides a comprehensive history of the Irish CSO. While the origins of the CSO more generally have been the topic of much academic debate (Young 1979; Pease 1981; Vass 1984; McIvor 1992; Kilcommins 2014) this thesis explores the origins of the CSO from an Irish perspective. It traces the lineage of the Irish CSO and identifies its roots in the original concept of community service as a penal sanction. It then gives a detailed description of that concept and shows its effect on the Irish CSO. The second way it contributes to the existing scholarship is by setting out what exactly the CSO was when it was first introduced in Ireland. Due the fact that the legislation which introduced the CSO in Ireland resembled almost verbatim the legislation which introduced the CSO in England and Wales, there was and continues to be a widely held belief that the CSO which was introduced in Ireland was almost identical to the CSO which was operating in England and Wales at that time (Riordan 2009). By focusing on how the Irish legislation was implemented and on identifying the core elements of the Irish sanction, this thesis highlights that there were in fact significant differences between the Irish CSO and English CSO. This is a new and important contribution. Providing this clarity about what the Irish CSO was at its outset is necessary in order to properly track the development of the sanction and understand what the Irish CSO has become.

Thirdly, this thesis combines an examination of the development of the Irish CSO with a detailed examination of the existing processes that are in place, from when a CSO is first requested in court through to the completion of the order. Together they paint a clear picture of the CSO as it currently operates in Ireland. Despite the increased attention and discussion on CSOs in recent years there is a distinct lack of literature detailing how CSOs operate in practice. This, combined with the existence of the incorrectly held belief that the original Irish CSO was almost identical to the original English CSO, has led to a significant amount of uncertainty and confusion in Ireland about what the Irish CSO is and what it was designed to achieve. This uncertainty and confusion makes discussions about the Irish CSO and its future difficult. By clarifying what exactly a CSO is, the thesis provides the necessary base for discussions to take place about the Irish CSO and how it can be developed and improved. It is only when we fully understand what a CSO is and how it operates in practice can we begin to

identify its shortcomings and confidently suggest developments and improvements to the sanction.

Lastly, this thesis contributes to the existing scholarship by making recommendations for change based on the best available and most up to date research. Having detailed how the CSO currently operates and identified issues and problems with the sanction in its current form, the thesis then focuses on identifying ways to overcome them and to increase the ability of the CSO to divert a greater number of offenders away from sentences of imprisonment.

## **Outline of Chapters**

### *Chapter 1*

This chapter explores the origins of the CSO. It analyses existing literature in order to identify where community service was first used as a penal sanction and where the Irish CSO has its roots. Once this starting point is identified, the chapter explores why the original community service sanction was introduced. It examines the factors that contributed to its development and helped shape the sanction that ultimately came into being. A significant focus of the chapter is on understanding what exactly the original concept was and on defining the community service sanction that first took its place within a formal criminal justice system. The chapter then outlines how the sanction was used and traces its development, as well as its expansion to other jurisdictions around the world, up until the point it emerged in Ireland. This chapter not only provides a history of the CSO but also provides a base, to be used later in the thesis, upon which to highlight how the Irish CSO differed from the original concept and from community service sanctions operating in other jurisdictions.

### *Chapter 2*

This chapter provides context to the emergence of the CSO in Ireland. It identifies and examines the factors that existed in Ireland in the late 1970s and early 1980s that would have greatly contributed to the introduction of the CSO in Ireland. While other authors, who have researched this area, have credited a wide range of different factors as having a contributing role, in this chapter it is argued that the emergence of the CSO in Ireland is primarily due to a very limited number of factors. It sets out that a prison crisis (which was being fuelled by an increase in crime) together with a well-established practice of directly transferring legislation from other jurisdictions, were the key factors which led to the CSO being introduced in Ireland.

As well as setting out why the sanction was introduced, this chapter also identifies the factors which shaped the sanction that ultimately became operational in Ireland.

### *Chapter 3*

Chapter 3 focuses on the introduction of the Irish CSO in legislation. It outlines the process by which the CSO came into being, from the first documented reference to the sanction in Ireland right through to the signing of the Criminal Justice (Community Service) Act 1983 into law. The chapter examines, in detail, each stage of the pre-legislative and legislative process. It shows that the CSO was put forward in Ireland as a sanction that could achieve a range of penal functions and there was widespread support for the CSO across the political spectrum. It also shows, however, that Parliamentarians in Ireland did not engage with the core concepts inherent within the sanction and there was a distinct lack of analysis as to how the Irish CSO was going to achieve its many touted functions. The chapter argues that this lack of analysis, combined with a dearth of data on the types of offenders at whom CSOs were to be targeted, meant that there was a high degree of uncertainty and confusion surrounding the Irish CSO at the time it was signed into law. This chapter also highlights how the factors identified in chapter 2 shaped the Irish legislation and how the Irish legislation differed from legislation governing community service sanctions in other jurisdictions at that time.

### *Chapter 4*

This chapter begins by describing the CSO, as set out in the Criminal Justice (Community Service) Act 1983 and the Supplementary Rules and Regulations. Once this is done the chapter then examines the implementation and operation of the legislation. It focuses in particular on the Probation Service and on the Judiciary. It examines the structures that were put in place within the Probation Service to allow for the CSO to operate and the guidance that was given to a Probation Officer as to how they should perform the duties under the 1983 Act. It also examines the information that was supplied to the judiciary about the sanction. Combined, this allows for the core elements of the Irish CSO to be identified and for a clear description to be set out as to what exactly a CSO was when it first became operational in Ireland.

The second part of the chapter focuses on how the sanction actually operated, from 1985 to 2017. It examines in detail how the CSO was used during this period as well as highlighting and discussing the developments that were made to the sanction. The core elements of the

CSO identified at the beginning of the chapter are referred to throughout, to highlight how and to what extent the CSO has changed over the years.

### *Chapter 5*

Chapter 5 examines the current operation of the CSO in Ireland. It outlines the process that exists from when a CSO is first contemplated by a judge right through to the completion of the order. The purpose of this is to provide the reader with a detailed description of the CSO as it currently operates in Ireland. The chapter then clearly positions the CSO within the existing Irish penal system. This is an area that has given rise to some dispute over the years. Providing this clarity as to what exactly a CSO is and where it currently fits within the penal system is vital in order to provide the necessary base for future discussions about the CSO and its ability to divert offenders away from imprisonment. The chapter concludes by identifying and discussing some key issues and problems with the Irish CSO as it currently operates.

### *Chapter 6*

This chapter examines the community service sanctions that are operating in England and Wales, Scotland and Northern Ireland. It also examines the integrated CSO that is being piloted in Ireland. It sets out how each sanction operates. It identifies aspects of the sanctions that are working well as well as aspects that may be giving rise to some negative outcomes. It then attempts to understand why they are giving rise to these outcomes. Informed by this, the chapter concludes by making a series of recommendations that aim to overcome the issues and problems with the existing Irish CSO that were identified in chapter 5. These recommendations outline how the Irish CSO can be developed and improved in order to increase the ability of the sanction to divert a greater number of offenders away from sentences of imprisonment.

# **Chapter 1: The Introduction and Development of Community Service in Other Jurisdictions**

## **Introduction**

The CSO is not a uniquely Irish innovation. When developing the order, policy-makers in Ireland were heavily influenced by the operation of similar sanctions in other jurisdictions. It is important, therefore, that this thesis dedicates some attention to setting out and understanding the emergence, development and operation of community service sanctions in other jurisdictions prior to its introduction in Ireland.

This chapter will begin with an exploration of the origins of community service. An analysis of previous literature will be conducted in order to ascertain when and where the use of community service as a penal sanction originated. The purpose of doing this is to try to identify what exactly it was when it was first introduced. This chapter will aim to go back to the beginning and try to ascertain why a penal sanction of community service was first developed. It will set out its original intended objectives and how it was going to achieve those objectives. The chapter will then continue by following the development of the sanction (including its spread into an array of jurisdictions around the world) up to the point of the introduction of the CSO in Ireland. It is hoped that this chapter will paint a clear picture of community service in its early years. This will then be used at different points throughout the thesis to highlight and analyse subsequent changes in the sanction in order to better our understanding of the CSO as it currently operates in Ireland.

## **The origins of community service as a penal sanction**

There has been a considerable amount of academic debate about where community service originated (Kilcommins 2014, 488). Much of this debate centres around the fact that offenders have been sentenced to perform unpaid work as a punishment for breaking the law since ancient times. Pease, a leading and authoritative voice on CSOs in England and Wales, argued that the idea of work by the ‘wrongdoer, or the enemy of the community, as a means of punishment or restitution,’ is extremely old and therefore CSOs are only in detail a novel disposal (1981, p.1). He was of the view that other work-based penal sanctions such as slavery, transportation, penal servitude, houses of correction and impressment could all be put forward

as community service's 'less reputable forebears' (Pease 1980, pp.56-58). He suggested, impressment, in particular bore considerable resemblance to the CSO and identified, what he believed to be, numerous similarities between the two penal sanctions. Both punished the offender for his/her wrongdoing, included an element of reparation or payback to the community, required the offender to consent and had similar 'rehabilitative overtones' (Pease 1981; 1985). Pease was not however the only person suggesting that community service's lineage could be traced back to previous work-based penal sanctions. Young in his book, published in 1979, suggested that 'work formed an important element,... and had found earlier expression in other penal sanctions and this gave community service strong links to past work-based penal practices (1979, p.23). Similar views were expressed by the European Committee on Crime Problems who stated that community service could be 'traced a long way back into penal history, in various jurisdictions' (1979, p.34). Vass (1984, p.6) was of the opinion that the affinity between the 'new penal sanction' of community service and older penal sanctions such as bridewells, workhouses, transportation and impressment were 'remarkable'. Chappell (1982, p.132) suggested that transportation was a direct ancestor of the CSO and that community service in Australia in essence had begun in 1788 when a British fleet arrived at Botany Bay with over 700 convicts. Hoggarth (1991) felt that the lineage of community service could be traced back through an array of past penal sanctions, citing examples as far back as the German tribes of AD 98; the common feature between these sanctions being that they all used labour as a form of punishment.

The view that community service is just an 'upgrade' or a 'more sophisticated' version of previous work-based penal sanctions was widely held and was the dominant view expressed in international literature for many years. Accepting this view means that in order to find the origins of community service, one would need to go back to the very beginnings of the criminal justice system or at least to the first work-based penal sanction that could be identified. Therefore, in a quest to understand the origins of community service as a penal sanction, the first step would be to explore the history of work-based penal dispositions. Kilcommins, however, vigorously disputes this view and questions the value of tracing CSO's lineage back through past penal sanction and the idea of simply lining up a series of work-based penal sanctions in sequential order.

'These attempts to provide a long, albeit prefatory, history of CSOs have little purposive effect and falsely proceed on the basis that penal work sanctions have through time always been governed by the same assumptions and commitments. Tracing continuities and affinities in this way is, in particular, ahistorical in that it distorts the contemporary

significance and character of CSOs whilst also obscuring the contextual usage of past penal practices.’

(Kilcommins 2014, p.489)

He asserts that:

‘the specific sanction of community service is grounded upon a particular set of penal, social, cultural, political, and economic practices. Thus, whilst community service may have a ‘long past’ in that sanctions have embodied work since ancient times, it has a ‘short history’ in that it was driven by a particular and specific complex of penal strategies, agencies, representations, and techniques which render anachronistic any unqualified collations between it and past penal work practices.’

(Kilcommins 2002, p.xvi)

It is his contention that the history of the CSO is not the history of all work-based penal sanctions (Kilcommins 2014). Therefore, when exploring the origins of community service, the focus should not be on community service’s ‘long past’ but rather should be on exploring it’s ‘short history’ and on identifying and understanding the casual forces that brought about the initial formulation of the sanction - its ‘conditions of emergence’. By identifying the factors which influenced and contributed to the development and introduction of community service as a penal sanction, it will allow for a greater understanding of the ‘assumptions and principles’ inherent in the sanction and will aid our understanding of what community service was when it was first introduced. This approach and the reasoning put forward to support it is difficult to dispute. But before one can engage in the type of analysis advocated, it is necessary to first identify where community service’s ‘short history’ begins in order to provide a starting point for this analysis.

#### *The beginning of community service’s ‘short history’*

This, too, has been a matter of some debate with Germany, United States, New Zealand, Australia and England and Wales all touted as being the contemporary birthplace of community service and the first jurisdiction to introduce a community service sanction. As well as a significant variance in academic opinion, when one looks at each of the jurisdictions mentioned, it becomes clear that they are all capable of putting forward an argument that they were community service’s pioneering jurisdiction. In Germany, for example, a judicial practice began in the 1950s whereby judges would sentence young offenders to give up their time to visit sick and disadvantaged children (Little 1957; Playfair and Sington, 1965) and subsequently legislation was passed in 1953 which gave judges the power to use a form of community service on juvenile offenders (Rentzmann and Roberts 1986, p.12). In California a community service program was set up for female traffic offenders in Alameda County in 1966, with local initiatives quickly following in several other counties throughout the United

States (Harris and Lo 2002). In New Zealand a practice was started by judges in the 1950s where offenders would be sentenced to perform unpaid work in the community as a condition of a probation order. This was followed by the introduction of a sentence of periodic detention in 1962, which required offenders to attend designated centres in the evenings or at weekends where they would perform work which was beneficial to the community. This system of periodic detention was later adapted and introduced in New South Wales (Rook 1978, p.10). In 1972, Tasmania introduced Work Orders which required offenders, who would otherwise have been sentenced to imprisonment, to give up a specified number of Saturdays to work in geriatric units, pensioners' homes, or on various other civic or community projects. In 1973, the sanction was amended to allow the unpaid work to be performed on any day of the week (Rook, 1978). In England and Wales, following a recommendation from the Wootton Committee (1970), legislation was passed in 1972 which provided for the introduction of a new statutory sanction called the Community Service Order. This gave judges the power to sentence offenders to between 40 and 240 hours of unpaid work in the community. The English model of community service has since been used as a prototype upon which many other jurisdictions, including Ireland, have developed their own community service sanctions (Riordan, 2009, 22).

So where should the proposed analysis of community service begin? Kilcommins (2014, p.491-493) argues that the contemporary origin of community service is in the jurisdiction that first introduced a non-custodial sentence of community service within the formal criminal justice system and, as such, believes that to be the most appropriate place to begin an analysis of the emergence of community service. Following this approach has many benefits. By using the establishment of community service in legislation and its emergence within the formal criminal justice system as a starting point, it removes the potential dangers that would exist if one were to search for the origin of community service by looking back through the various *ad hoc* forms of community service sanctions or practices that existed prior to its introduction in legislation. If one were to engage in such a task one would inevitably be faced with the very same pitfalls which were identified earlier in relation to the links drawn between community service and previous work-based penal sanctions. It would lead to a continuous search further and further back in time in an attempt to identify the earliest sanction or sentencing practice which bears some resemblance to the CSO. The focus would be on the similarities which could be identified while ignoring the differences between the sanctions as well as the differences in the principles and assumptions governing them.

If the introduction of a non-custodial sanction of community service within the formal criminal justice system is used as the method by which to identify community service's contemporary origin, two jurisdictions come to the forefront – Tasmania and England and Wales. Both passed legislation in 1972 which provided judges with a new option to sentence offenders to perform unpaid work in the community - Tasmania introduced the 'Work Order' on the 1<sup>st</sup> of February 1972 (Rook 1978, p.15) and England and Wales introduced the CSO on the 26<sup>th</sup> of October 1972. Technically, therefore, Tasmania was the first jurisdiction to introduce a statutory sanction of community service and as a result has the strongest claim to being the place of community service's contemporary origin. England and Wales, however hold a unique position. While technically the second jurisdiction to introduce a statutory sanction of community service, it is submitted that they are better described as 'another first' as opposed to second. The CSO in England and Wales was introduced within months of the Tasmanian Work Order and it was developed independently of the Tasmanian sanction. There was no mention of the Work Order in any of the English Government reports or during any of the parliamentary debates on the CSO. It could be said therefore that community service originated independently in two separate locations (on opposite sides of the world) at approximately the same time, with Tasmania introducing their sanction mere months before the CSO in England and Wales. So, in deciding on the most appropriate and beneficial location to begin the proposed analysis of community service, another factor needs to be considered. The purpose of this chapter is to explore the origins of community service in order to enhance our understanding of the CSO in Ireland. This chapter is in essence an exploration of the origins of community service from an Irish perspective. This is an important factor. When exploring the origin of community service from an Irish perspective the CSO in England and Wales becomes a far more logical and beneficial starting point than the Work Order in Tasmania. The Irish CSO has undeniably strong roots in the English CSO. The same cannot be said of the Tasmanian Work Order. Policy-makers in Ireland relied heavily on the English model of community service when developing the CSO in Ireland. The Criminal Justice (Community Service) Act 1983 as enacted by the Oireachtas resembles almost verbatim the legislation introduced in England and Wales in 1972 (Riordan 2009, p.20).

So while England and Wales were, technically, 'pipped to the post' in terms of being the first jurisdiction to introduce a statutory sanction of community service, it is submitted that due to the strong links that the English CSO has with the Irish CSO (and its introduction within months of the Tasmanian Work Order without having been influenced by it) that it is the most

beneficial place to begin the proposed exploration of the emergence and development of community service (from an Irish perspective).

### **Community service in England and Wales**

In 1966 the then Home Secretary, Roy Jenkins, M.P., asked the Advisory Council on the Penal System to consider what changes and additions might be made to the existing range of non-custodial penalties which may be imposed on offenders (Home Office 1970, p.1). The Council appointed a sub-committee, chaired by Baroness Wootton, to carry out this task and in their report (known as the Wootton Report) the committee recommended the development of a sanction that would require offenders, in appropriate cases, to engage in some form of part-time service to the community. This recommendation was ultimately followed and in 1972 legislation was passed which provided for the introduction of a new sanction called the Community Service Order.

Before moving on to examine the sanction itself in greater detail, it is worthwhile to first explore some of the factors which led the Home Secretary to make the request to the Advisory Council in the first place and the factors which influenced the Wootton Committee in making its recommendation for the introduction of a sanction of community service.

Academics who have researched the introduction of the CSO in England and Wales (such as Pease, Young, Hoggarth, Vass and Kilcommins) have all identified a number of key factors which were operating at that time, which would have contributed greatly to the desire of policy-makers to develop and introduce a new non-custodial sanction. They can be broadly separated into two main categories: (1) The growth in the number of offenders being sentenced to imprisonment and; (2) The rise in crime rates. England and Wales was experiencing a rapid growth of the prison population<sup>1</sup> (House of Commons 2013, p.20), massive overcrowding in prisons (Home Office 1969, p.104), increased social awareness of the degrading conditions in which prisoners were forced to live in, a realisation that imprisonment was an ineffective rehabilitative tool (Home Office 1965, p.3; Young 1979, p.41) as well as a desperate need to curtail the rising cost of operating the criminal justice system and in particular the prison system. The emergence of these factors led to the use of imprisonment as a penal sanction coming under attack from a number of angles. Questions were being asked about the

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<sup>1</sup> Between 1960 and 1970 the prison population in England and Wales grew over 44% from 27,099 in 1960 to 39,028 in 1970

effectiveness of imprisonment in rehabilitating or deterring offenders (Mattick, 1967; Jepson, 1971). Young noted that ‘a majority of parliament seemed to have fully rejected imprisonment, certainly as a reformatory tool and to a lesser extent as an individual deterrent’ (1978, p.41). The use of imprisonment was also being criticised on humanitarian grounds as a result of the high levels of overcrowding and the poor conditions within prisons. But above all it was being condemned from a financial perspective as the cost of operating the prison system was rising at an unsustainable level (H.C. Debates, 587: col 754).

Young (1979) argues that the disillusionment with imprisonment does not, however, on its own explain the desire to develop a new non-custodial measure. He believes that the growth in recorded crime rates (Home Office 2014) cast doubt on the abilities of existing penal measures. This, he suggests, led to a general realisation that the causes of crime were far more complex than previously thought and that the existing range of non-custodial measures (fines, probation or discharge) may not be appropriate in every situation in which a non-custodial option might be contemplated (Young 1979, p.9). All of these factors, he believes, combined to create a desire amongst politicians for a new non-custodial sanction which would divert offenders from sentences of imprisonment.

Kilcommins (2014), in an article examining the ‘conditions of emergence’ of the CSO in England and Wales, identified a number of other penal, social, political and cultural factors which would have worked to shape the sanction that was recommended by the Wootton Committee and ultimately introduced in the Criminal Justice Act of 1972. Firstly, there was the reported success of community service practices which had been operating in penal institutions throughout the 1950s and 1960s. Offenders in prisons, borstals and detention centres were engaged in community service activities, initially when called upon to do so in times of war and natural disaster, but later as an essential element of the employment and training of inmates (Kilcommins 2002, pp.386-390). Reviews of these projects were generally positive (Home Office 1946, p.41; Home Office 1961, p.19; Prison Reform Council 1962, p.18; Home Office 1964, p.17) and there was a growing sense of optimism with regard to their potential to benefit not only the community but also the participating offenders (Home Office 1962). Secondly, the ideology of community had become an important facet of both social and correctional processes by the late 1960s in England and Wales (Kilcommins 2014, p.495). The ‘community’ symbolised openness and inclusiveness, and was seen as a place where offenders could engage with upstanding and law abiding members of society and it was thought that this would help offenders reintegrate into the society from which they had become distant. The

introduction of parole in the Criminal Justice Act 1967, which allowed suitable offenders to be released into the community under certain conditions, is just one example of the impact this ideology was already having on penal policies prior to the Wootton Committee's recommendations. Thirdly, England and Wales were, at that time, experiencing a voluntary service movement (Young 1979, p.15) or what Kilcommins (2002, p.360) terms a 'voluntary boom'. While voluntary service had deep roots in English society it had come into fresh prominence with the emergence of organisations created for the specific purpose of providing services to the community on a voluntary basis and with the increased focus on youth volunteering (Home Office 1970, p.12). Youth organisations such as the Community Service Volunteers and the Task Force were set up in the early 1960s to allow young people from all social classes to volunteer and to provide a service from which they could feel appreciated (Dickson 1976, p.117). Many secondary schools also began to incorporate community service into the timetables of their curricula (Ball and Ball 1973, p.23). There was a growing belief that voluntary service could play an important role in dealing with concerns about youth alienation and the perceived lack of social responsibility amongst young people (Ministry of Education 1963; Department of Education and Science 1969). Volunteering was seen as an ideal way for young people to engage in constructive tasks while also giving back to the community (Young 1979, p.15). It was believed that engaging people, in particular younger members of society, in voluntary services would promote a sense of community responsibility and break down the impersonality of modern society (*ibid*, p.16). Fourthly, the idea of reparation becoming a core element within the penal system was popular politically as well as amongst the general public. Reparation had been portrayed in a positive light in a Government White Paper (Home Office 1959) and the Advisory Council on the Treatment of Offenders (the predecessor of the Advisory Council on the Penal System) had explored the possibility of reparation playing a greater role within the penal system (Home Office 1957; Home Office 1970b). In an opinion poll in the mid-sixties reparation was the dominant response by members of the public to the question of how best to deal with the criminal element within the youth subcultures of the Mods and Rockers (Cohen 1973, pp.90-91). There was a sense, therefore, that there would be wide support for the introduction of a sanction which would incorporate and promote the principles of reparation. Finally there was the 'cultural phenomenon of leisure' (Kilcommins 2014, p.498). The distinction between work-time and leisure-time did not always exist. It emerged after the industrial revolution but only really became palpable in the twentieth century (Kilcommins 2002, p.249). By the 1960s leisure-time had become an intrinsic and valued part of everyday life and as a result it became possible

for the deprivation of offenders' leisure time to be considered as a legitimate tool which could be used by judges when sentencing offenders.

All of the above factors provide background and context to the introduction of the CSO in England and Wales. They allow for an understanding of the criminal justice landscape in England and Wales in the 1960s. They inform us about how the search for a new alternative to imprisonment was pushed to the top of the political agenda. The rising prison population was a major concern at that time, both financially and from a humanitarian standpoint. It was vital, therefore, that a way was found to halt the expanding prison population and if possible, to reduce it. The rise in crime rates and doubts about the existing range of non-custodial measures increased the desire for the creation of a new non-custodial sanction as opposed to trying to increase the use of measures already in existence. As well as highlighting the forces that brought about the desire amongst policy-makers to develop a new effective non-custodial sanction, the above factors also provide an insight into the penal, social, political and cultural conditions that influenced and contributed to the development of the CSO itself. Factors such as the growth in the ideology of community, the positive reviews of other criminal justice community service practices operating at that time, volunteerism coming into 'fresh prominence', the rise in popularity of the ideology of retribution and the deprivation of leisure-time becoming a legitimate tool of the criminal justice system all influenced and shaped the sanction that was ultimately recommended by the Committee. As a result they are key to understanding the 'assumptions and principles' inherent in the CSO and to understanding what exactly the CSO was when it first emerged.

#### *Wootton Committee Report*

The Wootton Committee recommended the introduction of a sanction which would give judges the power to sentence an offender to perform a specific number of hours of unpaid work in the community. The work would be carried out by the offender in his or her spare time (Home Office 1970, p.14) and where possible, it would be performed in association with volunteers who were not offenders, so as to allow offenders to benefit from the influence of those who choose to voluntarily engage in such tasks as well as benefiting from the type of work the offenders would be performing (Home Office 1970, p.13). The tasks which offenders would carry out would be tasks which would otherwise have not been performed and which would be beneficial to the community. The sanction would be managed and overseen by the Probation and Aftercare Service and prior to an offender being sentenced to a CSO an enquiry would have to be made to the Probation and Aftercare Service with regard to the availability

of community service tasks and the suitability of the offender to perform the work (Home Office 1970, p.14). Where an offender was deemed suitable and work was available, the court would have the power to sentence the offender to perform a specific number of hours of community service.

The impact of the factors mentioned in the earlier section are clearly evident in the Wootton Report and in the sanction that was ultimately recommended. The Committee recognised the existence of leisure time and identified it as being a suitable and legitimate target of the criminal justice system. The committee embraced the ideologies of community and of reparation in proposing a sanction that would be carried out in the 'community' and which would benefit the 'community' (Home Office 1970, p.13). While it would not involve reparation to individual victims the proposed sanction did involve symbolic reparation to the 'community'. The committee also bought into the voluntary service movement and to the belief that offenders would benefit from engaging in the type of tasks that were being performed by voluntary service organisations and would benefit from the 'wholesome influence' of those voluntarily engaging in community service (Home Office 1970, pp.12-13).

While the Committee did put forward a broad outline of the proposed sanction and how it would operate, it did not, however, deal with or address a number of important issues and as a result the final report lacked clarity in a number of key areas. The committee did not put forward any evidence to support its views that the proposed sanction was capable of achieving all of the benefits which had been suggested. It simply stated that it was an experimental idea which, if implemented, would need to be immediately and regularly evaluated (Home Office 1970, p.21). The committee also failed to state precisely the types of offenders for whom community service might be appropriate nor did it state precisely where on the sentencing scale the new sanction should be placed (Home Office 1970, p.14). While the committee did express the view that community service would be a suitable alternative to a short-term prison sentence, it felt that it would be wrong to preclude its use in other situations. Probably the biggest omission of all was the committee's failure to address the penal philosophy which should underpin the sanction.

'The proposition that some offenders should be required to undertake community service should appeal to adherents of different varieties of penal philosophy. To some, it would be simply a more constructive and cheaper alternative to short sentences of imprisonment; by others it would be seen as introducing into the penal system a new dimension with an emphasis on reparation to the community; others again would regard it as a means of giving effect to the old adage that the punishment should fit the crime; while still others

would stress the value of bringing offenders into close touch with members of the community who are in most need of help and support.’

(Home Office 1970, p.13)

The committee, in trying to appeal to numerous penal philosophies, was more concerned with selling the sanction and easing its introduction than it was with making a justifiable statement of fact as to the purpose and philosophy of the sanction (Pease 1981, p.2). This was acknowledged and accepted by Baroness Wootton (chairperson) in a later report: ‘We did include a paragraph in the report of which I have always been slightly ashamed, as an undisguised attempt to curry favour with everybody’ (Wootton 1978, p128). (referring to the above quoted paragraph)

The absence of evidence to support the committee’s claims about the benefits of the sanction, the failure to identify the type of offender for whom community service would be suitable or where on the sentencing scale the sanction should be placed and the lack of clarity with regard to the penal philosophy meant that the sanction was proposed and proceeded to be considered by parliament in the absence of a solid foundation or a clear penal philosophy.

#### *Discussions in Parliament*

While the absence of a clear penal philosophy, as will be seen later, has given rise to many operational and evaluative difficulties, it turned out to be quite advantageous in transforming the sanction from a proposal into a legislative sanction. By appealing to numerous penal philosophies the proposed sanction could be ‘all things to all people’. Add to this the economic benefits which had been suggested in the Wootton Report and it meant that ‘you couldn’t be against community service any more than you could be in favour of sin’ (Pease 1981, p.9). Within eighteen months of the Wootton Report being presented to the Home Secretary the proposed sanction had been translated into a Bill. This was extremely quick, a point that was highlighted by Mr James Callaghan MP: ‘[The Wootton Committee] must be gratified and perhaps a little surprised to see their proposals translated into a Bill only 18 months after they reported. In some ways, that is a little unusual’ (H.C Debates, 826: col. 979).

In the House of Commons the provisions providing for the introduction of the new sanction of community service were well received. There was disillusionment amongst many members of parliament with regard to the use of imprisonment especially the use of short-term imprisonment. The ‘catch all’ sanction of community service with its multitude of penal philosophies and touted abilities to fulfil a range of penal functions, wooed parliamentarians. Some had blind faith from the outset. ‘I was attracted from the start by the idea that people

who have committed minor offences would be better occupied doing a service to their fellow citizens than sitting alongside others in a crowded goal' (Home Secretary Mr. Reginald Maudlind MP, H.C Debates, 826: col. 972). Others acknowledged that it sounded good but had a 'we will have to wait and see' attitude. 'Only when one has attempted it will one know whether community service can play a part in our penal system' (Parliamentary Under Secretary of State, Standing Committee G, cols.481-2). No member of parliament, however, during the House of Commons debates, argued against the introduction of the CSO. Mr Callaghan MP of the Labour Party, in opposition, went so far as to say that 'there is nothing in the Bill with which anybody can quarrel. There will be no division on it. If I had been at the Home Office, I should probably have introduced something very like it myself' (H.C Debates, 826: col. 983).

But why was there such widespread support of the order? Two points are worth noting in particular. The first is that parliamentarians when speaking about the CSO generally spoke about it as an alternative to imprisonment. This included the then Home Secretary Mr. Reginald Maudlind MP who, when introducing the second reading of the Bill, stated:

'There has been an enormous increase in the prison population, which is about four times the size it was before the war. . . . The conditions in our prisons are very serious. We must pay attention to this problem of overcrowding . . . . Thus the Bill embarks on a new range of non-custodial penalties designed to find methods of awarding punishments to criminals which do not involve incarcerating them. . . . I was attracted from the start to the idea that people who have committed minor offences would be better occupied doing a service to their fellow citizens than sitting alongside others in a crowded gaol . . . . and I like the idea of sentenced persons doing something useful for their fellow citizens rather than mouldering inside a prison.'

(H.C Debates, 826: col. 966-973)

This was a key selling point and one which was always going to be widely welcomed. If offenders could be diverted from ineffective and costly prison sentences, it would reduce the ever expanding prison population and as a result would save the exchequer substantial amounts of money. Interestingly however, while many spoke of the CSO as an alternative to imprisonment the Bill itself did not state that the CSO was to be used exclusively as an alternative to imprisonment but instead said it could be used in circumstances where an offender has been convicted of an offence punishable by imprisonment. This gave the proposed sanction a much broader scope as there are many imprisonable offences (such as low level theft or criminal damage) which seldom result in offenders being sentenced to imprisonment.

The second point is that because of the lack of a clear and definite penal philosophy, the CSO was seen as a sanction which could, potentially at least, achieve a range of functions. So whether you favoured punishment, deterrence, rehabilitation, reparation or just reducing the cost of operating the criminal justice system, CSO offered something. This meant that CSOs were attractive to all no matter what their penal philosophy. But while this may be a positive in transforming an idea into a legislative sanction, the negative consequences of this confused thinking, as will be set out below, quickly became evident when the 'CSO ceased to be simply words on paper and it became an operational sanction' (Pease 1985, p.59). Despite having progressed through a Working Group, and through Parliament, there was still no clarity as to what would be the penal philosophy of the sanction, where on the sentencing scale it would be placed or the type of offender it should be targeted at. The door was very much left open for the sanction to be used in a variety of different ways and for a variety of different purposes.

#### *The Community Service Order as introduced in the Criminal Justice Act 1972*

The Criminal Justice Act was passed into law on the 26<sup>th</sup> of October 1972 and provided the legislative framework for the CSO. The main provisions for community service contained in the Act were as follows: A CSO can only be imposed on an offender who has been convicted of an offence punishable by imprisonment (This is not to say that the sentence would have been one of imprisonment) (Section 15.1); the offender must be aged seventeen or older (Section 15.1); before making a CSO the court must request and consider the content of a social enquiry report prepared by a probation officer or social worker (Section 15.2.b); the court must be satisfied that there is suitable community service work available for the offender to perform and that the offender is a suitable person to carry such work (Section 15.2.b); the requirements of the sanction must be explained to the offender and the offender must consent to the order (Section 15.2); the number of community service hours an offender is ordered to perform must be between 40 and 240 hours (Section 15.1); the work must be performed within one year of the order being made (Section 16.2) unless the court grants an extension (Section 18.1.b); Community Service must be done in an offender's leisure time and must not interfere with their educational or religious commitments (Section 16.3); if an offender fails to comply with the CSO they will be in breach of the order and can be returned to court, where they can be fined with the CSO continuing to remain in force or the order revoked and the court will be free to sentence the offender again for their original offence (Section 17).

The early feelings about the CSO can be summarised in three words: enthusiasm, uncertainty and caution. There was huge enthusiasm amongst politicians and amongst various

stakeholders in the criminal justice system about the CSO and its potential. As noted earlier this was a sanction which proponents had advocated could achieve a range of important penal functions. Yet there was also uncertainty. There was uncertainty because there was little or no evidence to support many of these claims. This would be an experimental sanction. With this came a degree of caution. It was decided by Government that it would be best, therefore, to trial the sanction in a small number of probation areas before rolling it out nationwide. This would allow any operational difficulties to be identified and resolved and would allow for the CSO to be developed further before being universally introduced.

### *The Pilot Scheme and early years of the CSO*

Six probation districts were chosen to pilot the CSO (Nottinghamshire, inner London, Kent, Durham, south-west Lancashire and Shropshire) and operations begun in early 1973. While much of the reports about the early operation of the CSO were positive its introduction was not without some ‘teething problems’. One of the major criticisms of the pilot scheme has been that there was very limited guidance or central policies given to the probation districts with regard to how the sanction should operate and be developed.

‘The absence of national practical guidelines has encouraged the lack of uniformity between areas. Few directives have been issued by the Home Office on the administration of community service schemes. . . . The local probation areas have been largely free to develop their own policies on issue of practical administration without the need to achieve uniformity or consistency of approach on a national level.’

(Young 1979, p.68)

This absence of guidance combined with the lack of a penal philosophy and uncertainty about CSO’s position on the sentencing scale led to wide disparity in how the CSO was viewed, how it was used and how it operated in the different probation areas. For example, Pease (1985, p.2) noted that in three of the pilot areas the official policy of the probation and after-care service was that CSOs should primarily be an alternative to imprisonment but no such policy existed in the other three pilot areas. Despite these issues and concerns, the enthusiasm towards the CSO remained unfettered. Following the initial pilot scheme the Probation and After-care Services in the pilot areas expressed their support for the continuance of the CSO and for its expansion throughout England and Wales (Young 1979, p.x). The Home Office Research Unit in their final report on the operation of the pilot scheme concluded that while much was still unknown about the sanction (the penal philosophy, the effect on the offenders, the impact on the prison population, the type of offender for whom it is suitable or the most desirable work placements) that the CSO was, at least, a viable sanction (Home Office 1975). This was

enough to convince the Government and on the 22 of August 1974 the Minister of State for Home Affairs announced that that the CSO would be extended to all probation areas in England and Wales.

While some efforts were made to clarify certain aspects of the CSO before it was extended nationwide (such as the procedure for selecting offenders) the experience during the early years was, for the most part, much of the same. An absence of national guidelines, confusion as to the position of the CSO on the sentencing scale and a lack of a clear penal philosophy resulted in disparity and variation in how the CSO was being used (Young 1979). In terms of the early evaluative studies of the CSO, the results were modest, at best (Home Office 1975; 1977). A reconviction study found no evidence of a reduction in reconviction rates amongst offenders sentenced to a CSO and it suggested that the percentage of offenders who were sentenced to a CSO who would otherwise have been sentenced to imprisonment was between 45% – 50% (Home Office, 1977). While this does indicate that CSOs were having some positive impact it would have been hoped that these figures would have been higher. Yet the Home Office studies (1975; 1977) both concluded that the modest results from their evaluations could be explained by the fact the practical operation of the CSO was just developing and indicated the possibility that the result might improve as practical difficulties are ironed out. There seemed to be a general acceptance amongst politicians, academics and the media that the idea was good and the focus should be on improving the operations of the CSO so as to allow it to fulfil its potential.

*So what exactly was the CSO when it first emerged in England and Wales?*

Having described the emergence, development, introduction and early operation of the CSO in England and Wales the primary aim of this chapter will now be addressed which is to describe what exactly the CSO was. The CSO was developed at a time when there was widespread disillusionment with imprisonment and a strong desire amongst policy-makers to reduce the use of custodial sentences. It was introduced primarily as an alternative to imprisonment although legislation did allow for it to be used where sentencers were of the opinion that an offender would be suitable for CSO and would benefit from it, even where a sentence of imprisonment was not contemplated. While the CSO was not introduced exclusively as an alternative to imprisonment, it nevertheless, had inherent within it the principle goal of diverting offenders from prison sentences. To this end the CSO was designed to achieve a range of penal functions and objectives. However, the CSO's many functions and objectives makes any attempt to describe it, problematic. What the CSO was depends on one's

opinion of its primary objective or penal philosophy. It is submitted, therefore, that the best way to describe what the CSO was when it first emerged, is to set out what CSO's many objectives were and identify how the CSO was designed to achieve them.

First and foremost, the CSO was designed to fulfil the penal function of punishment. It punished offenders by requiring them to give up their time to perform unpaid work in the community. The punitive element of the CSO was not in the work that was carried out but rather was in the deprivation of the offender's leisure time. The deprivation of leisure time is what gave the CSO its punitive bite and, as Young points out, its punitive effect should not be underrated.

'It is not easy to complete an order approaching the maximum 240 hours within the stipulated twelve months. It may require considerable self-discipline and is certainly an obligation which many do not relish.'

(Young 1979, p.36)

Secondly, the CSO was to have a rehabilitative function. It must be remembered that CSOs were developed at a time when the ideology of 'community' was strong and was already being used successfully in other areas of the criminal justice system. The voluntary service movement also had momentum. These factors are key to understanding CSO's rehabilitative design. Central to the rehabilitative ability of CSOs is improving offender's self-worth, self-esteem and self-confidence. This would be achieved by offenders performing work in the 'community' which is of benefit to the community and/or to persons in need. In doing so it was hoped that offenders would develop a sense of social responsibility and that their outlook of their role in society would change.

'... by creating a situation in which an offender can make a positive contribution to community needs and thereby experience achievement, he will develop an improved self-image and a greater realisation of his value as an individual in society. The concentration upon the positive aspects of his character and the utilisation of his talents and skills, might render his negative attributes and antisocial tendencies less important in his overall social functioning. This in turn might give him a more social and responsive outlook towards others and thereby reduce the risk of reoffending.'

(Young 1979, p.40)

The type of work offenders performed was important to CSO's rehabilitative ability. It was thought that by engaging offenders in meaningful work that it would allow the offender to find 'an alternative and legitimate source of achievement and status and develop a sense of self-worth' (West 1976, p.74). Upon completion of the CSO it was hoped that there would also be an outside chance that offenders would continue volunteering within the community or develop employment aspirations.

It was further stressed in the Wootton Report that, for the purpose of rehabilitating offenders, where possible, community service tasks should be performed alongside other workers or non-offender volunteers. As well as benefiting from the work they were performing it was thought that offenders would also benefit from ‘wholesome influence’ of those voluntarily engaging in community service and would benefit from the additional support of working within a group.

Thirdly, the CSO was said to be capable of being reparative. This would be achieved by offenders performing work which was of benefit to the ‘community’ and in doing so ‘repairing’ the damage they caused to the community/society. It would not involve any reparation to individual victims or groups. The reparative element of the CSO was therefore merely symbolic.

To reiterate (and strongly emphasise) the CSO was designed to be used to punish, rehabilitate and symbolically repair the damage caused by offenders. It would punish by depriving offenders of their leisure time, rehabilitate through the performance of meaningful work performed where possible alongside volunteers and it symbolically repaired the damage caused by offenders through the completion of community service tasks which benefited the ‘community’. The sanction was designed with the overarching goal of diverting offenders away from sentences of imprisonment in the hope that by doing so it would result in a reduction in the prison population and thus save the state a substantial amount of money.

### **The Spread of the CSO to other Jurisdictions**

Many jurisdictions around the world were experiencing the very same conditions which had led to the development of the CSO in England and Wales. Rising prison populations and the problems associated with it were common across much of the western world. Within these jurisdictions there was a desperate need to find ways to divert offenders away from costly and ineffective prison sentences. Many looked to the experience of England and Wales and to the concept of community service. While early evaluative studies in England and Wales were not producing overwhelmingly positive results the concept was still seen as being promising. The late 1970s and early 1980s saw numerous jurisdictions introducing community service sanctions, many of which imitated closely the design and blue print of the English CSO. In 1978, Scotland passed legislation, the Community Service by Offenders (Scotland) Act 1978, providing for the introduction of a community service sanction. It was introduced to be used

primarily as an alternative to short-term prison sentences but just as in England and Wales the legislation did not limit its use to being exclusively an alternative to imprisonment. 1978 was also the year in which community service pilot projects became operational in Ontario, Canada. Projects were initially set up in six districts but within a year the pilot scheme was expanded and the number of districts participating in the scheme doubled (Polonoski 1981). The experience of England and Wales was one of the preliminary justifications given by the Ontario Ministry of Correctional Services for seeking to create a community service sanction (Vass and Menzies 1989, p.257). On the other side of the World, New Zealand passed legislation in 1980 establishing a sentence of community service with the sanction becoming operational on the 1<sup>st</sup> of February 1981. The Minister of Justice, in introducing the legislation to Parliament described the new sanction as being similar to the English CSO (Ministry of Justice 1999). Community Service sanctions also started to emerge in all of the states in Australia. A community service scheme became operational in Western Australia in 1977 (Jones 1983, pp.71-77), CSOs were launched in the Northern Territory in 1979 (Owston 1983, pp.90-94) New South Wales began using CSOs in 1980 (Griffith, 1983, 17-32) as did Queensland (Turnbull 1983, pp.84-89), both Victoria (Bonda 1983, pp.33-51) and South Australia (Visser 1983, pp.52-70) introduced CSOs on a pilot bases in 1982 and, as noted earlier in the chapter, Tasmania (Barnes 1983, pp.78-83; Rook 1978) had already introduced the Work Order in 1972. As well as all of the jurisdictions who had introduced a community service sanction by the early 1980s there were as many more who were exploring the possibility or were in the process of doing so – Ireland was one of these jurisdictions.

## **Conclusion**

This chapter explored the origins of community service from an Irish perspective. While many have argued that community service could be traced a long way back through a variety of work-based penal sanctions, this chapter favoured Kilcommins' position that tracing community service's lineage in this way would have little purposive effect and that attention should instead be focused on exploring community service's 'short history'. The introduction of the CSO in England and Wales was identified as being the most beneficial starting point for this analysis. While the Work Order in Tasmania was technically the first community service sanction to form part of a formal criminal justice system, the English CSO, which was introduced within months of the Tasmanian order and without having being influenced by it, is the sanction within which the Irish CSO has its roots.

In exploring the emergence of the CSO in England and Wales, the chapter highlighted the factors that brought about the initial desire amongst policy-makers to develop a new non-custodial sanction as well as the factors which impacted on the design of the sanction that was proposed by the Wootton Committee. The chapter went on to examine the development of the CSO, from the initial proposal in the Wootton Report right through to the passing of the Criminal Justice Act 1972, which introduced the CSO as a legislative sanction. Attention then turned to the practical operation of the CSO, initially as a pilot scheme in six probation districts and then throughout England and Wales. It was shown that while the concept of the CSO was such that you could not be against it any more than you could be in favour of it (Pease 1981, p.9), the practical operation of the CSO was not without its problems. A lack of a clear penal philosophy combined with an absence of central guidance on how the CSO should operate, resulted in significant disparity in how the CSO was being used. Early evaluations of the sanction were also only showing modest results in terms of achieving what proponents of the CSO had originally advocated. Nevertheless the positivity surrounding the CSO remained strong. When jurisdictions around the world began experiencing the very same conditions that gave rise to the CSO in England and Wales (rising prison populations and rising crime rates) many looked to the experience in England and Wales and to the concept of community service. This Chapter highlighted the spread of community service up until the point of the introduction of the CSO in Ireland in 1983.

The most significant aspect of this chapter, however, is the description of what the CSO was when it first emerged in England and Wales. The CSO was described by setting out what its many objectives were and by identifying how the sanction was designed to achieve them. This description is important because it will be returned to later in the thesis to highlight how the CSO that was introduced in Ireland differed from the CSO that was developed and operated in England and Wales.

## **Chapter 2 – Factors which influenced the introduction of the CSO in Ireland**

### **Introduction**

There is little doubt that policy-makers in Ireland relied heavily on the English model of community service when developing the Irish CSO. During the Oireachtas Debates on the Criminal Justice (Community Service) Bill 1983, a number of opposition Deputies and Senators were very critical of how similar the proposed Bill was to the English legislation. One Deputy, Deputy Kelly, went so far as to say that it was ‘simply one more example in the ignominious parade of legislation masquerading under an Irish title . . . which is a British legislative idea taken over here and given a green outfit with silver buttons to make it look native’ (Dáil Debate, Vol. 342, Col. 169, 3rd of May 1983). The then Minister for Justice Michael Noonan, himself, in commending the Bill to the Dáil, acknowledged and accepted that it ‘coincides, to some extent, with the relevant British legislation’ but went on to say that ‘the opportunity has been taken to improve where possible, in the light of British experience on the corresponding British legislation’ (Dáil Debates, Vol. 342, Col. 1331, 20<sup>th</sup> of April 1983).

Having looked at the CSO in England and Wales in the previous chapter, this chapter will now explore the emergence of the CSO in Ireland. It will focus on identifying the factors which existed in Ireland in the late 1970s/early 1980s which contributed to the introduction of the sanction. While others (Riordan 2009; Jennings 1990) have credited a wide range of factors<sup>2</sup> as having played a role, it will be argued in this chapter that the emergence of the CSO is as a result of a very limited number of factors. It will be shown that a prison crisis (which was being fuelled by an increase in crime) together with a well-established practice of directly transferring legislation from Britain, were ultimately the factors which led to CSOs being introduced in Ireland.

It is hoped that identifying these factors will provide some context to the introduction of the CSO in Ireland and will enhance our understanding of why it was introduced.

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<sup>2</sup> A rise in the ideology of community (O’Riordan 2009, p.133), a demand for sterner penalties and a growth in concern for the needs of victims (Jennings 1990, pp.117 -121).

## **Rise in Crime**

In the mid-1960s Ireland's crime rate dramatically increased. It was described by Dr. Woods, as 'a breakdown in law and order of unprecedented proportions' (Dáil Debates, Vol. 342, Col. 1339, 20<sup>th</sup> April 1983). Between 1968 and 1981 the number of indictable offences recorded in Ireland increased almost fourfold. It rose from 23,104 in 1968 to 89,400 in 1981 (Report on Crime 1977, 3; Report on Crime 1981, 3). The number of non-indictable offences also rose at a similar rate (O'Donnell and O'Sullivan 2001, p.23; O'Donnell et al 2005, p115). People, particularly those living in urban areas, were feeling the effects of the rise in crime. Mr. Brady, TD for Dublin North Central, speaking in the Dáil said:

'There has been an increasing breakdown in law and order to such an extent that many people are talking seriously about vigilante groups. During the past few days there has been some controversy regarding the setting up of such groups but many people feel they must do something to protect their families and their property and, perhaps, their lives. Crime is increasing and we as legislators must ask what we can do to bring about a reduction in it.' (Dáil Debates, Vol. 342, Col. 1476, 20<sup>th</sup> April 1983)

The rise in crime was causing people to lose faith in the criminal justice system and the State's ability to protect them. This was recognised by all politicians as a serious concern and as a result the issue of crime and how best to address it was pushed to the top of the political agenda.

Offences against property, drug-related offences<sup>3</sup> and petty unsophisticated crime accounted for the bulk of the overall increase in the crime rate (O'Donnell and O'Sullivan 2001, p.23; Mahony 2002, p.104; MacBride 1982, p.46). As well as a rise in the number of these types of offences being dealt with by the criminal justice system, courts, in particular district courts, were sentencing these so-called 'petty' or 'low-level' offenders to sentences of imprisonment (MacBride 1982, pp.47 - 50). This resulted in the prison system becoming weighed down with low-level offenders serving short prison sentences (NESC 1984, p.152)<sup>4</sup>. According to MacBride (1982, pp.47-50), first-time offenders who had committed relatively minor offences or recidivist offenders who had committed small-scale crimes of larceny or criminal damage represented a huge portion of Ireland's prison population at the beginning of the 1980s.

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<sup>3</sup> There were just 2 drug related charges in 1965 and this rose to over 2000 by 1983.

<sup>4</sup>In 1981, 75% of those sentenced to imprisonment received a custodial sentence of less than 12 months.

## **Prison Crisis**

Between 1960 and 1982 there was a 200 percent increase in the prison population (MacBride 1982, p.9). The rising prison population was being fuelled by increased crime rates and the use by the courts of short-term prison sentences when dealing with low-level offenders. On top of this, a National Economic and Social Council Report (1984, pp.158-160) showed that the average length of prison sentences were also increasing, meaning that the number of offenders being sentenced to imprisonment was increasing along with the length of the sentence imposed upon them. Inevitably, this was causing the prison population to grow. The consequences of this rise in the prison population began to appear throughout the prison system. Prisons became overcrowded, conditions started to deteriorate giving rise to humanitarian concerns, there was a growing scepticism about the effectiveness of imprisonment in terms of rehabilitating offenders and the cost of operating the prison system began to rise at an unsustainable rate. The prison system, a key and vital component of the criminal justice system, was beginning to falter; Ireland was experiencing a prison crisis. The individual aspects of this crisis will now be discussed in greater detail.

### *Prison Overcrowding*

By the early 1980s the prison system was, in the words of Deputy Barry, ‘bursting at the seams’ (Dáil Debates, Vol. 341, Col. 1925, 26<sup>th</sup> of April 1983). The demand for prison places far exceeded supply. Prisons were full to capacity yet offenders continued to be sentenced to imprisonment. To alleviate some of the immediate pressure on the prison system and to make room for new committals it became common practice for the Minister for Justice to release existing prisoners early. This practice became known as ‘shedding prisoners’. In 1982, 1,298 prisoners were released from prison before their sentence was completed, not because of any recognised remission or parole, but solely because cells were occupied and were needed for new prisoners (Report on Prisons and Places of Detention 1981, p.124). The provision used by the Minister for Justice to release offenders was s.2(1) of the Criminal Justice Act 1960. The Oireachtas when passing this provision however, never intended for it to be used in this way. The provision was included in the 1960 Act following a situation whereby the Minister for Justice had granted an offender temporary release to attend his mother’s funeral only to be advised after that he had no formal authority to do so and that if the prisoner had not returned to prison at the appointed time (though in fact he did), there was nothing that could have been done about it (O’ Malley, 2008, 9). It is clear from the Oireachtas debates on the Criminal Justice Bill 1960 that what was envisaged by members of the Oireachtas, was that s.2(1) would

give the Government the power to grant an offender temporary release and that this power would be used to release offenders for short periods for compassionate reasons, or to allow some prisoners to return home for Christmas or ‘the harvest’ (Dáil Debates 1960). It was never intended or envisaged that it would be used to release existing prisoners early to make room for new committals. In fact, while commonly referred to as ‘early release’ the power that was given to the Minister under the provisions of the 1960 Act was to grant ‘temporary’ release i.e. to release a prisoner for a defined period with the expectation that he or she would return to prison at the end of that period unless granted a further extension (O’ Malley 2008, p.10). Yet the Minister was for all intents and purposes using s2(1) as an informal early release system.

Leaving aside the questionable use of s2(1) by Ministers for Justice, the very concept of ‘shedding prisoners’ was in itself working to completely undermine the entire criminal justice system. Gardaí were apprehending offenders, they were being prosecuted by the DPP, found guilty in the criminal courts and sentenced to imprisonment by judges, only to be released having served only a fraction of the sentence imposed upon them (and in some cases having served none of it at all). While the practice of shedding prisoners may have been necessary as an emergency measure in order to prevent the criminal justice system grinding to a halt, it was clear that it was not a legitimate long-term solution to the rising prison population and if the practice continued, especially at the rate at which it was being used in the early 1980s, it would have devastating consequences for the criminal justice system in Ireland.

### *Humanitarian Concerns*

As the prison population increased and prisons became overcrowded, the condition of prisons deteriorated. It must be remembered that Ireland’s prisons were built in the 19<sup>th</sup> century and were housing far more prisoners than they were originally designed for. A Visiting Committee in Mountjoy Prison in 1984 described the conditions in the prison as being ‘deplorable . . . degrading and a disgrace to any community’ (Report of the Mountjoy Prison Visiting Committee 1984, p.33). A similar view was expressed by the Committee of Inquiry into the Irish Penal System which condemned ‘the triple depressants of overcrowding, idleness and squalor’ of prisons in Ireland (1985, p.90). Prison conditions were further worsened by the rampant drug use and the widespread availability of drugs in prisons (Joint Working Party Report 1985). The Prisoners’ Rights Organisation, which had been set up to advocate on behalf of prisoners and to hold the Government to account for breaches of prisoners’ rights, were very active in publicising what it was like to be detained in Ireland’s prisons.

As well as there being a concern about prison conditions there was also a humanitarian concern about the disproportionate impact prison was having on certain communities. There was a concern that those being sentenced to imprisonment were predominantly poor, lower class offenders from socially deprived areas; that prison was being used as a ‘social dustbin’ (Blom-Cooper 1974; Simon Community 1984; Jennings, 1990). There was growing awareness of the potential negative effects that a sentence of imprisonment could have on a person, their family and their community. Mr. Keating T.D. stated, during the Dáil Debates on the Criminal Justice (Community Service) Bill 1983, that ‘a prison sentence ruins a person . . . in many cases it is a sentence of death in terms of a person’s development, fulfilment, career and family’ (Dáil Debates, Vol. 341, Col. 1358, 20<sup>th</sup> of April 1983). It was beginning to be recognised that if those being sentenced to imprisonment were predominantly from deprived urban areas then the negative effects of imprisonment would disproportionately impact those communities. It would enhance levels of deprivation and social exclusion in areas already marginalised. Furthermore the concept of prisons as ‘universities of crime’ (Tuck 1988, p.5) had also gained currency. This led to a growing belief that not only would deprived urban areas become further marginalised but they would also become a breeding ground for new criminals creating a troubling pattern whereby the number of offenders being sentenced to prison and levels of social deprivation would continue to rise in Ireland’s poorest and most deprived areas.

#### *Scepticism about the rehabilitative ability of prisons*

Unlike England and Wales, Ireland had not experienced a sustained period of ‘penal-welfarism’, at least not in the way conceptualised by Garland (Kilcommins et al 2004, p.87). As a result the concept of rehabilitation had not impacted penal policies in Ireland to the same extent as it had in England and Wales. In a report on Prisons and Places of Detention in 1981 the principle purpose of imprisonment in Ireland was officially stated to be ‘to contain offenders’ (Report on Prison and Places of Detention 1981, p.29).

It would be wrong however, to portray the Irish prison system as being completely void of a rehabilitative function or goal. From the 1960s onwards rehabilitation began to receive increased political attention in Ireland. Charles Haughey during his time as Minister for Justice (from 1961 to 1964) regularly spoke about ‘rehabilitation’ when discussing prisons.

‘Prison will always be a place of punishment, but it seems to me that our prisons nowadays must, to an increasing extent, become places of rehabilitation as well.’ (Dáil Debates, vol. 198, col. 126–7, 27 November 1962)

Rogan (2012, p.12) suggests that this played a significant role in promoting the idea of rehabilitation in prisons. The increased attention on rehabilitation resulted in the introduction of numerous policies which had at their core the concept of rehabilitation. It started with the introduction of temporary release as part of the Criminal Justice Act 1960. As mentioned above, while it ended up being used as a method of alleviating overcrowding, it was originally introduced as a humanitarian measure for prisoners who needed go home for a short period, and as a mechanism to prepare offenders for release (Rogan 2012, p.13). This was followed by the introduction of a welfare service in prisons in 1964, the purpose of which was to assist prisoners in looking for work and accommodation prior to their release (MacBride 1980, p.8). Between 1968 and 1972 three open/semi-open prisons were established (Shanganagh Castle in August 1968; Shelton Abbey in February 1972; and Loughan House in May 1972). During this period the Prisons Act 1970 was also passed which provided statutory regulation for open prisons in Ireland. Rogan (2012, p.18) however suggests that the Act went further than this and that its preamble and explanatory memorandum, did in fact elevate rehabilitation to an ‘official aim’ of the Irish prison system. Then in 1976 a rehabilitative ‘training unit’ was opened on the grounds of the Mountjoy Complex. The unit specialised in employment-related skills and was intended for ‘long-term prisoners nearing the end of their sentence or short-term prisoners who could complete a course or programme of courses while incarcerated’ (NESC 1984, p.83). These policies highlight that policy-makers in Ireland did in fact believe that prisons should do more than just contain offenders.

It is clear that while the concept of rehabilitation may not have reached the heights of becoming the primary purpose of imprisonment, it had reached a level by the early 1970s whereby it had become a widely recognised and accepted aspirational aim of imprisonment. Yet by the latter half of the 1970s, confidence in the abilities of Irish prisons to rehabilitate offenders had begun to fade. Rehabilitative policies introduced in prisons were being ‘challenged by counterveiling factors such as the lack of facilities, resources and chronic over-crowding’ rendering many of them ineffective (O’Riordan 2009, p.128). A Commission of Inquiry into the Irish Penal System (1980) described welfare services and educational and training programmes operating in prisons as wholly inadequate. ‘They are not only limited to a small number of prisoners, but are inadequate even for them’ (MacBride 1980, p.13). High rates of recidivism amongst prisoners (two-thirds of male offenders sentenced to imprisonment in 1981 had previously served a custodial sentence) (NESC 1984, p.160) combined with an array of international research which seemed to show rehabilitative treatment in custodial institutions had little or

no impact on the future criminal behaviour of prisoners (Martinson 1974; Home Office 1998), cast huge doubt on the rehabilitative abilities of Irish prisons.

As a result, policy-makers quickly began to lose faith in the ability of prisons to rehabilitate prisoners. This loss of faith is evident in Mr. Cooney's (then Minister for Justice) speech at a crime and punishment seminar in December 1976 where he was extremely dismissive of the rehabilitative potential of prisons (Cooney, cited in Jennings 1990). Similar sentiments were expressed by numerous other T.D's and Senators throughout the late 1970s and early 1980s.<sup>5</sup> With recidivism rates in excess of 66% and heavy criticism of existing rehabilitative programmes, prisons, at least in terms of rehabilitating offenders, were generally seen not to be working and international research was suggesting that it may not be possible to change this.

### *Rising Costs*

From 1970 onwards the annual non-capital expenditure of the Irish Prison Service rose year on year at an alarming rate (NESC 1984, p.213). It rose from £800,800 in 1970-71 to £31,758,000 in 1983. A huge portion of this related to staffing costs. Between 1970 and 1983 the Irish Prison Service grew from an authorised strength of 377 to 1,525 (NESC 1984, p.164). The increased security requirements of Portlaoise and Limerick prisons, the additional prisoner numbers and the 'antiquated structures' of Mountjoy, Portlaoise and St.Patrick's meant that high staff to inmate ratios were required in order to ensure that there was sufficient security and supervision of prisoners (Rogan 2011, p.158; NESC 1984, p.164). A significant use of overtime to achieve the necessary ratio further increased the already extremely high staffing costs of the Prison Service. The rising cost of operating the prison system in Ireland was starting to have a significant impact on criminal justice policy decisions as it was putting an enormous strain on the criminal justice budget. The portion of the budget that was being spent on prisons rose from 4% in 1970 to 13.2% in 1981 (NESC 1984, p.212). With little scope for or prospect of real increases in the criminal justice budget, it became abundantly clear to policy-makers that there was an urgent need to curb the rising cost of operating Ireland's prison system.

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<sup>5</sup> Senator B. Ryan, for example, stated 'I am always disappointed to have to record that whether you treat young offenders by the harsh regimes that other people espouse or by the much more liberal rehabilitative, educational regimes that other people espouse, most of the evidence is that at the end of it all you do not get much difference in terms of control or further offences and so on' (Seanad Debates, Vol. 101, Col. 797, 6<sup>th</sup> of July 1983)

So, as can be seen from the above, Ireland's prison system was in crisis. Prisons were full to capacity, there were humanitarian concerns about the condition of prisons and the way in which it was being used, there was very little confidence in the ability of prisons to rehabilitate offenders or to deter them from committing further offences upon their release and the cost of operating the prison system was rising at an unsustainable level. By the early 1980s the prison crisis had reached a point where it could no longer be ignored and addressing the problem had become a key priority of all politicians across the political spectrum. In addition to there being a common acknowledgement and acceptance that there was a prison crisis, there was also a common approach when it came to looking for a solution. There was at the time a well-established practice of legislative transference from Britain to Ireland so it was no surprise that when looking for a solution to the prison crisis in Ireland that it was to Britain where the attention of politicians was immediately drawn.

### **A well-established practice of legislative transference from Britain to Ireland**

The Irish legal system is inextricably linked to the British legal system. Much of this is as a result of a long history of British rule in Ireland and in particular the passing of the Act of Union in 1800 whereby Ireland was fully absorbed into the British political system and became part of the United Kingdom of Great Britain and Ireland. Over the next one hundred and twenty years or so the Irish legal system was just a regional branch of the general British system (O'Mahony 2002, p.5). Legislation was passed by the Westminster Parliament and had effect throughout Great Britain and Ireland. As a result, the Irish legal system during that time developed in line with the British system. In 1922 the Irish Free State was formed but even after Irish independence had been achieved, there remained a significant degree of continuity with the British system. Many statutes which had been passed by the British Parliament in Westminster prior to 1922 were not repealed by the Irish Parliament and as a result continued to be law in Ireland (one example being the Probation of Offenders Act 1907 which remains on the Irish statute books to this day). But as well as there being a continuity with the legal system that existed in Ireland prior to 1922 there has also, since the formation of the Free State, been a practice of legislative transference between Britain and Ireland, particularly in the area of criminal justice. A lack of criminal justice research in Ireland meant that if a problem arose within the Irish criminal justice system it was not uncommon for Irish policy-makers to look to Britain to see if the same problem existed there, and if it did, to see how it was being

addressed. If the solution was thought to be appropriate for Irish conditions, the assimilation of a similar measure into Irish law was brought about without too much debate (O’Riordan 2009, p.124).

When the time came to address the prison crisis in Ireland, Irish policy-makers would therefore, have naturally looked to Britain for a solution. As was set out in chapter one, England and Wales had experienced a prison crisis of their own at the beginning of the 1970s and had introduced the CSO in an attempt to overcome the crisis. While evaluations of the sanction were not showing outstanding results (Pease 1975; 1977) there was a huge degree of positivity in Britain and across Europe about the sanction and its potential. When the Criminal Justice (Community Service) Act 1983 is examined and compared to the legislation that was introduced in England and Wales in 1972, one is left with little doubt that the well-established practice of legislative transference played a significant role in the introduction of the CSO in Ireland. Apart from some minor changes, the legislation introduced in Ireland was almost a direct copy of the legislation that had been introduced in England and Wales a decade earlier.

While it is submitted that a prison crisis (which was being fuelled by an increase in crime) together with a well-established practice of directly transferring legislation from Britain, were by far the most significant factors in the development and introduction of the CSO in Ireland, it is worth briefly discussing some additional factors which have been put forward by others as having had some impact.

### **Other Factors**

Both Riordan (2009, p.133) and Jennings (1990, p.116) suggest that the emergence of ‘community’ as a location for dealing with offenders played a role in the introduction of the CSO in Ireland. A new initiative had become operational in Ireland in the late 1970s whereby a limited number of suitable prisoners were released from prison to work on projects in the community. By 1981 the initiative had resulted in a scouts’ hall having been constructed and a centre for the treatment of alcohol refurbished. The initiative was widely praised and was generally seen to have been a success (Dept. of Justice 1981).

While this factor likely had some impact, it is important that its impact is not overstated. It is true that community service practices were beginning to emerge within the Irish penal system, but Ireland had not experienced anywhere near the same rise in the ideology of ‘community’

as had been experienced in England and Wales (see Chapter 1) nor did it have the same extensive history of successful community service practices within the penal system. It would be wrong therefore, to suggest that this factor played a similar role in Ireland as it had done in England and Wales. Unlike England and Wales where it was a hugely important factor in the development of the CSO, in Ireland the role it played was much more about policy-makers advocating the idea of CSOs and demonstrating that Ireland would be a suitable jurisdiction for community service. It was not, it is submitted, an integral and influential factor that led policy-makers to make the initial decision to bring forward legislation providing for the introduction of the CSO in Ireland.

Finally, while other factors (a demand for more severe penalties and a growing concern for the needs of victims) have been identified by Jennings (1990, pp.117-120) as having influenced the introduction of CSOs in Ireland it is submitted here that these factors have been wrongly categorised as such. If we first look at the demand for more severe penalties. There were indeed strong calls in the Dáil for the introduction of more severe penalties in the form of mandatory minimum sentences and a greater use of consecutive sentences.

The public want to know [if the Minister] will introduce mandatory minimum sentences for mugging elderly people, for house-breaking, robbery with violence and assault. They want to know will he . . . perhaps have mandatory sentences for unlawful possession of firearms and explosives. They want to know will he tighten up on the conditions of bail and provide for consecutive sentences. . . . The Community want to see that the punishment fits the crime and is seen to fit the crime. At present they see too many criminals getting off too lightly. (Dr. Woods, Dáil Debates, Vol. 342, Col. 1344, 20<sup>th</sup> April 1983)

This is just one of many instances where Deputies in the Dáil suggested that the sentences being imposed on offenders were too lenient and called on the Minister to introduce measures that would result in the imposition of lengthier sentences. This indicates that there was at that time (early 1980s) a significant demand for harsher penalties. While it accepted that this factor did exist, its classification as a factor which influenced or contributed to the introduction of the CSO is however, disputed. If anything the demand for sterner penalties would have worked against the introduction of the CSO. At no time throughout the emergence or development of the CSO was the sanction portrayed as being more punitive than imprisonment. Some even suggested that CSOs were a ‘soft’ approach to dealing with offenders. Deputy Brady for example stated that CSOs were a ‘continuation of the softy, softy kid glove approach to crime and crime-doers’ (Dáil Debates, Vol. 342, Col. 1478, 20<sup>th</sup> April 1983). It is therefore difficult to see any positive connection between the demand for sterner penalties and the introduction of the CSO in Ireland. The same is true for the growth in concern for the needs of victims.

While there is some evidence to suggest that there was indeed a growth in concern for the needs of victims there is little to suggest that it had any significant impact on the introduction of the CSO. Individual reparation to victims was never advanced or proposed as a function or goal of the CSO. The only element of reparation contained in CSOs is a symbolic reparation to the community through the performance of unpaid work in the community. It would be a stretch therefore to suggest that the growth in concern for the needs of victims influenced the development and introduction of the CSO in Ireland in any significant way.

## **Conclusion**

Ireland was experiencing a prison crisis in the 1980s. The prison population was rising, prison conditions were deteriorating and the cost of operating the prison system was increasing at a level that was unsustainable within the existing budgetary constraints. Crime rates were also on the rise and this fuelled the crisis by ensuring there was a constant and increasing flow of offenders entering the criminal justice system. It became abundantly clear to politicians from all of the major parties that something needed to be done. In trying to find a solution to the problem, politicians in Ireland did as their predecessors had done many times before them and looked to England and Wales for a solution. What they found was the CSO – a sanction that had been introduced in 1972 to deal with the prison crisis that existed there at that time. Reviews of the CSO were positive (Pease 1975; 1977; Young 1979) and the sanction had also found favour in the Council of Europe (Jennings 1990, p.120). Encouraged by this, policy-makers in Ireland used the CSO which was operating in England and Wales as a model when drafting a similar sanction for Ireland. When the sanction was put before the Houses of the Oireachtas for debate the existence in Ireland of some (albeit very limited) successful community service initiatives already operating within the Irish criminal justice system helped in demonstrating the suitability of Ireland for CSOs and the potential benefits that would arise from their introduction. It is submitted that these are the factors which influenced the introduction of the CSO in Ireland. This of course is not to say that these are the only factors which played a role but rather that they are by far the most significant. The next chapter will now examine the process by which CSOs came into being in Ireland.

## **Chapter 3 – The Development of CSOs in Ireland**

### **Introduction**

Having identified the factors which influenced the emergence of the CSO in Ireland in the previous chapter, this chapter will now focus on the development and introduction of the sanction. This will be done by detailing the process by which the CSO came into being, from the first documented reference to the sanction in Ireland, right through to the signing of the Criminal Justice (Community Service) Act 1983 into law. As well as detailing the process, particular attention will also be given in this chapter to setting out what politicians understood the CSO to be (what its objectives were) when it was passing through the Houses of the Oireachtas and what was known about how it was going to operate when it was signed into law in 1983.

### **Pre-legislative stage**

Jennings (1990, p.58) identified a speech by the Minister for Justice, Mr. Cooney at a Crime and Punishment Seminar, in December 1976, as the first documented reference to CSOs in Ireland. In his speech, the Minister stated that he intended to set up a committee to look further at the development of alternatives to custody, with a particular focus on examining the feasibility of offenders being required to perform community service. The committee was set up the next year but collapsed within two months following the Government's defeat in the 1977 General Election. Mr. Sorahan, Senior Counsel and Professor Enda McDonagh also mentioned CSOs when speaking at the same event as did Sean McBride in a report published in 1980. Aside from these isolated instances there were little or no other documented calls for the introduction of CSOs in Ireland. While there was, at that time, a lack of academic focus in the fields of criminology and criminal justice in Ireland, Jennings (1990, p.59) notes that even where publications did examine issues such as community-based approaches to dealing with offenders in Ireland (Burke, Carney and Cook, cited in Jennings 1990), no mention was made of CSOs. Yet in December 1980 the Government announced its intention to introduce legislation to provide for CSOs in Ireland and in June 1981 laid a White Paper entitled 'Community Service Orders - a method of dealing with offenders' before both Houses of the Oireachtas. The White Paper detailed the new sanction and set out how it would operate. It

also sought the views of the public and of key stakeholders. Both Riordan (2009, p.136) and Jennings (1990, p.61) suggest that the publication of the White Paper in advance of the legislation points towards an apprehension on the part of the Minister for Justice about how the idea would be received. Sections of the White Paper, just like the *Wootton Report* (Home Office 1970) in England and Wales, also appeared to be very much focused on trying to promote CSOs. Just as is in England and Wales, CSOs were portrayed as a sanction that could satisfy a range of penal philosophies and could achieve a range of penal functions.

Community Service Orders can be seen from several viewpoints: either as more positive and less expensive alternative to custodial sentences; as introducing into the penal system an additional dimension which stresses atonement to the community for the offence committed; or as having psychological value in bringing offenders into close contact with those members of the community who are most in need of help and support. To some, it might appear to have a symbolically retributive value. Thus although the court order, which would deprive the offender of his leisure time and require him to do work for the community, would necessarily involve a punitive element, it would also provide an opportunity to the offender to engage in personal service to the community and this might in turn lead to a changed attitude and outlook on his part. A central feature of community service work is that it would be work which would otherwise be left undone and that it would be of benefit to the community. (Dept. of Justice 1981, p.8)

The White Paper was widely distributed amongst the Irish Congress of Trade Unions, the Bar Council, the Law Society, the Judiciary, the Prison Officers Association, County Councils, public libraries, universities, voluntary organisations, and churches (Jennings 1990, p.62). Yet despite this, very few responded and participated in the consultation process. The Minister for Justice stated, during the Seanad Debate on the Criminal Justice (Community Service) Bill, that it was a source of some disappointment to him that there were so few responses from the public to the White Paper (Seanad Debates, Vol. 101, Col.780, 6<sup>th</sup> of July 1983). So just as there were little or no calls for the introduction of CSOs prior to the Government's announcement to bring forward legislation, it would seem there was also no real public interest in the CSO after the sanction had been proposed and outlined in great detail by the Department of Justice in the White Paper (1981).

### **The creation of Legislation**

The late 1970s and early 1980s was a politically unstable time in Ireland. There were four different Governments between the years 1979 and 1982; two Fianna Fáil (1979-1981 and 1982) and two Fine Gael/Labour coalitions (1981 and 1982). This resulted in three Community Service Bills being presented to the Dáil. The first was presented by Deputy Shatter (Fine

Gael), in opposition, by way of a Private Members Bill, on the 16<sup>th</sup> of June 1982, shortly after the Fine Gael led Government had fallen. Jennings (1990, p.75) believes that because it was presented so soon afterwards that it suggests that the contents of the proposed Community Service Bill had been formulated during Fine Gael's period in Government. The very next day the Minister for Justice, Sean Doherty presented Fianna Fáil's Community Service Bill. Neither of these bills progressed through the Houses of the Oireachtas though, due to the dissolution of the Dáil on the 14<sup>th</sup> of November 1982. On the 14<sup>th</sup> of December a Fine Gael/Labour coalition re-entered Government. The third and final Community Service Bill was then presented to the Dáil on the 12<sup>th</sup> of April 1983. The three bills were almost identical, the only difference being that in Deputy Shatter's Bill the maximum number of hours community service that could be imposed on an offender was four hundred and eighty - double the amount allowed for in the other two bills. What all of this shows is that despite the fact that there were no major calls for the introduction of CSOs and very little public interest in the sanction, there was, it would seem, a strong political will to introduce CSOs. All of the major political parties had brought forward legislation to provide for the introduction of the sanction in Ireland at one point. This meant that when the Criminal Justice (Community Service) Bill 1983 eventually began to make its way through the Houses of the Oireachtas it had a wide support base that traversed party lines.

#### *The Criminal Justice (Community Service) Bill 1983*

The Criminal Justice (Community Service) Bill that was laid before both Houses of the Oireachtas resembled almost verbatim the legislation that had been introduced in England and Wales in 1972. There were, however, some variances. First and foremost section 2 of the Bill included a requirement that a judge could only impose a CSO as an alternative to a prison sentence. This created a much narrower application for the sanction in comparison to the English legislation where the only requirement was that the offender had to have committed an 'imprisonable offence'. The minimum age an offender had to be before a CSO could be imposed upon him/her was also slightly lowered in Ireland. Section 2 of the Criminal Justice (Community Service) Bill set the minimum age at 16 whereas the minimum age in England and Wales was 17.

If passed, the Bill would give judges in Ireland the power to sentence offenders, who would otherwise have received a custodial sentence, to perform between 40 and 240 hours of unpaid work in the community (Sections 2 and 3). Before sentencing an offender to a CSO, however,

the legislation required that the judge be satisfied, having considered the offender's circumstances and a report from a probation officer, that he/she is suitable to perform community service and that there is suitable work available (Section 4). The judge must also be satisfied prior to imposing a CSO that the offender has consented to the order (Section 4). Section 7 provided for a new offence of failing to comply with the requirements of a CSO. An offender found guilty of this offence would be convicted and fined up to IR£300, without prejudice to the continuance of the CSO. Alternatively, the Court could, under powers set out in Section 8, in lieu of the fine, simply revoke the CSO and not impose any further sentence or revoke the order and deal with the offender in any way in which he/she could have been dealt with for the original offence had the CSO not been made.

### *Dáil Debates*

On the 20<sup>th</sup> of April 1983, the Community Service Bill came before the Dáil to be debated. In his opening address, the Minister for Justice, Michael Noonan strongly emphasised, what he believed to be, the many benefits that would arise if the Bill was passed and CSOs were introduced. He indicated that there would be benefits to offenders and to communities. In promoting CSOs benefits on offenders, the Minister focused primarily on the CSO's ability to reduce or eliminate the negative effects that prison sentences have on offenders. He said that CSOs would benefit offenders by allowing them to:

‘continue with their education or employment while fulfilling the obligations of the order in their spare time. There will be the minimum disruption of the offender's family life and if the order is used as an alternative to a custodial sentence it should keep the offender from associating with experienced offenders.’ (Dáil Debates, Vol. 341, Col. 1332, 20<sup>th</sup> April 1983)

In terms of benefiting communities he stated that CSOs ‘will provide an opportunity to have useful work done which might not otherwise be done’ and will give the community the opportunity to ‘involve itself in dealing with its members who step out of line’ (Dáil Debates, Vol. 341, Col. 1333, 20<sup>th</sup> April 1983). Another benefit which the Minister touted, and one which he referred to numerous times throughout his speech, was the CSOs ability to address ‘the difficulties being encountered in providing adequate accommodation for those offenders committed to custody by the courts’ (Dáil Debates, Vol. 341, Col. 1329, 20<sup>th</sup> April 1983).

‘I would hope that the accommodation problem will ease soon . . . community service should help ease the problem (Dáil Debates, Vol. 341, Col. 1330, 20<sup>th</sup> April 1983). . . there is, of course the important advantage that, applied as an alternative to a custodial sentence, community service orders should slow down the rate of increase in the number of offenders being committed to custody.’ (Dáil Debates, Vol. 341, Col. 1333, 20<sup>th</sup> April 1983)

The practice of shedding prisoners (releasing prisoners early in order to make room for new prisoners) was prevalent at that time. It was a major concern for the Government and the Minister was of the view that CSOs could assist in addressing this problem. Once the Minister had finished his speech and had commended the Bill to the Dáil, Deputies from all sides of the House were given an opportunity to have their say on the proposed legislation. While the vast majority of Deputies who spoke indicated their support for the Bill, a common feature of the debate was that Deputies spent most of their allocated time expressing their views on various other criminal justice issues while spending very little time talking about the Community Service Bill itself. Time and time again, the Ceann Comhairle had to intervene to direct Deputies to refrain from commenting on issues that were not directly related to the Community Service Bill. The need for increased Garda numbers, strengthening of Garda powers and the introduction of mandatory minimum sentencing were just some of the issues raised (Dáil Debates, Vol. 342, Col. 1344, 20<sup>th</sup> April 1983).

Deputies were at pains to stress the extent of Ireland's crime problem and the impact that it was having on communities within their constituencies. Dr Woods, for example, stated that:

People no longer feel secure and safe in their community or in their homes. They see thieves and vandals flouting and laughing at the law and those who enforce it. They see vigilante committees set up to defend themselves and punishment squads carrying out their own forms of justice. It is an extremely serious situation. (Dáil Debates, Vol. 342, Col. 1339, 20<sup>th</sup> April 1983)

At times an element of hysteria crept into the debate. Deputy Briscoe in seeking more comprehensive criminal justice legislation stated that 'if we do not do something in this year to protect our citizens this place will not be in existence five or six years from now. We will have been taken over by some sort of revolution. . . It is the beginning of what many people in this House have spoken of for years, the beginning of the revolution' (Dáil Debates, Vol. 342, Col. 1372, 20<sup>th</sup> April 1983).

It would appear that Deputies, in particular those representing inner city constituencies, were beginning to see crime as an important political issue and one which they had to address or at least be seen to be attempting to address. So while they supported the Community Service Bill it would seem that there was a fear that the introduction of CSOs alone would not satisfy their constituents. Deputy Briscoe stated during his speech that

I see Deputy Gay Mitchell sitting on the other side. We attend meetings of our constituents regularly and he will agree there is not much in this Bill that would satisfy some of the

people we have had to listen to complaining about what they have been going through. (Dáil Debates, Vol. 342, Col. 1369, 20<sup>th</sup> April 1983)

Deputy Mitchell then replied:

Crime in Dublin was so bad that public representatives are attending meetings now at an average of one a week. In one particular week I attended three public meetings. The situation is so serious that it is difficult for public representatives to give people hope anymore. (Dáil Debates, Vol. 342, Col. 1465, 20<sup>th</sup> April 1983)

With that said, both Deputies still gave their support to the Bill but just urged the Minister to introduce more comprehensive criminal justice legislation along with the Community Service Bill ‘and the sooner the better’ (Dáil Debates, Vol. 342, Col. 1339, 20<sup>th</sup> April 1983). Not all Deputies supported the Bill though. Deputy McGahon was of the opinion that the Bill was not capable of becoming operational or functional. He felt that the answer to crime was the ‘restoration of discipline in society’. This would be achieved by building more jails – ‘We need a jail in every county. If there is a necessity for a jail in every county we should build jails’ (Dáil Debates, Vol. 342, Col. 1947, 26<sup>th</sup> April 1983). It is fair to say however that there wasn’t a huge amount of support for Deputy McGahon’s approach.

While the debate, for the most part, consisted of Deputies having their say on the many, and wide-ranging, problems that existed within the criminal justice system, there were still some constructive comments made about the Community Service Bill and suggestions given on how the Bill could potentially be improved. Both Deputy Lyons and Deputy Andrews were of the view that the work done by offenders should, where possible, be linked to the crime committed. ‘for example, those convicted of drunken driving are required to serve their sentence by working in hospitals tending to serve the needs of accident victims . . . hospitalised as a result of the activities of other drunken drivers’ (Dáil Debates, Vol. 342, Col. 1913, 26<sup>th</sup> April 1983). Deputy Wyse advocated for the sanction to have more of a rehabilitative focus.

There is no mention of preventive activity or any training during the work period . . . all the provisions of the Bill have been drawn merely for the sake of having offenders repay the community for what they have done, full stop, rather than involving them in some kind of rehabilitation or training as part of the sentence. (Dáil Debates, Vol. 342, Col. 1928, 26<sup>th</sup> April 1983)

Deputy Shatter suggested making an amendment to allow for CSOs to be used in circumstances other than where a judge believes that a sentence of imprisonment would be appropriate. He argued that judges should have the option of sentencing young people

appearing before the Courts for the first or second time, who are currently receiving the Probation Act, to a CSO.

‘It would not be seen as an easy option by many offenders and it could instil in them the type of responsibility that would be lacking and prove a deterrent from committing crimes again. I urge the Minister to extend this legislation beyond the area of offenders for whom a judge believes imprisonment would be appropriate.’ (Dáil Debates, Vol. 342, Col. 311, 4<sup>th</sup> of May 1983)

Deputy Wyse queried whether it was necessary to require an offender to consent to the imposition of a CSO and Deputy De Rossa highlighted the importance of sufficient finance and personnel being provided for the sanction to operate successfully (Dáil Debates, Vol. 342, Col. 1382, 20<sup>th</sup> April 1983). The debate then concluded with the Minister addressing some of the issues that had been raised. However just as the comments made by Deputies had covered many different aspects of the criminal justice system so too did the Minister’s speech. In terms of the Criminal Justice (Community Service) Bill the main point that the Minister sought to get across was that the Bill was not being put forward as complete solution to the crime problem. He stressed that it was just ‘one instalment in a series of activities’ which will be taken in order to combat the very serious crime problem which the country is facing (Dáil Debates, Vol. 320, Col. 311, 4<sup>th</sup> of May 1983). The question of whether the Bill should progress to the committee stage was then put to the House and agreed to. The Bill was then ordered to be considered by a committee of the whole Dáil on the 10<sup>th</sup> of May 1983.

#### *Dáil Committee Stage*

The committee stage allows for a detailed examination of each section of the Bill and provides Deputies with an opportunity to propose amendments to the legislation. On this occasion four amendments were put forward, all of which however, were ultimately withdrawn. The first came from Deputy De Rossa. He proposed reducing the minimum age of an offender for which a CSO could be imposed from 16 years to 15 years. The Minister for Justice, in rejecting the amendment stated that ‘the intention of the Bill is that community service should be an alternative to imprisonment or detention and as a general rule, persons under 16 are not sentenced to imprisonment or detention’ (Dáil Debates, Vol. 343, Col. 768 , 8<sup>th</sup> of June 1983). He therefore felt that 16 years was the correct cut off age for CSOs. The second amendment was put forward by Dr. Woods. He proposed removing the requirement that CSOs could only be used as an alternative to a sentence of imprisonment or detention. He argued that by allowing CSOs to be used as an intermediate sanction it would provide judges with an additional and valuable sentencing tool (Dáil Debates, Vol. 343, Col. 905 , 8<sup>th</sup> of June 1983).

In response, the Minister said that if this amendment was passed, CSOs could be used as an alternative to Fines or Probation Orders. He was of the view that if this were to happen it could potentially result in an increase in the prison population as offenders could end up being sentenced to custodial sentences if they breached their CSOs (Dáil Debates, Vol. 343, Col. 906, 8<sup>th</sup> of June 1983). Deputy De Rossa moved the third amendment which proposed to introduce an explicit element of rehabilitation into the sentence. He wanted to include a section which would give judges the option to sentence an offender to attend an educational or training course instead of performing community service. He argued that it would benefit the offenders (most of whom are young, under-educated and unemployed) and as a result would also benefit society (Dáil Debates, Vol. 343, Col. 908, 8<sup>th</sup> of June 1983). The Minister firmly opposed the amendment stating that:

‘This Bill is designed to ensure that offenders who would otherwise be committed to prison carry out unpaid work on behalf of the community as a penalty – and I stress the fact that it is a penalty. I do not think it would be appropriate or desirable to include in this Bill any sanctions which do not have this effect.’ (Dáil Debates, Vol. 343, Col. 909, 8<sup>th</sup> of June 1983)

This response would seem to indicate that the Minister was of the view that the punitive element of the CSO is not solely in the deprivation of the offender’s leisure time but also in the activities that offenders will perform. The Minister refused to accept the amendment and it was withdrawn by Deputy De Rossa. The final amendment came from Dr. Woods. It proposed binding an offender to the peace for a specified period of time when imposing a CSO or to have a CSO in addition to a suspended sentence. This amendment was again rejected by the Minister. He was of the opinion that to allow a CSO to be combined with a suspended sentence would ultimately reduce the discretion of the judge in the event of a breach (as the sentence would be fixed in default) and could result in an offender being punished twice for the same offence. The Minister also rejected the proposal that judges should be allowed to bind an offender to the peace when imposing a CSO. He said that he did not think there was any merit in this proposal (Dáil Debates, Vol. 343, Col. 768, 8<sup>th</sup> of June 1983). Following some back and forth between Dr Woods and the Minister, the amendment was reluctantly withdrawn by Dr. Woods.

The Minister’s strong desire that the CSO be used to divert offenders away from sentences of imprisonment can clearly be seen during the Dáil Committee stage from his absolute and stern rejection of any amendment that might limit CSOs direct ability to achieve this goal. After the Title and all the sections were agreed to, the Bill passed the committee stage and was

reported as it was, without amendments. The motion ‘that the Bill do now pass’ was then put to the house and agreed. Once this was done the Bill was then sent to the Seanad.

### *Seanad Debate*

The Debate in the Seanad began with an address from the Minister for Justice, an address which was very similar to one which he gave at the Dáil debate stage. There were, however, some changes that are worth noting. Firstly, when highlighting the CSO’s potential benefits, the Minister, in the Seanad, focused more on how CSOs could benefit offenders and communities and less on how they could slow down the rate at which the prison population was growing. While he did still mention that the CSO could help to deal with the problem of overcrowding in prisons and the shedding of prisoners, he immediately followed it by saying that it ‘ought to be borne in mind that community service orders are not a panacea for the current pressure on prison accommodation’ (Seanad Debates, Vol. 101, Col.781, 6<sup>th</sup> of July 1983). The Minister had come in for some criticism in the Dáil for being overly concerned with the CSO’s potential ability to reduce the stress on the prison system and for stating it was one of the main objectives of the Bill. (Dáil Debates, Vol. 342, Col. 770 - 771, 8<sup>th</sup> of June 1983). While the Minister, in response to that criticism, said that this was just semantics and that it did not matter whether it was put forward as a primary objective of the Bill or a beneficial side effect, it would appear that in preparing his speech for the Seanad the Minister did take heed of these comments. Secondly, the Minister stressed from the very outset of his address that the Criminal Justice (Community Service) Bill 1983 was just ‘one of a number of measures being taken and planned to cope with the problem of rising crime that concerns us all’ and assured Senators that another, more comprehensive, Criminal Justice Bill was in the course of preparation (Seanad Debates, Vol. 101, Col.779, 6<sup>th</sup> of July 1983).

The Debate was then opened up to the Senators present, for their comments. Senator E Ryan began by saying that ‘This is a good Bill and I do not think it should be criticised merely because it is not another Bill. With the Minister’s assurance that the other Bill is being introduced in the near future, we can devote ourselves to this one Bill’ (Seanad Debates, Vol. 101, Col.784, 6<sup>th</sup> of July 1983). This very much set the tone for the rest of the debate. Unlike the Dáil debate, the debate in the Seanad focused almost exclusively on the Criminal Justice (Community Service) Bill. This led to a highly relevant debate in which many constructive comments were made. While the Bill as a whole was well received by all and was heralded by Senators as being a ‘revolutionary reforming measure’, ‘progressive, and ‘a positive approach

to crime', Senators did put forward some suggestions about how certain aspects of the Bill could be improved upon. Senator O'Leary questioned whether an offender could be said to have fully consented to a CSO in circumstances where he/she is not informed of the length of the sentence of imprisonment for which the CSO is being offered as an alternative. He suggested adding a section which would state that prior to ascertaining whether the offender is consenting, the court shall inform the offender of the actual sentence which will be imposed if he/she does not consent (Seanad Debates, Vol. 101, Col. 851, 7<sup>th</sup> of July 1983). Senator O'Leary was also concerned that under the proposed legislation a CSO could remain in force for an indefinite period of time. Section 7(2) laid down that a CSO, even though it may be out of time from a point of view of doing work, should not lapse. He highlighted that if an offender does not complete all of the hours required under the order within the specified period, for which there may be good and legitimate reasons for him not doing so, there is no method provided for in the Bill which would allow the CSO to be revoked other than the offender or probation officer going to court under the provisions of section 11. He suggested instead that the Bill should state that a CSO will automatically lapse after a period of a few years (Seanad Debates, Vol. 101, Col. 853, 7<sup>th</sup> of July 1983). Senator E. Ryan felt it was going to be difficult to find a sufficient amount of work for offenders. He was concerned that if there was not enough work in some areas that it could lead to a situation where two people from different areas but with equal degrees of guilt may have to serve different sentences due to a lack of community service work in one area (Seanad Debates, Vol. 101, Col. 786, 6<sup>th</sup> of July 1983). Senators also suggested that the Minister should expand and explain in greater detail some practical issues relating to the operation of CSOs, in particular how offenders would be supervised when performing tasks at night or at weekends, issues relating to insurance cover and how the scheme was going to be funded and resourced.

The Minister in his response addressed some of the issues raised by Senators. He assured Senators that CSOs would be properly resourced and gave a more detailed breakdown of the estimated cost of a CSO.<sup>6</sup> He stated that he had not yet fully worked out all of the actual details in relation to the supervision of offenders but said that offenders will not necessarily have to have a supervisor with them all of the time. He felt that checking offenders' work would in many cases be the greatest form of supervision. The example he used was the removal of graffiti. 'What supervision is required? If they are removed, they are removed. That kind of

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<sup>6</sup> The Minister stated that the cost of an offender serving a CSO was £18 per week while the cost of keeping an offender in prison for a week was £424 (Seanad Debate, Vol. 101, Col. 867, 7<sup>th</sup> July 1983).

work can be checked and supervised rather easily' (Seanad Debates, Vol. 101, Col. 872, 7<sup>th</sup> of July 1983). The Minister did not think that finding work for offenders would be an issue. In terms of the type of work offenders would perform he was of the view that there would be a wide variety of work and that the Probation Service would arrange and implement this in a careful and imaginative way. As for the concerns raised by Senator O'Leary, the Minister acknowledged them, and said that he would address them at the Committee stage.

It would appear that the Minister was very conscious not to be seen to be introducing a measure that would simply allow offenders, who should be in prison, out into the community, in order to free up prison places and to save money. With crime rates rising this would likely not be very well received by the public. He therefore placed strong emphasis on promoting CSOs capabilities to achieve a range of other penal functions. However it was clear that even at this late stage in the legislative process there was a distinct lack of clarity as to how exactly the CSO was going to achieve these functions.

#### *Seanad Committee Stage*

While no amendments were officially moved at the Committee Stage, Senators did make a number of constructive comments about the Bill and engaged with the Minister in an in-depth discussion/debate about their concerns with the proposed legislation. Much of the debate centred around issues raised by Senator O'Leary during the Seanad Debate Stage which he again put to the Minister at the Committee Stage. The first of these issues was that under the proposed legislation, Judges, prior to seeking an offender's consent to the imposition of a CSO, did not have to inform the offenders as to what the sentence of imprisonment would be if he/she did not consent to the CSO. Senator O'Leary asserted that if an offender was not fully informed as to what the alternative would be then he/she could not give proper and informed consent to the imposition of the CSO (Seanad Debates, Vol. 101, Col. 880, 7<sup>th</sup> of July 1983). Senator Durcan added a further consideration that if an offender failed to comply with a CSO and for some reason the original sentencing judge could not deal with the breach, the sentencing hearing for the original offence would have to be reheard if the judge now dealing with the case wanted to impose a prison sentence. The Minister, however, felt that Senator O'Leary was over-complicating the situation and if his logic was to be followed then it would not only be necessary for a judge to specify the extent of the prison sentence but also to specify the type and nature of the work that the offender would be required to perform as part of the CSO. This, the Minister felt would lead to all kinds of practical difficulties. The Minister was

also concerned that if Senator O'Leary's suggestion was accepted that it would be used as part of the drama of the courtroom whereby a judge would state a sentence of imprisonment which is much higher than the sentence he thinks is appropriate in order to encourage an offender to opt for the CSO (Seanad Debates, Vol. 101, Col. 883, 7<sup>th</sup> of July 1983). As for the second issue raised by Senator O' Leary that CSOs should terminate after a specified period of time the Minister accepted the Senator's concern and agreed to address it by way of a regulation under Section 14. Senator B. Ryan also had some concerns about how participating on a CSO project would affect an offender's status with the Department of Social Welfare. He suggested that offenders should still be able to say that they are available for work and it should not impact their social welfare payment (Seanad Debates, Vol. 101, Col. 878, 7<sup>th</sup> of July 1983). The Minister again agreed with the Senator and assured him that he would address this with the Department of Social Welfare. Once all the sections of the Bill had been agreed to, the question 'that the Bill do now pass' was put to house and the Bill was passed. The Bill was then sent to the President and was signed into law on the 13<sup>th</sup> of June 1983.

## **Conclusion**

This chapter examined the process by which CSOs came into being in Ireland, from the first documented reference right through to the signing of the Act into law. It showed that there were very few calls for the introduction of CSOs in Ireland and very little interest in the Government's White Paper on the sanction when it was published. Despite the lack of public interest in the sanction, however, all of the political parties who had spent time in Government put forward legislation providing for the introduction of CSOs and when a Bill finally came before the Dáil to be debated, Deputies from the major political parties, while spending most of their allocated time talking about other crime and criminal justice issues, ultimately gave their support to the Bill and to the introduction of the CSO. The reason for this, it is submitted, is that it was glaringly obvious that Ireland was experiencing a prison crisis which needed to be addressed and CSOs were seen as a legitimate solution to the crisis.

It is evident from the changes that were made from the original English legislation (most notably that CSOs can only be used as an alternative to imprisonment) as well as Minister Noonan's absolute refusal to accept any amendment which he thought would limit the ability of CSOs to reduce the use of imprisonment, that one of the primary reasons for introducing CSOs in Ireland was to ease the increasing pressure on the prison system. Comments made

by Deputy Shatter, a member of the Government party and the TD who first put forward legislation in this area, are also quite insightful here.

‘I have no doubt this present legislation is before the House, partly – and, it is meritorious in in itself - because it has been forced on the Government by the fact that the prison system cannot cope with the number of offenders who are being sentenced to imprisonment.’ (Dáil Debates, Vol. 320, Col. 311, 4<sup>th</sup> of May 1983)

However, with crime becoming more of a concern for the general public, the Government did not want to be seen to be introducing a measure which would give offenders the option of avoiding imprisonment simply to allow the Government to reduce prison numbers and save money. The CSO was therefore strongly promoted as a sanction that was going to achieve a range of penal functions. It was advocated that CSOs would punish offenders for the crime they had committed, help to rehabilitate them so that they would be less likely to commit other offences in the future while also including an element of symbolic retribution to the community. Due to a lack of discussion and analysis of core concepts inherent within the original idea of CSOs though, the Irish CSO was passed into law in the absence of clarity as to how it was going to achieve all of the functions which its proponents had said it was going to achieve. Furthermore, while policy-makers may have identified, to some degree, the targeted group for which CSOs were to be used on (i.e. offenders currently being sentenced to imprisonment), a dearth of criminal justice data in Ireland meant that very little was really known about the offenders within this targeted group. So while the Criminal Justice (Community Service) Act 1983 may have passed through the Houses of the Oireachtas with ease and the CSO heralded as ‘revolutionary reforming measure’ which was going to perform a range of important penal functions, in reality a sanction had been signed into law in circumstances where very little was known about the offenders for whom it was to be imposed upon and where there was a huge degree of uncertainty as to how it was going to operate to achieve its many stated objectives. It seemed to be just presumed that because the CSO appeared to be achieving these functions in England and Wales that this would also be the case in Ireland. The next chapter will now proceed to look at the setting up of CSOs in Ireland and explore how they operated from 1985 to 2017.

# **Chapter 4 - The Implementation of the Criminal Justice (Community Service) Act 1983 and the operation of CSOs from 1985 to 2017**

## **Introduction**

In the previous chapter the passage of the Criminal Justice (Community Service) Act 1983 through the Houses of the Oireachtas was outlined and discussed. This chapter will now begin by describing the sanction which was set out in that Act as well as in the supplementary rules and regulations. Once this is done, the focus of the chapter will then turn to the implementation and operation of the legislation. With regard to the implementation of the legislation the chapter will focus in particular on the Probation and Welfare Service (as it then was) and on the judiciary. It will examine the structures that were put in place within the Probation and Welfare Service to allow for the operation of the CSO. It will also examine guidelines given to probation officers on how to perform their duties as well as the information which was supplied to the judiciary about the sanction. In doing so, this chapter will provide a complete picture of the Irish CSO. The second part of the chapter will then focus on how the CSO actually operated, from 1985, when the first order was made, up until 2017, with specific attention given to developments which were made to the CSO during this period.

## **The CSO as set out in legislation**

The Criminal Justice (Community Service) Act 1983, the Criminal Justice (Community Service) Regulation 1984 and the District Court [Criminal Justice (Community Service) Act] Rules 1984 outlined what the Irish CSO was to be and set the parameters within which it had to operate. The legislation initially gave all courts exercising criminal jurisdiction, except the Special Criminal Court, the power to impose a CSO. However, because the legislation specifically stated that it was the ‘court by or before which an offender is convicted’ that may impose a CSO, it in effect also prevented the Court of Criminal Appeal and Supreme Court from imposing a CSO as they both only heard cases on points of law and did not conduct a hearing *de novo* (Walsh and Sexton 1999, p.15). In a similar vein it precluded the Circuit Court

from imposing a CSO when it was hearing a District Court appeal against the severity of a sentence only (Walsh and Sexton 1999, p.15)<sup>7</sup>.

Where a court did have jurisdiction it could only impose a CSO under certain conditions and within certain parameters. The CSO was to be an alternative to imprisonment and not a sanction in its own right. Therefore, a judge could only impose a CSO where it would, but for the Act, have otherwise imposed a sentence of imprisonment (section 2, section 3). This created a very high threshold that needed to be reached before the imposition of a CSO could even be considered. As for the offender, they had to be over the age of 16 and the court had to be satisfied that they would be suitable to perform work in the community and that arrangements could be made for such work to be carried out (section 4). The legislation required that the offender be assessed by the Probation and Welfare Service and a written report addressing these two issues in particular be submitted to the court before it could proceed to impose a CSO. No further guidance is given in the Act though, as to what information would be relevant to the offender's 'suitability' or how much detail should be included about what 'arrangements' can be made (Walsh and Sexton 1999, p.74). The Act also stated that a judge could only impose a CSO where the offender gave his/her consent to the imposition of the sanction, but it did not stipulate how or when this consent had to be given (section 4). The legislation set out that the length of the CSO had to be between 40 and 240 hours and, in general, had to be completed within one year (section 2, section 7). Where an offender was convicted of multiple offences, the court could impose more than one CSO to run consecutively or concurrently but the aggregate total could not exceed 240 hours (section 5). The Act did not allow for CSOs to be combined with any other primary punishment although secondary sanctions such as revocation of a licence, forfeiture, confiscation, seizure of property, compensation or an order of costs could be made in addition to a CSO (section 3).

The legislation gave no guidance to judges on how community service should be valued when comparing it to a prison sentence (for example x amount of hours community service is equivalent to 1 month in prison). Judges were essentially given absolute discretion in this regard. The Act itself was also silent on the type of work which should be carried out under a CSO, other than to say it had to be unpaid. However, the regulations made pursuant to the Act

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<sup>7</sup> It would appear that this is no longer the case following the implementation of the Criminal Justice (Community Service) Amendment Act 2011. The legislation has been amended to now state 'a court by or before which an offender stands convicted' instead of what had previously been set out in the original 1983 Act of 'the court by or before which an offender is convicted'.

did state that the relevant probation officer had to ‘ensure, as far as practicable, that work to be performed by an offender under a community service order is of benefit to the community or to an individual or group of individuals in need’ (Regulation 4.b). While this placed some conditions on the type of work which could be performed as part of a CSO, according to Walsh and Sexton (1999, p.17) it was far more generous than other jurisdictions. It would appear to allow for work to be done for any public or private organisation or individual (even one linked to the offender). The court was given no role in choosing the type of work which was to be performed. This role was given to the Probation and Welfare Service. They would make this decision, in consultation with the offender and within the limits of the legislation and supplementary regulations. The Probation and Welfare Service were also given the task of supervising the operation of the sanction. The legislation required that offenders perform the CSO as directed by the relevant probation officer. When giving these directions, though, the probation officer must, in so far as is possible, not interfere with an offender’s work or education (section 7).

The legislation allowed for a CSO to be reviewed on application from an offender or probation officer. It stated that where a court is reviewing a CSO they can consider all circumstances that have arisen since the CSO was first imposed (section 11). The court can then either revoke the CSO, revoke it and deal with the offender in some other way for the offence in respect of which the CSO was made or make no change and require the offender to continue to perform the original CSO. The Act states that this decision should be based on what is in the interest of justice. The Act does not however provide any guidance as to what is meant by the ‘interest of justice’ or what circumstances would justify a revocation of the original order.

Where an offender fails, without reasonable excuse, to comply with the requirements of the CSO imposed upon them, they shall be guilty of an offence and, without prejudice to the continuance of the CSO, shall be liable on summary conviction to a fine not exceeding £300 (section 7). Where an offender is convicted of such an offence, the legislation allows the court, in lieu of imposing a fine, to revoke the original CSO and deal with the offender in any other way for the offence for which the original CSO was made. The Probation and Welfare Service were given the role of identifying and prosecuting breaches of the CSO under the supplementary regulations. Finally it is the Probation and Welfare Service’s responsibility to certify that offenders have completed the CSO imposed upon them and inform the relevant court when this has occurred (Regulation 11).

While the legislation, combined with the supplementary rules and regulations, were clear and detailed in relation to certain aspects of how the CSO was to operate, it was silent or vague in relation to others. For example, the legislation provided very little guidance as to how an offender's suitability to perform community service should be assessed, what type of work should be performed as part of a CSO and what conduct would amount to a breach of a CSO. The legislation leaves these and other important issues very much within the discretion of the Probation and Welfare Service. It also provides the judiciary with very little guidance as to when a CSO should be considered and when it should not (apart from the requirement that it could only be used as an alternative to imprisonment) and provides very little guidance as to how a CSO should be valued. Therefore, when attempting to understand what the Irish CSO was, it is necessary to look beyond simply what is contained in the statute books. In order to get a more complete understanding of the sanction it is necessary to examine how the legislation was actually implemented.

### **The Implementation of the Criminal Justice (Community Service) Act 1983**

This section will firstly set out how the Criminal Justice (Community Service) Act was implemented within the Probation and Welfare Service and what guidance was given to Probation Officers with regard to how they should perform their statutory duties. It will then examine what information was provided to the judiciary about the sanction and how this information was communicated to them. Once this has been done the section will identify where the new legislative sanction fits within the existing Irish criminal justice and penal system.

#### *Implementation of the Act within the Probation and Welfare Service*

Under the Criminal Justice (Community Service) Act 1983 the Probation and Welfare Service were given responsibility for the management and operation of the CSO. After the Act had passed through the Houses of the Oireachtas and was signed into law, the Probation and Welfare Service had to put systems in place to allow for the new sanction to operate. A group of senior officials within the Service were tasked with putting together a document that would set out how the new sanction would be implemented within the Probation and Welfare Service. This Document, which was entitled 'The Management of the Community Service Order' (Probation and Welfare Service 1984) set out exactly how the CSO was to operate and

provided guidance to probation officers as to how they should perform their new duties given to them by the Act.

One of the things that the document did was detail the procedures to be adopted by probation and welfare officers when preparing community service reports. It provided guidance for officers on how to assess the suitability of an offender for community service. The following is a series of questions which probation and welfare officers were to have regard to:

- (a) Has s/he a permanent address?
- (b) Has s/he a work record?
- (c) Do his/her working hours leave enough free time to do community service?
- (d) Will family responsibilities allow him/her to do community service?
- (e) Is s/he in good health?
- (f) Has s/he any psychiatric, emotional or environmental problems which make him/her unsuitable to perform community service?
- (g) Will the Court be able to make a Community Service Order without taking unwarranted risk, bearing in mind the offence and the past record of co-operation with the service?
- (h) Is s/he likely to be motivated towards community service?
- (i) Is s/he without a constructive use of his/her leisure time?
- (j) Has s/he a serious drink or drug habit?
- (k) Has s/he a record of violence
- (l) Does his/her offence or record include serious sexual misbehaviour?
- (m) Does s/he understand the demands of the Order and the implications of failure to complete?

(Probation and Welfare Service 1984, p.3)

While the guidance did highlight the main issues which should be considered by probation and welfare officers when assessing an offender's suitability for community service, it did not provide clear rules as to when they should deem an offender unsuitable. It left a significant amount of discretion with the probation and welfare officer when performing this duty.

The document also gave some guidance on the type of work which should be sought for offenders to perform as part of their CSO. It stated that the projects most suitable for resources were 'basic painting and decorating, gardening, landscaping, maintenance of buildings, cleaning/tidying graveyards and other similar projects' (Probation and Welfare Service 1984,

p.6). It did however also say that, where possible, consideration should be given to personalised projects where the individual has a direct working responsibility for and with the recipients of the service.

In describing the role of probation and welfare officers and community service supervisors it stated that it was the responsibility of the probation and welfare officer to oversee the implementation of the court order while community service supervisors would be engaged to supervise offenders' work - they would record or report the attendance, application and behaviour of offenders and when required give guidance on technical aspects of the work to ensure that the work carried out was of a satisfactory standard (1984, p.4). It was not envisaged that either the probation officer or community service supervisor would look to identify and address the root causes of an offenders' offending behaviour.

As for when an offender should be brought back before the court for non-compliance the document states that this will primarily come about as a result of offenders being absent from their work placement. It states that absenteeism can be broadly categorised as acceptable or unacceptable.

‘Acceptable absenteeism will occur where the offender is unable to attend at placement arising from a genuine illness, bereavement in the immediate family, compulsory overtime at work, custody or any other reason approved by or known to the supervising officer when notified and agreed in advance’. (Probation and Welfare Service 1984, p.5)

All other absences it said should be regarded as unacceptable. It states that as a general rule after two unacceptable absences the third should lead to a return to court (Probation and Welfare Service 1984, p.5). The document does not, however, mention the many other types of conduct which could amount to a breach and does not give any guidance on how they should be dealt with. Again it can be seen that just like the other duties, when it comes to deciding on whether or not to bring an offender back before the court for non-compliance, that the probation and welfare officer was given significant discretion.

Another thing that is worth noting here is that while the objectives of the CSO remained uncertain following the passing of the Criminal Justice (Community Service) Act 1983 through the Houses of the Oireachtas, this document ‘The Management of the Community Service Order’ clearly set out what the Probation and Welfare Service (a branch of the Department of Justice and the body responsible for operating the CSO) believed the objective of the sanction to be. Under the heading of ‘Objectives of Community Service’ the document sets out three objectives:

- (a) To provide a method of dealing with offenders who would otherwise be sentenced to imprisonment.
- (b) To provide offenders with the opportunity to make general reparation for their offending.
- (c) To further the notion of community responsibility for offending and involvement of the community with offenders.

(Probation and Welfare Service 1984, p.2)

From the Probation and Welfare Service's perspective the CSO was an alternative to imprisonment that would punish offenders and allow them to make general reparations. While the Service itself had a strong rehabilitative ethos it is clear from this document that they did not believe rehabilitation to be a primary objective of the CSO. A Senior Probation Official involved in the setting up of the CSO within the Probation and Welfare Service described the rehabilitative aspect of the sanction as follows:

‘it was really punitive in effect ... basically what they would have to do was complete the order and that was considered a success and that was it. But certainly you would like to see that the guy or girl ... that they might develop a work ethos from it, and they would go on and lead a more industrious life.’ (Retired Senior Probation Official)

Probation and Welfare officers were not expected to actively seek to identify an offender's criminogenic needs and attempt to address them, nor did the sanction appear to incorporate any of the rehabilitative concepts and assumptions inherent within the English CSO. As already noted, key to the rehabilitative design in England and Wales was that offenders would perform meaningful work and where possible this would be performed alongside other non-offending volunteers. In Ireland there was not the same focus (throughout the Oireachtas Debates or in the Management of the Community Service Order document) on the type of work that would be performed and the role it could play in rehabilitating offenders. This differentiates the Irish CSO significantly from the CSO in England and Wales. While it was hoped that offenders would develop a work ethos from participating on a CSO which would assist them in living a more industrious life, the Irish sanction was not designed to rehabilitate offenders. Rehabilitation was not a primary objective of the sanction but rather was seen as a potential beneficial side effect.

#### *Informing the Judiciary*

After writing ‘The Management of the Community Service Order’ document, senior members of the Probation and Welfare Service then attended a conference organised for the judiciary and informed judges about the CSO and how it would operate (Retired Senior Probation Official). While the author of this thesis was unable to get any transcripts of presentations that

were made on the day, one can reasonably assume that when explaining the sanction to judges that they would not have deviated too much from what was set out in 'The Management of the Community Service Order' (Probation and Welfare Service 1984). This document made it clear that the CSO is only to be used as an alternative to imprisonment. It also made it clear that the CSO is punitive and reparative. It is punitive in that it deprives offenders of their leisure time and reparative in that it allows them to carry out unpaid work in the community. While the sanction does not actively seek to address the criminogenic needs of offenders it is expected that the sanction will have some rehabilitative effect. As well as eliminating the negative effects that a prison sentence has on an offender it is expected that offenders would develop good habits and skills from performing their work in the community and that this in turn would reduce the likelihood of them reoffending.

### *The Boundaries of the Irish CSO*

Having looked at the origins of the CSO, the development and passing of the Criminal Justice (Community Service) Act 1983 as well as the practical implementation of the legislation, it is now worth briefly discussing where the CSO was going to fit within the existing Irish penal system and what were the limitations and boundaries of the sanction. As stated many times already in this thesis, the CSO was to be used solely as an alternative to imprisonment. That essentially put in place a very high threshold that had to be reached before a judge was to consider imposing a CSO. An offender would need to have committed an offence serious enough that a judge would consider the removal of the offender's liberty as an appropriate response or that the offender had continuously offended to such an extent that a judge would feel that a custodial sentence would be warranted. The CSO was therefore not being targeted at very low-level offenders. It was being targeted at offenders who had either committed a serious offence or offenders who had committed numerous offences.

Once this threshold had been reached then a judge could consider imposing a CSO as an alternative to sending the offender to prison. Before imposing a CSO, however, a judge had to first satisfy him/herself that the offender was suitable for community service (that they would perform the work and not put the community at risk) and that suitable work was available for the offender to carry out. They were to do this by asking the Probation and Welfare Service to prepare a report addressing those two issues in particular. As set out in 'The Management of the Community Service Order' (1984) when assessing the suitability of an offender for community service, probation and welfare officers were to consider factors such as the existence of a permanent residence, the presence of psychiatric, emotional or environmental

problems, whether an offender had a record of violence or a serious drug or alcohol addiction. So essentially the ideal offender was one who had committed an offence serious enough to warrant a custodial sentence or was a repeat offender but who had a permanent residence and who did not suffer a psychiatric illness, did not have a violent record or a serious drug or alcohol habit. While having these factors would not necessarily mean an offender could not receive a CSO, their presence did make it less likely that they would be deemed suitable for community service by the Probation and Welfare Service or that a judge would think that a CSO was appropriate, as the CSO was not designed to help an offender to address or overcome any of these factors if they were present in their life. From the outset, therefore, this essentially placed a boundary around the CSO and severely limited the number of offenders whom CSOs would likely be imposed upon. The focus of the chapter will now turn to how CSOs operated and were used, starting from 1985 the year the first CSO was imposed.

### **The Operation and use of CSOs from 1985 to 2010**

This section will detail how CSOs operated and were used. It will highlight how the lack of data and research has negatively impacted our understanding of this, particularly the early operation of the CSO. It will show, however, that over the years as more research began to be conducted on the CSO, it increased our knowledge and understanding of how the sanction was operating and it allowed for critical discussions to take place about the CSO and how it could be improved.

#### *The early operation of CSOs*

In a report by the Whitaker Committee in 1985 it was stressed that the CSO scheme should be properly monitored from the outset. They stated that while the committee endorsed the concept of the CSO and the way in which it was being implemented in Ireland there was still a lot unknown about the sanction and in their view the CSO needed to be regularly evaluated (1985, p.50). Unfortunately, policy-makers in Ireland did not take heed of this advice and little or no research was conducted on the CSO during its early years of operation. The net effect of this lack of research is firstly, that there was and still is very little known about the early operation of the CSO in Ireland and secondly, as will become evident below, the CSO saw very little development during its first 25 years in operation.

Graph 1



Source: O'Donnell et al (2005); National Crime Council Statistics; Probation Service Annual Reports

The first CSO was imposed in February 1985 with a total of 698 orders being made that first year. The use of the sanction steadily increased over the next number of years reaching 1,759 orders in 1993 before the use of the sanction began to decline, falling as low as 1,167 orders in 1997. The dearth of research on the CSO and on the criminal justice system in general during this period makes any analysis of the sanction or attempt to understand the reason for the decline in use of the CSO extremely difficult. Looking back now there are many factors which could conceivably have played a role. Firstly, crime rates in Ireland had increased significantly from the 1950s up until the early 1980s. From 1984 however, crime rates went through a period of fluctuation before eventually reaching a period of sustained reduction in 1995 (Young 2001, p.21). This reduction in the crime rate is reflected in the number of criminal cases which came before the courts. For example, the total number of non-indictable offences which resulted in a conviction reduced from 254,274 in 1993 to 202,744 in 1997. The number of indictable offences which resulted in a conviction similarly reduced from 5,719 to 4,399 during the same period (O'Donnell et al 2005, pp.129-132). It is therefore conceivable that this reduction in the crime rate and number of convictions impacted, to some extent, the number of CSOs that were being imposed.

Secondly, drug-related offences and the number of offenders with drug addictions increased from the 1980s onwards and had reached staggeringly high levels by the mid-1990s. Garda

research which was conducted in 1996 showed that 43% of those apprehended for indictable crimes in the Dublin Metropolitan Area were known hard drug users and they were responsible for 66% of all detected crime in that area (Keogh 1997, p.x). That included 84% of detected offences of larceny from the person and larceny from unattended vehicles and 82% of ordinary burglaries. While these figures could not be said to be representative of the entire country they do give some indication of the extent of the drug problem at that time. O' Mahony's (1997, p.103) study on the sociological and criminological profile of prisoners in Mountjoy supports this by highlighting the extraordinarily high level of drug use amongst those imprisoned in Mountjoy Prison in 1996. The CSO, while put forward and promoted as a sanction capable of achieving numerous penal objectives, was never shown to be capable of addressing and overcoming addiction issues. It is, therefore, plausible that judges did not view the CSO as a suitable sanction for offenders who were hard drug users and that this would have contributed to an overall reduction in the use of the sanction.

Thirdly, the public attitude towards crime appears to have changed significantly from 1992 to 1997. This was a time when gangland violence began to receive significant media attention particularly in the aftermath of a number of high profile murders such as Detective Garda Jerry McCabe and journalist Veronica Guerin. In an MRBI survey conducted for the *Irish Times* in 1992, when asked what are the main issues the parties should be addressing in this election campaign, only 8% of respondents said crime/law and order. When a similar MRBI survey was conducted in 1997, 41% of respondents said crime/law and order (Kilcommins et al 2004, p.136). This demonstrates a clear heightening of the public's concern about crime/law and order. The impact of this on politicians is clearly evident. Not only did it lead to the use of 'tough on crime' rhetoric, it also impacted penal policy. During this period prison building projects were initiated (O'Donnell 2005, p101), a constitutional referendum took place which asked the people of Ireland if the constitution should be amended to allow a judge to refuse bail if the judge was of the view that a person would commit a serious offence if granted bail (the amendment passed with 74.8% voting in favour) and legislation was introduced which provided for a presumptive minimum sentence of 10 years if a person is found in possession of a controlled substance worth €13,000 or more<sup>8</sup>. O'Donnell suggests that this period is a textbook case of 'moral panic' (O'Donnell 2005, 106). Public anger and anxiety were inflamed

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<sup>8</sup> Section 15A, Misuse of Drugs Act 1977, as inserted by Section 4 of the Criminal Justice Act 1999

and a raft of legal and policy changes were set in motion to clamp down on crime (O'Donnell 2005, 106).

It is possible that this 'moral panic' would have impacted the judiciary and made judges more reluctant to impose a sanction which could be viewed as being 'soft on crime'. In the absence of sentencing statistics for this period though, it is difficult to properly evaluate this factor and the role it played in the reduction in the use of the CSO. These are just some of the stand out factors which could potentially have had an impact on the use of the CSO. There are of course many more. The availability of community service projects around the country, whether judges thought that the projects that were available were suitable and an array of other practical and administrative issues could all have played some role. In the absence of in-depth research of this period one can do little more than speculate when writing about the use of the CSO in its early years of operation and when discussing the reasons for the reduction in the use of the sanction from its high point in 1993.

#### *The First Empirical Study of CSOs in Ireland*

It was not until 1999 that the first empirical study of CSOs was published (Walsh and Sexton 1999). This wide-ranging study provided the first real insight into how CSOs were operating in Ireland. It provided data on the types of offenders receiving CSOs and the types of offences which resulted in the sanction being imposed. It also analysed how judges and probation officers were performing their duties and exercising the discretion given to them under the 1983 Act as well as highlighting some practical and procedural issues arising from the operation of the sanction. Focusing first on the types of offenders receiving CSOs, it found that CSOs were predominantly being imposed on healthy single male offenders. Out of the 269 offenders analysed in the study 95% were male. 77% were single. 65% did not suffer from any mental or physical illness. Of those who did suffer an illness the most common one was what was termed in the report as 'alcohol or drug abuse' (27%). This figure may be somewhat misleading though as it includes offenders who had a history of drug/alcohol abuse but who were no longer abusing the substance at the time of their sentencing hearing. Even without knowing the exact breakdown of the 27% it is still clear from the study that judges, for the most part, were reluctant to use CSOs when sentencing offenders who were abusing drugs or alcohol. Another characteristic of note was that 43% of offenders had no previous convictions and out of the 57% who had previous convictions, 40% (25% of the whole sample) had previous convictions which were classified in the study as minor (Walsh and Sexton 1999, pp.25-34).

With regard to the types of offences which resulted in a CSO the study found that 88% of cases could be grouped into 7 categories of offences: larceny (22%), less serious assault (15%), driving offences (15%), malicious damage (10%), public order offences (9%), MPV offences (9%) and burglary (8%). Possession of a serious weapon, serious assault, drugs offences, robbery and miscellaneous offences made up the remaining 12% of cases (Walsh and Sexton, 1999, 35-45). This breakdown of offences combined with the fact that 68% of offenders had either no previous conviction or had only minor convictions led Walsh and Sexton to conclude that net-widening was likely taking place. Net-widening could be said to be occurring if judges were imposing CSOs in cases where they would not ordinarily have imposed a sentence of imprisonment. In other words, if judges were not using CSOs exclusively as an alternative to imprisonment and were at times using it as an alternative to other non-custodial sanctions.

When the study explored how judges and probation officers were performing their duties and exercising the discretion given to them by the 1983 Act, it found major inconsistencies existed. It suggested that some judges may have been more inclined to impose CSOs than others. Furthermore, when CSOs were imposed it was shown that there were significant variances in how they were being used, in particular how judges were valuing community service against imprisonment. The study examined the average number of hours community service that had to be worked in each court district to be equivalent to one month imprisonment. The difference between the highest and lowest equivalences was found to be 52 hours (Walsh and Sexton 1999, p.51). In Donegal, on average, 63 hours community service was equivalent to 1 month imprisonment while in Portlaoise, 11 hours community service was equivalent to 1 month imprisonment.

As for the duties being performed by probation officers, in particular, their role in assessing offender's suitability to perform community service, the study also found some inconsistencies. There were significant variances with regard to the style and the level of detail of community service reports submitted to the court by probation officers. Out of the 257 reports analysed, 57% were described as detailed, 33% as concise and 10% as very brief (Walsh and Sexton 1999, p.72). Furthermore, it highlighted, through interviews with probation officers, that there were differing views amongst them as to what exactly their role was under the legislation.

‘Some officers gave a very blunt functionalist view of their role: "I assess their suitability and concurrently investigate an appropriate placement"; "I simply assess the guy to see if he is suitable or not"; "[I make] an honest assessment of people's ability to do a CSO. I need to be able to stand over it in court". Others see their role more in terms of a mission to assist in

the rehabilitation of the offender: "I'm a social worker so I try to make a connection vis-a-vis a fairly dynamic report to the court"; "I see it as somewhat broader than just community service. I also try to look at the addiction issues"; "I give a picture to the court of who the client is. I often point out the terrible disadvantages these people have faced in life"; "I let the client know of this great opportunity to stay out of prison".' (Walsh and Sexton 1999, p.75)

It is also interesting to note that the study found that 2 out of every 9 reports submitted in the Dublin area were unfavourable. This clearly demonstrates that probation officers were playing a significant role in filtering out offenders who they felt would not be suitable to perform community service (this is important because it will be shown later that probation officers no longer appear to be performing this function to the same degree).

Another issue of note which was examined in the study was the overall completion rate of CSOs. It found that 81% of the orders were successfully completed (Walsh and Sexton 1999, p.54). The authors were of the opinion that this was a very high success rate, by any standards. It was noted, however, that successful completion did not mean that the order was completed without any breaches. Finally, the report highlighted some practical issues which were giving rise to some concerns, most notably the length of time it was taking in some districts for a CSO to commence as well as the lack of State-provided insurance cover for injury, loss or damage caused by an offender while performing his/her community service. It highlighted that many districts outside of Dublin were experiencing significant delays in the commencement of CSOs with over 40% of orders in some districts taking more than 2 months to commence (Walsh and Sexton 1999, p.54). As for the lack of State-provided insurance cover for community service projects it was suggested in the report that this was becoming a major obstacle for probation officers when sourcing suitable community service projects. It was pointed out that very few county councils or corporations were willing to make work projects available as a result of the legal advice they had received concerning insurance cover and that many more varied and meaningful projects would be available nationwide if the insurance problem could be overcome (Walsh and Sexton 1999, p.61).

This report provided the first real insight into how the CSO was operating in Ireland. It identified problems and concerns with the operation of the sanction and by doing so made it easier for them to be addressed and for improvements to be made to the community service scheme. For example, the report directly led to a system being put in place whereby any injury or damage caused by offenders in the course of a CSO would be covered by the Probation and Welfare Service's State indemnity and would be dealt with through the State Claims Agency (Comptroller and Auditor General 2004, p.59). It also meant that, for the first time, discussions

about the CSO and its future could be informed by data opposed to being based solely on mere speculation.

#### *Concern about the Low use of CSOs*

As mentioned above the use of the CSO had declined year after year from 1993 to 1997. In 1998, however, the downward trend stopped and the use of the order increased. 1,269 CSOs were imposed in 1998 and this increased again in 1999 to 1,342 orders (O'Donnell 2005). The upward trajectory did not last long however and between 2000 and 2003 the use of the order fell significantly with only 893 orders being imposed in 2003 (Probation Service 2004, p.62). The low use of the order was starting to become a major problem. It appeared that judges were becoming more and more reluctant to use the CSO. While it could be argued that judges had never really fully embraced the CSO, it was clear that the problem was getting worse. In the ten years, from 1993 to 2003, the use of the CSO had dropped from 1,759 orders to 893 orders. This led to numerous calls, from a range of different bodies and organisations, for an increase in the use of CSOs (National Crime Forum 1998; Expert Group on the Probation and Welfare Service 1999; National Economic and Social Forum, 2002; National Crime Council, 2002; 2003). But while there may have been a widespread belief that the use of the CSO should increase there was very little known about why judges were so reluctant to use them or what could be done to increase judges' use of the sanction. The Comptroller and Auditor General (2004), as part of a review of the Probation Service, made some suggestions as to why it thought the use of the CSO was so low. The view expressed was that it could be due to CSOs being unsuitable for offenders with substance misuse problems and also due to the decline in unemployment rates meaning that 'fewer offenders are available to undertake work in the community during normal work hours' (Comptroller and Auditor General 2004, p.23). The report did not expand further on these suggestions, however, nor did it provide data to support them. The effect of the lack of regular and up to date data on CSOs was really starting to be felt and the calls for more research in this area intensified (Law Reform Commission 1996; Dept. of Justice 1997; Walsh and Sexton 1999; Expert Group on the Probation and Welfare Service, 1999; National Economic and Social Council, 2002; National Crime Council 2002; 2003). As for the use of the sanction it decreased again in 2004 to 843 orders. In 2005, 1,176 orders were imposed and between 2006 and 2009 the use of the order fluctuated, reaching as low as 1,158 in 2006 and as high as 1,667 in 2009.

### *Other Major Studies of CSOs in Ireland*

In 2009 the Department of Justice, Equality and Law Reform published its Value for Money and Policy Review of the Community Service Scheme. As well as following up and expanding on some of the findings of the Walsh and Sexton Report (1999) it also provided information on new issues relating to the operation of the CSO which had come to the forefront since the publication of the Walsh and Sexton Report in 1999. Most notably, it provided some insight into why the CSO was being under used and how this issue could be addressed. Its findings in relation to how the sanction was being used, for the most part, highlighted that very little had changed in the ten years since the Walsh and Sexton report. It found that, just as had been shown in the previous study, significant inconsistencies continued to exist in relation to the use of the sanction across different regions. It found that the average number of hours' community service that had to be worked in each region to be equivalent to one month imprisonment ranged from 26 to 43 hours (Department of Justice, Equality and Law Reform 2009, p.5). It also provided data to support the suggestion that had been made previously in the Walsh report that some judges were more inclined to impose CSOs than others. It highlighted that, in 2006, 29 Courts accounted for 80% of the total number of CSOs imposed with 60% coming from just 12 Courts (Department of Justice, Equality and Law Reform 2009, p.38). The study then looked to ascertain why this was the case. Questionnaires were circulated amongst judges in order to get their views on a range of issues relating to community service.<sup>9</sup> It found that nearly every judge supported the CSO in principle, with 95% of judges who responded indicating that they were positively inclined to use it (Department of Justice, Equality and Law Reform 2009, p.52). However when the questionnaire delved a little deeper it unearthed some interesting data. It found that 58% of judges were unsure or did not know what community service projects were operating in their area. 54% were unsure or they did not think that community service projects in their area were suitable sites for CSOs. 44% were unsure or did not think that community service projects were of benefit to the community and 40% said that they were unsure or did not think that CSOs benefited offenders (Department of Justice, Equality and Law Reform 2009, p.52).

The CSO was introduced and promoted as a sanction that could achieve a range of penal functions (punishment, reparation and rehabilitation). What this report shows, however, is that a substantial portion of judges had doubts about the ability of the CSO to achieve these

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<sup>9</sup> In total 100 questionnaires were circulated to District and Circuit Court Judges. 29 Judges responded, 17 District Court Judges and 12 Circuit Court Judges.

important functions (the touted benefits of CSOs). If judges are unsure or do not think that CSOs can achieve these functions then this will inevitably impact whether or not they use the CSO or the extent to which they use it. If these doubts exist when they are fully informed of the type of work projects operating in their area and after they have assessed and considered all of the available research on CSOs then there is very little that can be done to encourage them to increase their use of the sanction in its current form. The decision of whether or not to impose a CSO ultimately falls within the wide discretion given to judges when it comes to the sentencing of offenders. What the Value for Money and Policy Review highlights, however, is that many judges may well be forming their views about CSOs in the absence of important information about the sanction. Over half of the judges surveyed said that they were unsure or did not know what CSO projects were operating in their area (Department of Justice, Equality and Law Reform 2009, p.52). This indicated a major communication problem between the Probation Service<sup>10</sup> (whose role it is to promote the use of the CSO) and the Judiciary. If judges are doubting the abilities of CSOs in circumstances where they are unaware of the type of work projects operating in their area and/or where they have not fully considered all of the available (albeit limited) research on CSOs then some relatively simple steps could be taken to address this and to try increase their use of the CSO. This was recognised in the report and it was recommended that as part of the overall goal of increasing the use of the sanction that systems should be put in place to increase and improve the communication between the Probation Service and the Judiciary. In particular, that information on the impact achieved by the Community Service Scheme both for offenders and for communities, at a national and local level, along with specific information on schemes operating locally should be made available to Judges by the Probation Service (Department of Justice, Equality and Law Reform 2009, p.57).

The report also examined a number of other issues such as the cost of CSOs in comparison to imprisonment and the capacity of the Probation Service to deal with an increase in the use of the CSO. It found that the cost of a CSO was 34% of the cost of imprisonment. This was significantly higher than what had previously been suggested but nevertheless still showed that the CSO was significantly cheaper than imprisonment. As for the capacity of the Probation Service to supervise more offenders it found that the capacity utilisation of Community Service Supervisors nationwide, on an aggregate basis, was 33%. This meant that the existing supervisors, operating at full capacity, could provide supervision services to three times as

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<sup>10</sup> The Probation and Welfare Service was renamed the Probation Service in 2006

many offenders (Department of Justice, Equality and Law Reform 2009, p.74). In total 11 recommendations were made in the report, the purpose of which was to try make CSOs more efficient and more effective as well as to try increase the use of the sanction. The recommendations were categorised as high or medium priority and dates were also outlined for when they should be implemented.

2009 was also the year when Judge David Riordan completed his PhD thesis - 'The role of the community service order and the suspended sentence in Ireland: a judicial perspective'. In it he too explored why the CSO was not used more often. He suggested that the most obvious reason was that many judges simply did not regard the CSO as a genuine alternative to a real custodial sentence (Riordan 2009, p.172). He felt that this was particularly true for Circuit Court and Central Criminal Court judges, where there was a perception that the maximum 240 hours was too lenient for it to be considered as an alternative to imprisonment for a person convicted of an indictable offence where the sentence of imprisonment being contemplated was in excess of 12 months (Riordan 2009, p.182). Judge Riordan also hypothesised that the lack of judicial ownership of the sanction may also be a contributing factor, that some judges were not particularly comfortable handing over responsibility to the Probation Service to monitor the performance of the sanction. He suggested that there was a concern amongst some judges that the CSO would not be implemented in the manner intended by the court and that 'this fractious relationship between the Probation Service and the Courts may have a significant bearing upon the tendency by the Courts to use community service orders with any degree of frequency' (Riordan 2009, p.184).

While the issues raised by Judge Riordan differ somewhat from those highlighted in the Value for Money review (2009) it is fair to say that there are some common themes in both studies. It was made clear in both that there was a lack of confidence amongst some judges in the touted abilities of the CSO (to punish and be a genuine alternative to imprisonment, to rehabilitate and to benefit the community). It could also be said that both highlight a lack of communication between the Probation Service and the judiciary as a major contributing factor to this. The recommendations contained in the Value for Money and Policy Review attempt to address these findings. In short it was recommended that improvements be made to the operation of CSOs, that empirical research on the impact of CSOs be conducted and that an information campaign be coordinated through the Probation Service and the Courts Service to allow for information about the CSO and its impact to be communicated to the judiciary.

## **Developments to the Community Service Order**

The absence of research on the CSO from the outset and the lack of criminal justice research in general throughout the 1980s and early 1990s meant that much of the discussions about the CSO and the wider criminal justice system were, in the words of one commentator, for a long time based on a ‘heavy dose of speculation seasoned with a measure of folk wisdom’ (O’Donnell et al 2008). The lack of regular and up to date research on the CSO meant that it was not possible to identify, with any degree of certainty, which parts of the community service scheme were working well and which parts of it were not. The consequences of this were that the CSO remained static and saw very little development for the best part of 25 years. Between 1999 and 2009, however, a number of reviews and research studies were conducted and these began to provide some insight into how the CSO was operating in Ireland (Walsh and Sexton 1999; Comptroller and Auditor General 2004; Department of Justice, Equality and Law Reform 2009; Riordan 2009). They began to allow for the CSO to be critically examined; for aspects of the scheme which were not working well to be identified and for discussions, supported by some data, to take place about how the CSO could be improved. In 2009 following the publication of the Value for Money and Policy Review of the Community Service Scheme and the recommendation contained within it, a plan was put in place for a series of changes and developments to be made to the community service scheme. However, as the Irish economy began to collapse the desire and urgency amongst policy-makers to increase the use of the CSO grew even stronger. So as well as seeking to make a number of changes in accordance with the recommendations set out in the Value for Money and Policy Review, policy-makers also sought to introduce new legislation to force judges to consider using CSOs more often. The CSO in Ireland was now, for the first time, entering a phase of development. Operational changes were going to be made, in particular within the Probation Service, to improve how the CSO would operate and legislative changes were going to be introduced to try to alter how the sanction would be used by the judiciary. Both of these developments will now be discussed in more detail below.

### *The Implementation of the Value for Money and Policy Review Recommendations*

Following the publication of the Value for Money and Policy Review, the Probation Service established a dedicated team, headed up by a senior manager, to spearhead the implementation of the recommendations contained in the report. The team, as well as considering the contents of the report also engaged in extensive consultation with stakeholders before finally drafting up ‘a new model for community service’ (Probation Service 2010, p.10). This ‘new model’

was piloted in the Dublin area in January 2010 as a first step to introducing it nationwide. It involved the setting up of a dedicated community service unit with enhanced administrative supports and new processes; same day CSO assessment at the Criminal Courts of Justice (CCJ) and more efficient and speedy return to court of offenders who did not co-operate with the Probation Service while serving a CSO. It was hoped that this would increase judges' confidence in the sanction. Enhanced efforts were made to ensure that this new model which was being piloted was properly communicated to the judiciary. As well as communicating specifically with judges in the Dublin area prior to the commencement of the pilot scheme, the Director of Operations of the Probation Service also attended the Judicial Studies Institute Conference in 2010 and presented the new model of community service to judges from all around the country (Probation Service 2011, p.18).

During the initial trial period 270 reports were completed with 194 becoming CSOs on the same day (Probation Service 2011, p.9). The Probation Service reported numerous benefits arising from the pilot scheme such as more timely and efficient assessments, prompt starting of Court Orders, improved attendance at worksites and an increase in the number of orders being made. During the period of the pilot scheme, 8 out of 10 CSOs started within 10 days of induction; 7 out of 10 were completed within 6 months and the number of new CSOs imposed in the pilot area rose by 34% (Probation Service 2011, p.9). In 2011 the Probation Service set about expanding aspects of the 'new model of community service' to other parts of the country. Same-day assessments were introduced permanently in the CCJ in Dublin and then in Children Courts and at sittings around the country where there were a sufficient number of referrals to the Service and where facilities were in place for the Probation Officer to compile same day assessment reports (Probation Service 2012, p.8).

#### *Criminal Justice (Community Service) (Amendment) Act 2011*

Following the global financial crisis in 2008 and the fall of the Irish economy into severe recession, the Government urgently needed to find ways to cut costs and reduce public spending. For the Department of Justice, Equality and Law Reform (as it then was) a major expense, and one which was increasing year after year, was the cost of operating the prison system. The number of people being sentenced to prison each year had grown substantially over the previous 20 years. In 1991, there were 4,435 committals to prison under sentence (O'Mahony 2002, p597) by 2010 this had risen to 12,487 (Prison Service, 2011). The average daily prison population had also risen during this period from 2,108 in 1990 (O'Donnell et al 2005) to 4,290 in 2010 (Irish Prison Service 2011, p.13). Furthermore, studies commissioned

by the Department of Justice, Equality and Law Reform to predict the prison population into the future were showing that this upward trend was likely to continue (Schweppe and Saunders 2009). By 2011, with Ireland in the midst of a severe recession which was likely to last a number of years, the increasing use of imprisonment and the costs associated with it were a major concern for the Government and addressing it was a top priority for the Minister for Justice, Alan Shatter TD, when he took up office. He, similar to his predecessor in 1983, saw the CSO as a sanction capable of diverting substantial amounts of offenders away from costly prison sentences. While he acknowledged that increasing the use of the CSO would not on its own be a long-term solution to the rising prison population and issues of overcrowding in prisons, he believed that it would allow for immediate financial savings to be made, as offenders who would previously have served prison sentences would instead serve a much cheaper non-custodial alternative and it would also, at least in the short-term, go some way towards altering the steep upward trajectory of the prison population (Dáil Debates, Vol. 729, Col. 588, 7<sup>th</sup> April 2011; Dáil Debates, Vol. 739, Col. 848, 21<sup>st</sup> July 2011; Seanad Debate, Vol. 209, Col. 926, 26<sup>th</sup> July 2011). The problem, however, was that many judges appeared reluctant to use the CSO and since being introduced in 1983, the use of the sanction had remained relatively low. While attempts were being made to initiate an increase in the use of the CSO by implementing changes to the operation of the CSO based on research findings, this process was slow. The Minister for Justice, it would appear, wanted an immediate increase in the use of the CSO. So, in an attempt to achieve this, he brought forward legislation in the form of the Criminal Justice (Community Service) (Amendment) Bill 2011.

It is important that a distinction be drawn between other attempts to increase the use of the CSO and the Criminal Justice (Community Service) (Amendment) Bill 2011. As is set out above other attempts to increase the use of the CSO, for the most part, stemmed from the desire of successive Governments throughout 1990s and 2000s, to try increase the use of the CSO (for a variety of reasons, not just financial). State commissioned research studies on CSOs were conducted and recommendations arising from these studies were being used to guide decisions about how to change and improve the operation of the CSO. The Criminal Justice (Community Service) (Amendment) Bill 2011, however, was very different. The development of the Bill, and the decision to introduce it, does not appear to have been guided by any academic study or research report. In 2010, for example, the Government initiated a consultation process on criminal sanctions in Ireland. This included the publication of a Discussion Paper (Dept. of Justice 2010) which raised important questions about sentencing

and called for submissions on how this area could be improved. It also involved a consultation seminar and an open forum attended by academics, legal practitioners, judges, advocacy groups and senior personnel from the Probation Service, the Prison Service and An Garda Síochána (Institute of Public Administration 2010). Many ideas and suggestions were put forward and discussed during this process but there is absolutely no mention of introducing legislation similar to the Criminal Justice (Community Service) (Amendment) Bill. The intention to introduce legislation of this kind, legislation which would create a requirement on judges to consider imposing a CSO, was first officially touted by the Fianna Fáil Government in late 2010 and formed part of their National Recovery Plan 2011-2014 (Government of Ireland 2010, p.71). A Bill was then published by the then Minister for Justice, Dermot Ahern, on the 12<sup>th</sup> of January 2011. The Bill never made its way through the Houses of the Oireachtas though, as the Fianna Fáil Government was dissolved a few weeks later on the 1<sup>st</sup> of February 2011. When Fine Gael/Labour came into power they seemed to be in agreement with the approach set out in the National Recovery Plan and with the Fianna Fáil Bill. They set out their position in their Programme for Government as follows:

We are committed to a sentencing system that provides a safer society at a lower cost to the taxpayer. We will ensure that violent offenders and other serious offenders serve appropriate prison sentences while at the same time switching away from prison sentences and towards less costly non-custodial options for non-violent and less serious offenders. This will result in a reduction in the prison population and alleviate overcrowding. (Fine Gael/Labour 2011, p.47)

One of the ways in which they proposed achieving this was by introducing legislation similar to that which had been previously brought forward by Fianna Fáil.

‘Where a member of the judiciary is considering the imposition of a prison sentence of one year or less, he/she will be required by legislation to first consider the appropriateness of Community Service Orders as an alternative to imprisonment.’ (Fine Gael/Labour 2011, p.47)

The way in which the Bill emerged as well as the economic climate that existed at the time of its development would strongly suggest that it was driven by one factor above all others and that was the immediate need to reduce the number of people being sentenced to prison in order to allow for financial savings to be made. This is not to say that it was the only reason it was introduced but rather that it was the driving force behind the Bill and the reason why it was the first piece of legislation that Alan Shatter TD brought before the Houses of the Oireachtas in his capacity as Minister for Justice.

The primary purpose of the Criminal Justice (Community Service) (Amendment) Bill 2011, as set out in the Explanatory Memorandum, was to introduce a requirement on judges to consider imposing a CSO in all cases where they would otherwise have imposed a prison

sentence of 12 months or less. This would be done by amending Section 3(1) of the Criminal Justice (Community Service) Act 1983 to the following:

3(1)(a) Where a court, by or before which an offender stands convicted, is of opinion that the appropriate sentence in respect of the offence of which the offender is convicted would, but for this Act, be one of imprisonment for a period of 12 months or less, the court shall, as an alternative to that sentence, consider whether to make an order (in this Act referred to as a 'community service order') in respect of the offender and the court may, if satisfied, in relation to the offender, that the provisions of section 4 have been complied with, make a community service order in accordance with this section.

The new amended Section 3(1) would also include a provision which stated that judges *may* impose a CSO as an alternative to a prison sentence of more than 12 months.

3(1)(b) Where a court, by or before which an offender stands convicted, is of opinion that the appropriate sentence in respect of the offence of which the offender is convicted would, but for this Act, be one of imprisonment for a period of more than 12 months and, it is satisfied, in relation to the offender, that the provisions of section 4 have been complied with, the court may make a community service order in accordance with this section.

The Minister for Justice in presenting this Bill to the Dáil first stated that it was designed to encourage a greater use of community service as an alternative to imprisonment (Dáil Debates, Vol. 729, Col. 583, 7<sup>th</sup> April 2011). He then focused his attention on highlighting the many benefits of CSOs.

'Community service delivers significant financial savings, as it is a considerably cheaper sanction than imprisonment. An analysis of the costs involved indicate that the comparative cost of a community service order is unlikely to exceed 34% of the alternative cost of imprisonment and may be estimated to be as low as 11%-12%. Community service benefits the offenders by diverting them from prison, allowing them to maintain ties with family, friends and community, including continuing in education or employment as the case may be. Community service also offers reparation to the community, which benefits from the unpaid work of those serving these orders.' (Dáil Debates, Vol. 729, Col. 584, 7<sup>th</sup> April 2011)

The Bill was very well received in the Dáil and there was widespread support for it across all parties. During the Dáil debate, just like the Minister had done in his speech, Deputies, primarily focused on the potential benefits of CSOs. With the exception of three, each and every other Deputy who contributed to the debate spoke about the ability of CSOs to make significant financial savings when used as an alternative to imprisonment.

'An increased use of community service orders will undoubtedly lead to savings in the overall scheme of things.' (Deputy Jonathan O'Brien, Dáil Debates, Vol. 729, Col. 595, 7<sup>th</sup> April 2011)

'... there is a very strong economic argument in favour of supporting community service instead of a custodial sentence of 12 months or less.' (Deputy Maureen O'Sullivan, Dáil Debates, Vol. 729, Col. 598, 7<sup>th</sup> April 2011)

'I welcome and support the Bill in particular because of the savings that will arise from the implementation of its provisions.' (Deputy Seamus Healy, Dáil Debates, Vol. 729, Col. 599, 7<sup>th</sup> April 2011)

‘Given the financial constraints under which this Government has been forced to operate, opportunities to make improvements from within our existing resources must be grasped and used to maximum effect.’ (Deputy Jerry Buttimer, Dáil Debates, Vol. 730, Col. 822, 21<sup>st</sup> April 2011)

Most of these Deputies did make it clear, however, that it was not the only reason why they were supporting the Bill. They were very much in agreement with the view expressed by the Minister that as well as being financially beneficial, CSOs could also benefit communities and offenders.

‘A community sanction means an offender will continue to work or stay in education and still be with his or her family or community. However, through community service offenders are being given an opportunity to make reparation and perform a service for the community, which is a much more positive step than languishing in an overcrowded prison.’ (Deputy Maureen O’Sullivan, Dáil Debates, Vol. 729, Col. 598, 7<sup>th</sup> April 2011)

‘One of the positive aspect of community service is that it is not necessary to interrupt an offender’s education and employment while he or she is doing it. Many community organisations benefit from community service orders.’ (Deputy Mattie McGrath, Dáil Debates, Vol. 729, Col. 598, 7<sup>th</sup> April 2011)

‘It provides an opportunity for young people to perform community work instead of going to prison only to learn all of the things they should not. In addition, it gives communities an opportunity to avail of unpaid work by the young people concerned.’ (Deputy John Browne, Dáil Debates, Vol. 729, Col. 598, 7<sup>th</sup> April 2011)

There was also a strong belief amongst many deputies that this Bill would address the rising prison population and problems of over-crowding in prisons.

‘It offers the courts the opportunity to increase the use of non-custodial sentences and to reduce the burden of over-crowding within our prison system. If the community service order system were used to its full capacity, it could take 3,800 prisoners out of our prisons, immediately reducing the problem of overcrowding. (Deputy Jerry Buttimer, Dáil Debates, Vol. 730, Col. 822, 21<sup>st</sup> April 2011)

‘One inevitable consequence is that there will be a freeing-up of prison spaces because of the numbers of people who no longer will serve prison sentences, which in turn will exert less pressure on the State to take up some of the options that were being pursued by the previous Government, namely, the creation of two super prisons.’ (Deputy Patrick O’Donovan, Dáil Debates, Vol. 730, Col. 824, 21<sup>st</sup> April 2011)

Following the Dáil Debates, the Bill quickly progressed through the Houses of the Oireachtas. First it went to committee stage, where apart from some minor technical amendments put forward by the Government only two other amendments were proposed. Both of these were moved by Sinn Fein Deputy, Jonathan O’Brien. The first was a proposal to include a requirement on judges when sentencing an offender to a prison sentence of more than one year to provide a written reason to explain why they did not impose a CSO (Deputy Jonathan O’Brien, Select Committee on Justice, Defence and Equality Debate, 19<sup>th</sup> July 2011). In refusing this amendment the Minister of State at the Department of Justice, Kathleen Lynch,

said it would have consequential negative effects as it would require judges to explain a negative. She felt it would create a significant imposition on judges and would create a division in the courts as the amendment stated that it only applied when a judge was imposing a prison sentence of more than 12 months and not when imposing a prison sentence of less than 12 months, which is what the Bill was focused on (Deputy Kathleen Lynch, Select Committee on Justice, Defence and Equality Debate, 19<sup>th</sup> July 2011). The second amendment proposed by Deputy O' Brien was to allow victims, if they so wished, to furnish to the Court a victim impact statement and that it would be considered by the Court prior to sentencing an offender to a CSO (Deputy Jonathan O'Brien, Select Committee on Justice, Defence and Equality Debate, 19<sup>th</sup> July 2011). This was refused on the basis that there are very specific categories of crimes for which victim impact statements are allowed. Deputy Lynch stated that if this amendment was to be accepted then it would be possible for every victim of a crime to submit a victim impact statement which would take 'forever and a day' to deal with in court (Deputy Kathleen Lynch, Select Committee on Justice, Defence and Equality Debate, 19<sup>th</sup> July 2011).

The Bill then moved to the Seanad where the debate was very similar to the one which took place in the Dáil. Senators from all sides of the House expressed their support for the Bill and just like in the Dáil the focus of the debate was, for the most part, on the benefits of CSOs. The Seanad Committee stage also very much mirrored its Dáil equivalent with the same amendments that were moved in the Dáil Committee being once again put forward and the Minister refusing them for similar reasons as were outlined by Deputy Lynch during the Dáil Committee stage. The Bill was then passed by the Seanad without amendments. It was signed into law on the 2<sup>nd</sup> of August 2011 and was commenced by S.I 467 of 2011 on the 1<sup>st</sup> of October 2011.

As can be seen, the Act had a quick and straightforward passage through the Houses of the Oireachtas. It was commended and supported from all sides of the Dáil and the Seanad. There was a universally held belief amongst Deputies and Senators that the provisions contained in the Act would give rise to an increase in the use of the CSO, which in turn would give rise to many benefits, financial and social. What was absent from the debate though, was any real interrogation of the method by which the Bill was proposing to achieve the goal of increasing the use of the CSO. It was just accepted that the amendment to Section 3 would be capable of achieving this desired increase. It could be argued, however, that the amendment to Section 3 (the most significant provision contained in the Act) in reality changed very little, if anything at all (Guilfoyle, 2011). The new amended Section 3 introduced a requirement on judges to

consider imposing a CSO in all cases where they would, but for the Act, have imposed a prison sentence of 12 months or less. It did not introduce any new sanction nor did it make any significant change to the existing CSO. So essentially what this provision did was impose a requirement on judges to consider a sanction that already existed and was already available to them. It is argued that there must be an assumption that judges (experienced legal practitioners who have been appointed to this important position) will always consider all the options that are available to them when sentencing an offender, especially when it involves a person potentially losing their liberty, but will ultimately choose the option that they believe to be most suitable based on the circumstances of the case and their own personal views. It is difficult to see then how this Act would alter judges' use of the sanction. For example, if a judge was reluctant to impose a CSO prior to the implementation of the Act, whether it be because they did not believe a certain type of offender was suitable for community service or they did not believe projects in their area were suitable sites for community service or for any one of a number of other reasons, what does the 2011 Act change? It simply requires that judges consider imposing a CSO. It does not address the reasons why judges were not imposing CSOs. If a judge did not impose a CSO for a particular reason prior to the Act and that reason still exists then it is unlikely that the judge would now, because of this Act, alter his/her use of the sanction and impose a CSO where previously they would not have done so. At best this Act is just an endorsement of CSOs by policy-makers. It is the legislator saying we would like to see CSOs used more often. Practically, that is all this Act is. While it is conceivable that in some circumstances, when the sentence that is going to be imposed hangs in the balance, that this endorsement by the legislator could sway a judge to impose a CSO instead of imprisonment, it is unlikely that it would occur to such an extent that it would result in a significant change in the overall use of the sanction (Guilfoyle 2011).

*The impact of the 'new model' of community service and the Criminal Justice (Community Service (Amendment) Act 2011*

Unfortunately there has not been any study conducted which has looked at whether judges' views of CSOs have changed since the introduction of the 'new model' of community service. Nor has there been a study which has examined if, or to what extent, the 2011 Amendment Act has altered judges' use of the CSO. So when trying to assess the impact these changes have had, one is left with little options but to look to the overall use of the sanction as an indicator of their possible impact. In 2010, the year when the 'new model' of community service was piloted in Dublin, 1,972 CSOs were imposed nationwide, that was up from 1,667

in 2009 (Probation Service 2012, p.40). In 2011, when the ‘new model’ of community service was expanded to other parts of the country and the 2011 Amendment Act was implemented, the use of the sanction rose again, this time by 28%, with 2,738 orders being imposed, the most that had ever been imposed in a single year in Ireland (Probation Service 2012, p.40). While it is of course not possible to say with any degree of certainty to what extent, if at all, either one of these changes contributed to the rise in the use of the CSO, it would appear, at least at a glance, that they likely had a positive impact on the use of the CSO. It is worth noting, however, that the 2011 Amendment Act was only implemented in October 2011. Therefore the extent to which it can be credited for the rise in the use of CSOs in 2011 is somewhat reduced, as the Act was only operational for the final 3 months of the year. That is not to say that it did not have any impact but rather it is unlikely to have been the primary or most significant factor in increasing the use of CSOs in 2011.

After the substantial rise in 2011, the use of the order declined in 2012 from 2,738 to 2,569 orders and has continued to decline each year since (Probation Service, 2013, 35). In 2013, 2,354 orders were imposed (Probation Service 2014, p.48). In 2014 it dropped to 2,190 orders and it declined again in 2015 to 1,938 orders (Probation Service 2016, p.50). So despite the significant increase in the use of the CSO in 2011, within 4 years the use of the sanction had fallen back to the level it was at in 2010, prior to the expansion of the ‘new model’ of community service and the implementation of the Criminal Justice (Community Service) Amendment Act 2011.

### **CSOs as an Alternative to Imprisonment for Non-payment of a Fine**

A further development to the CSO was made in 2016 when the Fines (Payment and Recovery) Act 2014 was commenced. Section 19 of this Act now gives judges the power to impose a CSO as an alternative to imprisonment for fine defaulters. Prior to this when a person defaulted on a fine, judges had no option but to impose a prison sentence. It is submitted that like the other two developments outlined above this is yet another separate development to the CSO. The provision was created and introduced in an attempt to address a particular problem and not as part of a planned holistic development of the CSO.

A provision allowing judges to impose a CSO as an alternative to imprisonment for fine defaulters was first contained in the Fines Act 2010. This came about after extraordinarily high increases in the number of fine defaulter being imprisoned each year. In 2007 there were 1,335

committals to prison for non-payment of a fine. This rose by 88% in 2008 to 2,520 committals and by a further 90% in 2009, to 4,806 committals. However while the 2010 legislation was enacted it was never commenced and as a result the provision allowing for CSOs to be imposed on fine defaulters never came into force. In the years that followed the number of committals to prison for non-payment of a fine continued to increase and by 2013 it had reached 8,213. It was clear that something needed to be done to address what had become a major issue for the Prison Service. The response by policy-makers was to introduce the Fines (Payment and Recovery) Act 2014, the purpose of which was to try divert fine defaulters away from sentences of imprisonment.

The Fines (Payment and Recovery) Act 2014 (hereafter referred to as the Fines Act 2014) made a number of amendments to the laws which govern the setting of fines, the payment and recovery of fines as well as how persons are dealt with once they have been found to be in default. It set out that judges must take a person's financial circumstances and their ability to pay into account when deciding upon the level of fine to be imposed. It introduced a system whereby fines over €100 could be paid by instalment. It provided judges with additional options to impose a recovery order or attachment order to try to recover unpaid fines. Where these orders were unsuccessful or where a judge was of the view that they would not be suitable having considered the person's financial circumstances then the Act gave judges the power to impose a CSO on the fine defaulter provided he/she was deemed suitable to perform community service, there was suitable work available and the fine defaulter consented. If the person was not suitable or there was no suitable work available, or if they refused to consent and the judge was left with no option but to impose a prison sentence, the Act reduced the length of the sentence of imprisonment which could be imposed. It reduced it from 90 days to 30 days where the fine was imposed summarily in the District Court and set the maximum at 12 months where the fine was imposed on indictment.

With regard to the CSO essentially what the Act did was expand the CSO to allow it to be used on fine defaulters. So while the 2011 Amendment Act sought to expand the use of the CSO for higher level offenders, those receiving prison sentences of 12 months or less and those receiving prison sentences of more than 12 months, the Fines Act 2014 sought to expand the use of the CSO, in the other direction, to the very lowest level of offenders – fine defaulters.

While overall it is expected that the Act should go some way towards reducing the number of fine defaulters who are imprisoned each year, a number of potential negative effects of the Act

have been identified (Guilfoyle 2016). One of these potential negative effects is the impact Section 19 (the provision which allows judges to impose CSOs for non-payment of a fine) may have on the use of the CSO in the wider criminal justice system. It is argued that it could end up having a negative impact. The basis for this position is as follows. Under the Criminal Justice (Community Service) Act 1983 and the Criminal Justice (Community Service) (Amendment) Act 2011, the legislation which governs the use of the CSO in Ireland, 240 hours community service is, in a broad sense, benchmarked against 12 months imprisonment. Section 3 of the Criminal Justice (Community Service) (Amendment Act) 2011 provides that judges must consider imposing a CSO of between 40 and 240 hours in all cases where they would, but for the Act, have imposed a prison sentence of 12 months or less (Section 3.b of the Act also gives judges the power to impose a CSO of up to 240 hours as an alternative to prison sentences of more than 12 months). This same benchmark is used in the Fines Act 2014 when dealing with non-payment of a fine imposed on indictment. Judges can, under the Act, impose a prison sentence of up to 12 months or as an alternative a CSO of up to 240 hours. However, when dealing with a person who has defaulted on a fine imposed summarily in the District Court, where the vast majority of fines are imposed, the Fines Act 2014 uses a different benchmark. In these cases the Act allows a judge to impose a prison sentence not exceeding 30 days or as an alternative a CSO of up to 100 hours. So straight-away it can be seen that the CSO, when used under the Fines Act 2014 for non-payment of a fine in the District Court, is significantly more punitive. 100 hours community service is now being benchmarked against 30 days imprisonment.

If this equation is brought into the wider criminal justice system then, 240 hours, the maximum number of hours that can be imposed on an offender under current community service legislation, would equate to a prison sentence of less than two and a half months. If judges are, on a regular basis, valuing CSOs in this way (there were 9,883 offenders sentenced to imprisonment for non-payment of a fine in 2015 and the vast majority were as a result of non-payment of a fine imposed summarily in the District Court) then can we reasonably expect judges to view even the maximum 240 hours as an adequate alternative to a prison sentence, of say, 10 or 12 months when sentencing offenders for other offences (a burglary or assault for example)? Yet this is exactly what the legislation is asking of judges. The concern therefore, is that the CSO will become devalued in the minds of judges, due to them regularly having to value the CSO in accordance with the Fines Act 2014, and as a result this will impact how CSOs will be used by judges when sentencing offenders for other offences in the wider

criminal justice system. It is submitted that there is a real danger that the CSO will become more punitive and will primarily be used on a lower level of offender than is currently the case, with judges becoming less inclined to impose a CSO as an alternative to a prison sentence where the sentence of imprisonment is approaching 12 months or beyond.

Furthermore with CSOs becoming more punitive under the Fines Act 2014 a question arises as to what impact the increased punitiveness will have on offenders when deciding whether or not to consent to a CSO and how this will effect the number of fine defaulters who are ultimately sentenced to a CSO. At this stage, with the Act having only been implemented in January 2016, it remains unclear. One could put forward a strong argument that when a person is faced with 30 days imprisonment, 100 hours community service will still be viewed as a reasonable alternative and therefore it will not significantly increase the portion of offenders who refuse to consent to performing community service. However, where a person is sentenced to imprisonment for non-payment of a fine, in reality they serve only a small fraction of the actual sentence handed down by the court and in most cases are released within 24 hours. This is not a well-kept secret that is known by only a select few high-ranking criminal justice officials. This is a well-known fact that regularly receives national media attention. A recent example of this was the well-publicised case involving two TDs, Deputy Mick Wallace and Deputy Claire Daly. Both were convicted of breaching airport regulations for climbing a fence at Shannon Airport and attempting to inspect a US Army plane for weapons. They were fined €2,000 each with 30 days imprisonment to be imposed if they failed to pay within 3 months. Both refused to pay the fine as a matter of principle. After the due date set by the court had passed, they were arrested and brought to prison. Deputy Wallace walked in the front door of Limerick Prison just before 2pm and was out again in time to be interviewed on the evening news, while Deputy Daly spent no more than 2 hours in custody (RTE, 2015). The reality of fine defaulters spending little or no time in prison has been acknowledged by the Government. The Minister for Justice, Alan Shatter (as he then was) when speaking in the Dáil about the Fines Bill 2013, accepted that it is ‘common knowledge that imprisonment, in any real sense, for the non-payment of fines is now a rarity and only the unlucky spend even a night in prison’.

The proper question therefore, is not will fine defaulters view 100 hours community service as a reasonable alternative to 30 days imprisonment but rather will they view 100 hours community service (or any amount of hours community service for that matter) as a reasonable alternative to a prison sentence of less than 24 hours. If for a substantial portion the answer is

no and they refuse to consent to the imposition of a CSO, then the ability of this provision to achieve its aim of diverting a substantial portion of fine defaulters away from sentences of imprisonment, is significantly reduced. Furthermore, if this were to occur, and a system emerged where offenders were regularly refusing to perform community service and instead choosing to go to prison knowing that they will be released within 24 hours, it would cause significant damage to the criminal justice system and to the authority of the courts (Guilfoyle, 2016).

### **The CSO After The Changes**

It can be seen, therefore, that since the CSO was first introduced in Ireland some developments and improvements have been made to the sanction, some within the Probation Service and others by way of legislation. It is important to highlight, however, that these changes, have not altered the core structures/elements of the sanction. They have not changed the objectives of the sanction or how the sanction would achieve those objectives. They changed how the CSO operated and attempted to change how the CSO was used but did not change the CSO itself.

### **Conclusion**

This chapter began by describing the Irish CSO. This was done by examining the contents of the Criminal Justice (Community Service) Act 1983 and the supplementary rules and regulations as well as how the legislation was implemented. Two things of note stand out from this part of the chapter. The first is the extent of the discretion which was left to probation and welfare officers. Even after the Probation and Welfare Service had issued their guidance, officers still maintained a significant amount of personal discretion in the performance of their core duties. The same can be said of the judiciary though this is not unusual or surprising as sentencing is a function of the judiciary and judicial independence is an important part of the separation of powers in Ireland. Nevertheless, this all made it much more likely that when the CSO became operational that there would be significant variances in how the CSO would be used and how it would operate across the country. The second thing of note was, what the primary objectives of the CSO were at the outset. The Irish sanction had been developed from the English CSO which had a strong rehabilitative element to it and throughout the Oireachtas Debates on the Criminal Justice (Community

Service) Act, CSOs were touted as a sanction that could achieve a range of penal functions including rehabilitation. However, it was shown in this chapter that when one examines the Irish legislation as well as how it was implemented by the Probation and Welfare Service it becomes clear that the objectives of the Irish CSO were to provide judges with an alternative sanction to imprisonment that would punish offenders while also giving them the opportunity to make general/symbolic reparation. While it was hoped and believed that offenders would benefit from performing community service, rehabilitation was not a primary objective of the CSO. The sanction did not seek to identify or address offenders' criminogenic needs.

The chapter then went on to highlight that there was little or no research conducted on the CSO during its early years in operation making it very difficult to analyse or assess the early operation of the CSO. It was also argued that this dearth of research contributed the lack of development of the sanction during its first 20 or so years in operation. The chapter then examined all of the research that was conducted on the CSO starting with Walsh and Sexton's empirical study of CSOs in 1999. It highlighted that as more research was conducted on the CSO and more became known about the operation of the CSO, changes began to be made to the sanction. This ultimately led to the Probation Service developing and introducing a 'new model' of community service in 2010. This made changes to the operation of the CSO within the Probation Service but did not alter the core elements of the sanction.

The chapter also examined the legislative developments that have been made to the CSO. Two in particular were discussed in detail: the Criminal Justice (Community Service) (Amendment) Act 2011 and the Fines (Payment and Recovery) Act 2014. It was argued that each of these were introduced separately and not part of a unified plan to develop and improve the CSO. The Criminal Justice (Community Service) (Amendment) Act 2011 was introduced following Ireland's economic crash. The urgent need to try to halt or at least slow the rising prison population was a driving force behind this legislation. It attempted to do this by forcing judges to consider imposing a CSO in all cases where they would otherwise have imposed a prison sentence of 12 months or less. The Fines Act 2014 then was introduced after Ireland's use of imprisonment for non-payment of a fine began to dramatically increase. As well as making changes to how fines were imposed and recovered, the Act gave judges the power to impose a CSO on fine defaulters where previously judges had no option but to impose a prison sentence.

Finally, it was stressed, that while operational or legislative changes have been made to the CSO, they have not altered, in any way, the core elements of the CSO. The CSO that existed after these changes, was the same sanction that had been introduced in 1983. In the next chapter the focus will turn to the current operation of CSOs. It will focus on detailing the process that exists and understanding how probation officers and community service supervisors perform their duties at various important stages in the process.

# **Chapter 5 - The Current Operation of the Community Service Order**

## **Introduction**

The previous chapter detailed the introduction and development of the CSO in Ireland. This chapter will now examine the current operation of the CSO. It will outline the process that exists from when a CSO is first contemplated by a judge right through to the completion of the order. Together, these will allow for a clear understanding of what a CSO currently is in Ireland. The chapter will also examine where the CSO fits within the existing Irish penal system. Providing clarity as to what exactly a CSO is and where it currently fits within the penal system is vital in order to provide a solid base for future discussions about the CSO and its ability to divert offenders away from imprisonment. Once this base has been established the chapter will then conclude by highlighting and discussing some of the key issues and problems with the CSO in its current form and as it currently operates. This chapter is informed by interviews with probation officers and community service supervisors.

## **The Process: From when a CSO is first contemplated to the completion of the order**

The first thing that should be noted is that there is no one universally applied process throughout the country. The process can vary between different parts of the country. In Dublin City and Cork City, for example, there are special community service units. Parts of the process that exist in these units differ from the process in other cities and towns around the country. So a CSO in Dublin City, for example, can be somewhat different to a CSO in Kerry. Where possible, these variances will be highlighted below.

### *The initial consideration of a CSO by a judge*

After a person has been convicted of a criminal offence they will be sentenced by a judge for that offence. When sentencing the offender, a judge will have a range of sentence options available to them. One of the options available to a judge is a CSO. It is not a sanction in its own right and can only be imposed as an alternative to imprisonment. Technically, therefore, before a judge can consider a CSO they must first form the view that a custodial sentence is warranted. The first stage in the process therefore, is when a judge forms the view that a

custodial sentence is warranted and they then proceed to consider whether or not it would be suitable and appropriate to impose a CSO as an alternative to the custodial sentence. It could be argued that this is the most important stage in the entire process in terms of filtering offenders away from CSOs yet it is also the stage that we know least about. The only real insight that we have comes from Judge David Riordan's PhD thesis<sup>11</sup> (2009, pp.176-181). He highlighted some of the factors that judges consider when making their decision. The factors mentioned included the risk of re-offending, the type of offence committed and whether or not they believed the offender deserved to spend time in custody. What stands out most from this study however, is how much the factors/criteria used by judges in making their decision vary from judge to judge. For example, one judge indicated that they would not use a CSO if an offender had been convicted of a violent offence, another said they would not use it if the offender had been convicted of a drug offence while another said they would not use it on offenders with serious addiction issues (Riordan 2009, pp.177, 180). It would appear, therefore, that there are no agreed criteria or set of factors that are used by all judges when considering whether or not to impose a CSO. The criteria used is very much dependant on a judge's own personal views and as a result our understanding of this part of the process remains very limited.

#### *Requesting a Community Service Report*

Once a judge has formed the view that a CSO may be an appropriate sentence to impose, they are required, under Section 4 of the Criminal Justice (Community Service) Act 1983, before imposing the order, to satisfy themselves that the person is suitable to perform community service and that arrangements can be made for the work to be carried out. In complying with this requirement judges must request a report from the Probation Service addressing these issues. This report is known as a Community Service Report. In some locations, for example at the Criminal Courts of Justice in Dublin City, offenders meet with a probation officer immediately in the court building. The probation officer will attempt to assess the offender and write a Community Service Report that day. If, however, an issue arises when speaking with an offender that requires further exploration or consideration, then the assessment will be postponed. The probation officer will inform the judge and the case will be adjourned for an

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<sup>11</sup> His thesis included four focus groups and six semi-structured interviews. Three of the focus groups were made up of District Court judges with the other being comprised of Circuit Court judges. The semi-structured interviews were conducted at District Court, Circuit Criminal Court, Central Criminal Court and Supreme Court level (Court of Criminal Appeal). In total about 23% of the Irish judiciary were either individually interviewed or participated in focus groups (Riordan 2009, p9).

assessment to take place at a later date. Where this occurs or where a Community Service Report is requested in a Court that does not have same day assessment facilities, the offender's details are recorded by the probation officer in court or if no probation officer is present, by court service staff. This is done by filling out Form A which records the offender's date of birth, contact details, the offence committed, the Garda involved in the offence etc.. This is sent to the Probation Service's offices where it is received by clerical staff and then sent to a senior probation officer. The senior probation officer assigns a probation officer to the case and an appointment is made with the offender for the assessment to be conducted. The time it takes for a Community Service Report to be submitted varies from location to location. The probation officers who were spoken to as part of this study suggested a timeframe between 4 and 6 weeks though it was stated that at times they may request longer when they have excessive or increased workloads.

#### *Community Service Assessment*

In assessing an offender's suitability to perform community service the probation officer uses a template/check list of issues to guide the assessment. Issues that are explored include drug or alcohol addiction, the use of prescription medication, physical and mental health difficulties; and health and safety issues. The presence of one of these issues does not automatically result in a person being deemed unsuitable. The probation officer will explore the issue in detail and use their personal experience and discretion to decide whether its presence is sufficient to deem a person unsuitable. For example, where an offender has a drug or alcohol addiction, the probation officer will be looking to assess the offender's level of stability.

‘What is the level of stability? Can this person work at least one day a week? Will their addiction allow that? You are really looking to see can they come into appointments, can they present sober at those meetings because if they attend site and they are under the influence they will be asked to go home and it may warrant a return to court.’ (Probation Officer 2)

Similarly, where an offender is suffering from a mental health issue, the probation officer is assessing their ability to turn up to appointments and to carry out work safely. Where there is a concern the probation officer may speak with the offender's social worker or request a slip from their doctor as proof of fitness to perform community service. In general the probation officer is looking to work with the offender and to find ways to overcome issues and allow them to perform community service.

‘Many of our clients have issues . . . If we said no mental health, no drug addiction or no alcohol issues we wouldn’t be accepting anyone.’ (Probation Officer 1)

In making their final assessment, however, the probation officer’s primary concern is the safety of the offender, the site supervisor, other people performing community service on site and the general public.

The probation officer will also explain to the offender what is involved in a CSO. They will discuss the types of projects that are available, on what days they operate and what would be required of them if a CSO was imposed. The offender is then asked if they would consent to the CSO if the judge sought to impose the order. A CSO cannot be imposed on an offender who refuses to consent.<sup>12</sup>

The report itself is generally quite brief and is not as comprehensive as a pre-sanction/probation report. The report will provide some background information, it will indicate whether or not the offender accepts their guilt, whether or not they would consent to a CSO and whether or not the offender is suitable to perform community service. Where the offender is deemed suitable, the report will indicate that suitable work is available for the offender to perform. Where an offender is deemed to be unsuitable, the report will state the reason why the probation officer has reached this conclusion. In some cases where there is an issue that is causing the offender to be deemed unsuitable but the probation officer is of the view that if addressed the offender would be suitable, the probation officer may request an adjournment to allow the offender to deal with or overcome the issue.

### *Induction Meeting*

A judge will consider the Community Service Report and decide whether or not to impose a CSO. Where a judge imposes a CSO the offender will be sent an appointment to meet with a probation officer. In this induction meeting the CSO is served on the offender. The probation officer then inducts the offender (referred to as ‘client’ by probation officers). This involves agreeing on what community service project they will work on and what their work schedule will be. There are two types of community service placements. The first, the most common placements, are on projects that are run and managed by the Probation Service i.e. by a community service supervisor. These projects are generally sourced by community service supervisors but organisations do also contact the Probation Service requesting that community service work be carried out. The type of work that is performed on these community service

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<sup>12</sup> Section 4 of the Criminal Justice (Community Service) Act 1983

sites includes painting, picking up litter, graffiti removal, building maintenance and grounds keeping.<sup>13</sup> The second type of placement is less common. It is called individual placement and it is where a client performs their community service within a host organisation (for example in a charity shop or soup kitchen). A member of the host organisation performs the role of the community service supervisor, records the attendance of the client and supervises their work. This type of placement is generally only suitable for clients who have little or no support needs.

In deciding on what community service a client will do, probation officers will consider a number of factors such as the client's needs and abilities, their availability as well as their location and their capacity to travel. The probation officer will also be sensitive to any requests or suggestions from the client. In many cases after considering the aforementioned factors, the number and type of projects that are ultimately available are very limited.<sup>14</sup> It should also be noted that there are huge variances in the number and types of supervised projects operating around the country, particularly between cities and rural towns. In some rural areas there may only be one supervised project operating on a limited number of days. The vast majority of supervised projects could also be described as being male-orientated. The type of work that is performed is work that in the normal paid employment market is predominantly performed by men and the overwhelming majority of offenders working on supervised community service projects are male. This can give rise to some difficulties when attempting to place female offenders on supervised community service projects.

As well as agreeing on the community service site and the days that the client will work, the probation officer will also explain the entire process to the client. Their duties and responsibilities are clearly set out. They are told what is and is not an acceptable excuse for missing a day and how they should inform the Probation Service if they are unable to attend. The consequences of non-compliance or misbehaviour are also explained to them. They are then given contact details for their community service supervisor, they are told where the site is located, what time they are to be there at and they are also given work gear (usually work boots). Once the meeting is finished the community service supervisor in charge of the site that the client will be attending is contacted and sent a time card along with basic information about the client (physical or mental health problems, drug use, health and safety concerns etc.).

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<sup>13</sup> An example of a project would be painting the walls of a school or club

<sup>14</sup> A client that is not suitable for individual placement may only be able to work on set days and may not have access to transport. This would for the most part limit them to performing work on the supervised projects that are operating in their location on the days they are available to work.

Where a client is doing an individual placement, this card is sent to a designated member of the host organisation. In areas where there is a community service unit, a new probation officer will then usually be assigned to the client. In these units probation officers are given responsibility to oversee certain sites and community service supervisors. Therefore, the probation officer who has responsibility for the site that the client will be working on will be assigned the case. In other areas the same probation officer who wrote the community service report and inducted the client will continue to oversee the case while the client performs their community service hours.

### *Performing Community Service*

When the client reports for community service for the first time the community service supervisor will give them a site induction. This involves explaining to the client what they will be doing, the rules of the site and general health and safety instructions. Most supervised sites will have a start time and finish time, for example 10am to 5pm (for clients on individual placements the start and finish times may differ and be more flexible). The client is expected to turn up on time with the work gear that was provided to them at the induction meeting. Once on site they are expected to remain there until the set finish time or until they are instructed to leave by their supervisor. In some areas, at times, there may not be enough work on site for the entire day and therefore the clients may be sent home earlier than the stated finish time. At the beginning of each day the community service supervisor will explain to the clients (maximum of eight per site) what they will be doing for the day and if necessary show them how to perform the tasks (painting, graffiti removal, grounds maintenance, cleaning etc.). The clients will then perform the task as shown and directed by the community service supervisor. The community service supervisor oversees the work and makes sure that work is carried out safely and to a sufficient standard.

### *Non-compliance*

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

‘If someone doesn’t attend rather than immediately sending a warning letter I would be asking the site supervisor their opinion and they could say actually that person is a good worker and is normally consistent so hold off until next week and see what is happening.’  
(Probation Officer 2)

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

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

The decision to return a case to court is technically made by a senior probation officer though in some areas this can be a mere formality with the decision in reality being made by the probation officer overseeing the case. Where breach proceedings are brought against a person the case is prosecuted by a probation officer. In areas where there is a community service unit this is done by a probation officer assigned to this role and in other areas it is done by the same probation officer who had been overseeing the case from the outset. The offender is returned to court charged with an offence under Section 7 of the Criminal Justice (Community Service) Act 1983 and if convicted shall be liable, without prejudice to the continuance of the CSO, to a fine not exceeding €1000. Where a person is convicted of this offence the court may, in lieu of imposing this fine, either revoke the order or revoke it and deal with the offender in any way for the original offence (this includes the option of sentencing the person to imprisonment). The probation officers spoken to as part of this study stated however, that in practice it is common for a judge to give a person another opportunity to re-engage with the Probation Service and carry out their community service hours before revoking the order and re-sentencing the person.

#### *The Role of the Probation Service in the Process*

It can be seen that the Probation Service have a number of important roles in the operation of the CSO. As well as having a role in sourcing community service projects, they assess the suitability of offenders for community service and manage/oversee the CSO once it has been imposed. It would appear that the central goal of all of their roles is the completion of the order. When assessing offenders' suitability, probation officers are primarily looking to assess if the person will turn up to do their community service and if they can carry out community service work safely. Once the CSO has been imposed, the probation officer's primary goal is to facilitate and assist the person in completing their order. They will, in so far as possible, place the client on a project that puts them in the best position to complete their order i.e. a project in their locality and that is suitable to their abilities etc. The probation officer will generally not have much interaction with the client once they begin their community service, unless an issue arises such as the client failing to turn up, in which case the probation officer may try re-engage the client. They may try to find out why the person is not attending and if necessary and where possible, make amendments to their community service schedule to try overcome it. As for community service supervisors, their role is to manage the community service sites. They show clients how to carry out their tasks, they ensure that the work is carried out to a sufficient standard and that the work is completed safely. It can be seen that the current

process does not operate to encourage or facilitate the Probation Service to address issues such as drug or alcohol abuse/addiction, mental health problems, anger management issues etc. So long as the person can turn up and perform their community service work safely the current CSO process does not seek to engage the person further and attempt to address issues or needs that they may have.<sup>15</sup>

The CSO that exists today is, therefore, at its core, the same sanction that was introduced in 1983 and set out in the ‘Management of the Community Service Order’ (1984). It is an alternative to imprisonment that seeks to punish offenders and allow for general reparations to be made through the performance of unpaid work in the community. While it is hoped that offenders will benefit from performing a CSO (that it will reduce the negative effects the person would have suffered if they had been imprisoned and that it will help clients develop a work ethos) it is clear that the CSO does not operate to address a person’s criminogenic needs and rehabilitation is not a primary and core feature or objective of the sanction.

The next section will examine the CSOs position within the current Irish penal system. Doing so provides context to the use of the CSO by highlighting the other sentencing options available to judges. It also adds to our understanding of who CSOs are intended to be targeted at (legislatively) and how judges are currently using CSOs and the other sanctions available to them.

### **The Community Service Order’s Position within the Irish Penal System**

When sentencing an offender, judges in Ireland can choose from a range of sentencing options. At the very bottom of the scale is a discharge and at the very top is a sentence of imprisonment. The other options in between include a fine, a probation order, a CSO and a suspended sentence. When trying to locate the CSO on the sentencing scale, few would dispute that it would be situated above a discharge, a fine and a probation order but below a sentence of imprisonment. What is less clear, however, is where it sits in relation to the suspended sentence.

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<sup>15</sup>It should be noted, however, that some of the probation officers spoken to stated that they will inquire about issues or needs that offenders may have, despite not being obliged to do so, and where possible assist them in seeking help in addressing their issue. For example, if a person has a drug addiction they would put them in contact with a drug treatment centre or if they are suffering from a mental illness they would put them in contact with a counsellor.

A suspended sentence is where a judge imposes a prison sentence but then immediately suspends it for a set period of time (for example, 9 months imprisonment suspended for a period of 12 months) on condition that the offender enter into a bond to keep the peace and be of good behaviour for the duration of the operational period (the period of time for which the sentence is suspended). Judges can also attach other conditions to the bond. Examples of these conditions may include a requirement that the offender undergo drug treatment, remain under the supervisor of the Probation Service, attend anger management counselling, stay away from certain areas and so on. If the person complies with the conditions set out in their bond for the duration of the operational period, the custodial element of the sentence will not be activated. Once the operational period concludes they will be discharged from all liability under the sanction. If they commit another offence during the operational period or do not comply with the conditions of their bond, however, they may be returned to court and the judge may then activate all or part of the custodial element of their sentence.

If one were to place both the CSO and the suspended sentence on the sentencing scale using their key features, as set out in legislation, as the primary criteria in identifying their location on the scale, then the suspended sentence would, in the author's view, be situated above the CSO. There are three primary reasons for reaching this conclusion. Firstly, while a CSO can only be imposed as an alternative to prison and when imposing the order judges will usually state the sentence of imprisonment that would have been imposed had it not been for the CSO (for example, 100 hours community service as an alternative to 6 months imprisonment) a sentence of imprisonment is never actually imposed. A CSO is a wholly non-custodial sanction. When imposing a suspended sentence on the other hand, a sentence of imprisonment is first imposed on the offender and it is then suspended on condition that he/she enter into a bond to keep the peace and be of good behaviour and comply with any other attached conditions. While an offender may never actually spend time in prison, a custodial sentence has nevertheless been imposed upon them. O'Malley (2006, p.457) suggests that the stigma of having been sentenced to a custodial sentence can have a significant impact on an offender. It may arise when travelling to other countries or applying for jobs and is an added punitive element to the suspended sentence. Secondly, if an offender fails to comply with a CSO and they are returned to court, judges are not required under legislation to impose a prison sentence. Section 7 of the Criminal Justice (Community Service) Act 1983, as amended, states that when an offender fails to comply with a CSO they shall be guilty of an offence and, without prejudice to the continuance of the order, shall be liable to a fine. Section 8 of that Act

states that in lieu of imposing that fine, a judge may revoke the CSO and deal with the offender in any way for the original offence. While this does allow a judge to impose a prison sentence it also allows a judge to impose a lesser penalty. A judge may, for example, impose a different non-custodial sanction. Where an offender receives a suspended sentence, however, and they are returned to court for breaching the conditions of their bond, judges have fewer options. Provided that they do not rule that the breach is trivial or that it would be unjust based on the circumstances to activate the custodial sentence, judges must order the person to serve all or part of the custodial element of their sentence.<sup>16</sup> The procedures and consequences for failing to comply with or breaching a suspended sentence would appear, therefore, to be stricter than that of the CSO and the path to imprisonment much clearer, with imprisonment being the default position for non-compliance of a suspended sentence. Thirdly, if an offender commits another offence while serving a CSO it does not, on its own, cause the CSO to be breached and revoked. An offender could be serving a CSO, commit another offence, be convicted and sentenced for that offence without breaching their CSO. If however, an offender commits another offence while serving a suspended sentence they will have breached their bond and will, therefore be returned to court where a judge will decide whether or not to activate their custodial sentence. If a judge decides to activate all or part of the custodial sentence it will run consecutive to any sentence of imprisonment that is imposed for the trigger/breach offence<sup>17</sup>. It could be argued therefore, that during the operational period at least, the suspended sentence is designed to be more of a ‘last chance’ to avoid custody, than the CSO.

In the author’s view the three factors outlined above situate the suspended sentence in closer proximity than the CSO to a sentence of imprisonment and therefore would place the suspended sentence above the CSO on the sentencing scale. However, while this would appear to be the case based on the key features of the sanctions, it is not necessarily how the sanctions are used by judges in practice. If one looks at how the sanctions are actually used by judges when locating their positions on the sentencing scale, their locations become less clear.

The suspended sentence, similar to the CSO, lacks a clear rationale (O’Riordan 2009, p.246) and is capable of serving a number of penological aims (O’Malley 2006, p.258). As a result, judges impose suspended sentences for many different reasons and in a wide variety of different cases (Riordan, 2009, p.225-245). For example, some judges will use the suspended

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<sup>16</sup> S99 (8) and S99 (17) of the Criminal Justice Act 2006 as amended by the Criminal Justice (Suspended Sentences of Imprisonment) Act 2017

<sup>17</sup> S99 (11) of the Criminal Justice Act 2006 as amended by the Criminal Justice (Suspended Sentences of Imprisonment) Act 2017

sentence when sentencing repeat offenders for very serious offences and impose sentences in the region of 4 years imprisonment suspended for a period of 4 years with a number of other additional conditions attached (to attend addiction counselling and remain under the supervision of the probation service etc.). When used in this way it could easily be argued that a suspended sentence is being used in a way that places it above the CSO on the sentencing scale. Judges do also, however, impose suspended sentences for less serious offences and on first-time offenders. A judge may, for example, impose a 3 month sentence of imprisonment suspended in full for 3 months with no additional conditions when sentencing a first-time offender for a low-level assault or public order offence. When the suspended sentence is used in this way it is more difficult to argue that the suspended sentence is being used in a way that positions it above the CSO on the sentencing scale.

It can be seen, therefore, that if one focuses solely on the key features of both the CSO and the suspended sentence, as set out in legislation, then the CSO's position should be below the suspended sentence on the sentencing scale. However, if one also looks at how both sanctions are used in practice by judges then the lines between the two sanctions become blurred and the best way to describe the position of the sanctions is to say that the suspended sentence operates around the CSO. In practice the CSO operates above a fine, a probation order and a suspended sentence and below a suspended sentence and imprisonment.

The CSO should operate below the suspended sentence but in reality it does not always do so. The danger with this is that the use of the suspended sentence will expand if the CSO is not reformed. Offenders with criminogenic needs will be sentenced to suspended sentences instead of CSOs because the suspended sentence allows for conditions to be attached. The net effect of this would be that an offender with criminogenic needs would be more likely sentenced to a more punitive sentence and a sentence higher on the sentencing scale simply because they have criminogenic needs.

Having set out the core elements of the CSO, how the sanction operates in practice and where it fits within the existing Irish penal system, the focus will now turn to identifying and discussing some of the key issues and problems with the CSO in its current form and as it currently operates.

## **Issues and Problems with the CSO in its Current Form and as it Currently Operates**

This section will set out some of the key issues and problems with the Irish CSO. It is informed by all of the analysis that has taken place earlier in this chapter and in all of the previous chapters as well as the interviews with probation officers and community service supervisors.

### *Discrepancies between the CSO and its Target Group*

A CSO can only be used as an alternative to imprisonment. Before a judge can consider imposing the sanction they must first be satisfied that the case was serious enough to warrant a custodial sentence. This is a very high threshold. In order for a level to have been reached whereby the deprivation of a person's liberty is seen as an appropriate sanction, a serious offence would generally have to have been committed or the person would have to be a repeat offender. When CSOs were first introduced in 1983, the targeted group, those being sentenced to prison, in particular short-term prison sentences, were seen as largely being made up of young male offenders, many of whom would be ideally suited to carry out unpaid work in the community (Dáil Debates, Vol. 341, Col. 1331, 1345, 1358, 1380, 20<sup>th</sup> of April 1983). At the time drug use was not as prevalent as it is today and there was not the same awareness and understanding of mental health issues.

In 2011, in an attempt to increase the use of the CSO, policy-makers doubled down on targeting offenders who were being sentenced to imprisonment. The Criminal Justice (Community Service) Amendment Act was passed into law and this introduced a requirement on judges to consider imposing a CSO in all cases where they would otherwise have imposed a prison sentence of less than 12 months and also it stated that judges may impose a CSO as an alternative to a prison sentence of more than 12 months. This attempt to increase the use of the CSO was done, however, without any assessment of the characteristics of the targeted group and without any assessment of how this group may have changed over the years. While there continues to be a significant dearth of data on offenders who are being sentenced to short term prison sentences, the limited information that is available would indicate that there are now high levels of drug and alcohol addiction, mental health issues and instability within the target group<sup>18</sup> (Kennedy *et al* 2005).

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<sup>18</sup> Michael Donnallen, Director General of the Prison Service, speaking to the Public Accounts Committee on the 2<sup>nd</sup> of February 2017 said that 70% of Irish prisoners have addiction issues. Reported in the Irish Time, available at <http://www.irishtimes.com/news/crime-and-law/more-than-70-of-prisoners-have-addiction-issues-1.2961144>

As set out already in this thesis, the CSO is an alternative to prison that seeks to punish offenders by depriving them of their leisure time and allowing for reparations to be made through the performance of unpaid work in the community. While it is hoped offenders will benefit from completing a CSO and develop a work ethos, rehabilitation is not a primary objective of the sanction nor is the CSO designed to address offenders' criminogenic needs.

So in short, a judge can only impose a CSO on an offender who has committed an offence serious enough to warrant a prison sentence or who is a repeat offender. Studies are indicating that significant numbers of these offenders have criminogenic needs such as drug or alcohol addictions or mental illnesses and the CSO, the sanction judges are being asked to impose as an alternative to sending the offenders to prison, does not attempt to address or overcome these criminogenic needs or the root cause of their offending behaviour. This in the authors view, does not make the CSO, in its current form, an attractive option for judges when sentencing many of the offenders within the targeted group. As a result it curtails the use of the CSO, and severely limits the ability of the sanction to significantly impact and reduce the number of offenders being sentenced to prison. The next chapter will explore how this can be overcome and what changes could be made to the CSO to enhance its abilities to divert more offenders from prison.

#### *The De-valuing and Stretching of the CSO*

The 2011 Amendment Act seeks to increase the use of the CSO to higher level offenders, those who are being sentenced to imprisonment of less than 12 months as well as those receiving prison sentences of more than 12 months. The Fines Act 2014, on the other hand seeks to expand the use of the CSO in the opposite direction, to the very lowest level of offenders, fine defaulters. The net effect of both of these Acts is that the remit of the CSO is being extended. Judges are now being asked to use the same sanction on a vast range of different type of offenders. With the Fines Act now benchmarking 100 hours against 30 days imprisonment there is a danger the CSO may become devalued in the minds of judges, due to them regularly having to value the CSO in accordance with the Fines Act 2014<sup>19</sup>, and as a result this will impact how judges will use the CSO when sentencing offenders for other offences in the wider criminal justice system. The concern is that judges will increase their use of the sanction on fine defaulters and lower level offenders but will be less inclined to impose a CSO as an

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<sup>19</sup> There were 9,883 offenders sentenced to imprisonment for non-payment of a fine in 2015, 70% of all prison committals under sentence that year.

alternative to a prison sentence where the sentence of imprisonment is approaching 12 months or beyond.

### *The Availability of Community Service Projects*

The number of community service projects that are available vary substantially across the country. A person sentenced to a CSO in one of the major cities, for example, will have options to choose from when arranging their community service work schedule. There will most likely be a variety of different projects operating in an area close to where they live and on a number of different days of the week. This gives the person some flexibility in choosing the day of the week that they wish to do their community service and also in choosing a project that best suits their needs, abilities and interests. If the person does not want to work too close to where they are living or if there is a particular project that interests them in another area of the city, access to public transport makes it easier for the person to attend these other projects outside of their own locality. This can be very different to the experience of a person living in other parts of the country. For example, a person could be living in a small town in which there is no community service project operating or a number of miles outside of a town that has a community service project. To perform their community service work they would have to travel a considerable distance, most likely without access to public transport. There are also many towns that have just one community service project operating there and it operates just one day a week. So even if a person lives in the town, the day of the week that the project operates may not be suitable to them or the type of work that is carried out on the site may not be appropriate to their needs and abilities. This no doubt is a significant consideration for both probation officers when assessing a person for community service and for judges when considering imposing a CSO.

The obvious solution would be to source and operate more community service projects in towns around the country. The Probation Service, however, just like any other organisation, public or private, has to operate in an efficient manner and within a budget. The population in Ireland, particularly in rural areas is very much dispersed. There are small towns and villages spread out all around the country. It would not be feasible or realistic for the Probation Service to operate and supervise projects in every town in the country. Similarly in towns that only have one community service project operating on a limited number of days, it would not be an efficient use of resources to operate additional projects, allocate additional staff and purchase additional equipment if there continued to be a limited number of CSOs imposed in the area.

While there is no quick fix solution, possible ways to improve this issue will be outlined in the next chapter.

### *The Unsuitability of CSOs for Female Offenders*

It is now well established that there are significant differences between male and female offenders. There are clear differences in the types of offences committed. Female offenders generally commit less serious and non-violent offences (Burman 2004; Bloom *et al* 2005; McIvor 2011; Kelly 2014). In 2009, 82% of females committed to prison under sentence in Ireland were imprisoned for committing a non-violent offence (IPRT 2013, p.4). There are differences in frequency of offending (Gelsthorpe 2004; McIvor 2011). Female offenders tend to have shorter criminal histories (Corston 2007; Kelly 2014) and lower rates of recidivism (Central Statistics Office, 2016). There are also differences in the range and complexity of criminogenic and non-criminogenic needs of male and female offenders (Prison Reform Trust 2007; Gelsthorpe *et al* 2007; Kelly 2014). Women who enter the criminal justice system, as well having backgrounds of social disadvantage, mental health issues, substance dependency/abuse, poor family relationships/support structures and accommodation problems also often have histories of domestic or sexual abuse and tend to be the primary carer of children (Kennedy *et al* 2005; Malloch *et al* 2014; IPRT 2013; Irish Prison Service and Probation Service 2014).

In Ireland, as is the case in other jurisdictions, female offenders historically accounted for a very small portion of the offending population. Because of this, penal sanctions were designed in the first instance for male offenders. This is very much true of the CSO and despite increases in female offending and a growing awareness of the differences between male and female offenders, the CSO continues to operate as a predominantly male-oriented sanction. The overwhelming majority of community service supervisors are male, the work carried out on community service projects is work that in the paid employment market is, for the most part, carried out by males and the vast majority of offenders on community service sites are male. Furthermore, the CSO does not incorporate any additional supports to address the particular and complex needs that are present in many female offenders. It is submitted that this is causing judges to be less inclined to sentence female offenders to a CSO and is also creating reluctance amongst female offenders to advocate for and consent to the imposition of community service in circumstances where a judge might be inclined to impose the sanction. In 2016, women accounted for 26% of committals to prison under sentence, yet only accounted for 10% of the CSOs imposed (Irish Prison Service 2017; Probation Service 2017).

Even if the use of the CSO in its current form could be increased for female offenders, the male orientated design of the sanction in the author's view, negatively impacts the ability of the CSO to produce positive results for female offenders. While many male offenders will view the work carried out as part of a CSO as a path to future employment, due to the type of work that is generally carried out on community service sites, this is less likely to be the case for female offenders. As a result it will be less beneficial to female offenders and may even cause additional hardships due to the fact that the work is carried out in a male-dominated environment. The likelihood for hardship is further enhanced due to the lack of support structures incorporated within a CSO and the inability of the sanction to engage with and address the needs of female offenders.

In recent years there has been an increasing acknowledgment that better outcomes can be achieved when sentencing female offenders if gender responsive approaches are utilised and it has been stressed, both nationally and internationally, that sanctions imposed on female offenders should be designed to take into account female offenders' vulnerabilities, needs and childcare commitments (Clarke 2004; Bloom *et al* 2005; Corston 2007, Gelsthorpe *et al* 2007, Convery 2009; Malloch and McIvor 2011; IPRT 2013; Irish Prison Service and Probation Service 2014). This has been accepted by the Irish Prison Service and the Probation Service (Irish Prison Service and Probation Service 2013, p.8) and in a joint strategy report, entitled 'An Effective Response to Women Who Offend' (Irish Prison Service and Probation Service 2014) they set out their intention to develop and implement a gender-informed approach to working with female offenders in custody and in the community, based on evidence and best practice. They also indicated their desire to introduce gender-responsive CSOs. However, while some positive advances have been made within the criminal justice system generally<sup>20</sup>, there has been limited advancement to date with regard to the CSO.

When placing a woman on community service the Probation Service have stated that they will seek, where possible, to place them in a woman centric environment. This will be done firstly by attempting to send them to a female only project. However, while some female only projects have been set up, currently they are few and far between. Where no such projects exist

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<sup>20</sup> In 2016, the BRIO programme (Dublin) was developed (pilot programme). It provides women with an opportunity for peer led experiential training in education, facilitation skills and delivery (Probation Service, 2107, 8). The Probation Service also funded Tus Nua (Dublin). It is one of the few accommodation and 'wrap around' supported options for women leaving custody. Tus Nua offers women supported accommodation for six months, on site education and counselling, aftercare and progression routes with other services (Probation Service, 2107, 8).

in an area, the Probation Service will then attempt to place the female offender on an individualised placement, for example in a charity shop or community resource centre (Probation Service 2017, p.8). These, however, can be difficult to source in many areas and may not be appropriate in a lot of cases due to the criminogenic needs of the offender. Where an offender has many needs it is generally not seen as appropriate to place them on a site that is not supervised by the Probation Service and is instead supervised by a member of a host organisation.

It is clear that there is a desire within the Probation Service to operate gender responsive CSOs but it is also clear that this has yet to be achieved. The important question now is what needs to be done to make sure that Irish CSOs are gender responsive and that these gender responsive CSOs operate nationwide? Unfortunately a detailed answer to this question goes beyond the scope of this thesis. In order to set out a comprehensive solution to the stated problem it would need a PhD or a similarly detailed study to focus solely on this issue. While it may not be possible to provide an in-depth solution here it is possible, however, to sketch a broad outline of how this problem could be addressed in Ireland. This will be done in the next chapter.

#### *Variations in CSO processes within the Probation Service*

As set out at the beginning of this chapter, there are significant variations in how CSOs operate within the Probation Service. As well as there being variations in the processes in place between areas that have community service units and those that do not,<sup>21</sup> there are also variations between probation officers in how they perform their individual duties. Probation officers have significant discretion when it comes to the operation and enforcement of CSOs and in returning an offender to court for breach of the sanction. The concern is that this discretion leads to inconsistencies. Some probation officers will apply the rules strictly while others will be more lenient. For example, if an offender is failing to turn up for their community service, one probation officer may issue warnings immediately and then after two warnings, initiate breach proceedings while another probation officer may attempt to find out why the person is not turning up and attempt to work with them to overcome it. This variation may be down to the probation officer's own opinion of their role or it may simply be a result of one probation officer being overworked and not having the time to work with the offender to identify and overcome why they are not complying with their order. This inconsistency,

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<sup>21</sup> In community service units, processes have been improved to reduce the time it takes to submit community service reports, to reduce the time it takes for a CSO to begin once it has been imposed and to reduce the time it takes to return an offender to court if they fail to comply with their order.

however, can create uncertainty which in turn can lead to a lack of confidence amongst the judiciary in how CSOs operate and are enforced. Judge David Riordan's PhD thesis, which provided us with a rare glimpse into how judges in Ireland view CSOs, highlighted this lack of confidence amongst some members of the judiciary. He hypothesised that this lack of confidence and distrust on the part of judges that CSOs will not operate and be enforced in a manner intended by the court may have a significant bearing upon the tendency of the Courts to use CSOs with any degree of frequency (Riordan 2009, pp.182-184).

In searching for a solution however, it is important to also acknowledge that the discretion afforded to probation officers can also be hugely beneficial and very important in allowing probation officers to take offenders' individual and personal circumstances into account when making decisions. For example, if an offender fails to turn up on a day they are scheduled to work the general rule is that they should receive a written warning and if they fail to turn up three times they should be returned to court for non-compliance. There are, however, many situations and circumstances where a probation officer may feel that it would be unjust or inappropriate to issue a warning. An offender may have been caring for a sick child or they may have been ill themselves. An offender may also have just forgotten to turn up that one day but prior to that had been turning up every day, on time and carrying out their work without any issue. In those circumstances a probation officer may feel it is not necessary to issue a warning and to do so would only risk disrupting the person's good pattern of behaviour.

## **Conclusion**

This chapter began by outlining the process from when a CSO is first contemplated by a judge right through to the completion of the order. This, combined with the previous chapter provides us with a clear understanding of what a CSO currently is in Ireland. It was shown that the CSO that exists today is, at its core, the same sanction that was introduced in 1983, albeit possibly a more operationally efficient version of it. It is an alternative to imprisonment that seeks to punish offenders and allow for general reparations to be made through the performance of unpaid work in the community. It was shown that the current process does not encourage or facilitate probation officers to identify and address offenders' criminogenic needs. This supports the claim made in the previous chapter that the sanction is not designed to rehabilitate offenders and rehabilitation is not a primary objective of the sanction.

The chapter then attempted to identify where the CSO sits on the sentencing scale. It was suggested that while the CSO should sit above the fine and the probation order but below the suspended sentence and imprisonment, in practice its position is not that clear, particularly in relation to the suspended sentence. It was submitted that in practice the suspended sentence operates around the CSO, with the lines between the two sanctions blurred. Once the chapter had set out what a CSO is and where it sits on the sentencing scale the focus then turned to identifying issues and problems with the CSO in its current form and as it currently operates.

It was argued that there are discrepancies between what the CSO is and who it is targeted at. The CSO is a direct alternative to imprisonment. Its target group are those being sentenced to prison sentences, in particular prison sentences of 12 months or less. Research is now showing that large sections of this targeted group have substance addictions and/or mental health issues as well as other criminogenic needs (Kennedy *et al* 2004). The CSO, as it currently operates, does not attempt to identify and address these needs. It was argued that this severely limits the ability of the CSO to divert these targeted offenders away from imprisonment and to significantly reduce the number of offenders being sentenced to imprisonment.

The chapter then discussed the implementation of the Fines Act 2014 and suggested that it has resulted in the CSO being stretched and devalued. As well as the CSO being targeted at those receiving prison sentences of 12 months or less it is now also, since the implementation of the Fines Act 2014, being targeted at fine defaulters, the very lowest level of offenders. The Fines Act 2014 also devalued the CSO and it was suggested that this may result in the CSO being used more on fine defaulters and other low-level offences and less as an alternative to prison sentences that are approaching 12 months or beyond.

The chapter also identified other issues and problems with the CSO. These included the lack of community service projects in some areas, the unsuitability of CSOs for female offenders and the variations in the processes for operating CSOs within the Probation Service.

The next chapter will now explore community service sanction in other jurisdictions in order to identify aspects of those sanctions that could be adapted and incorporated in Ireland to overcome the issues and problems raised in this chapter and to further enhance the ability of the CSO to divert more offenders away from imprisonment.

## **Chapter 6 - Community Service in Other Jurisdictions and Recommendations for Change in Ireland**

### **Introduction**

This chapter will examine community service sanctions in England and Wales, Scotland and Northern Ireland. It will also examine the integrated CSO that is being piloted in Ireland. It will set out how each sanction operates and identify aspects of the sanctions which are working well as well as aspects which may be giving rise to some negative outcomes. Informed by this analysis the chapter will conclude by making a series of recommendations aimed at overcoming the issues and problems with the existing Irish CSO that were identified in the previous chapter. These recommendations will outline how the Irish CSO can be developed in order to increase the ability of the sanction to divert a greater number of offenders away from sentences of imprisonment.

### **Community Service in Other Jurisdictions**

This section will examine the operation of community service sanctions in England and Wales, Scotland and Northern Ireland. These jurisdictions were chosen for a number of reasons. As noted earlier in the thesis, England and Wales was the first jurisdiction to introduce a community service sanction within its formal criminal justice system. Scotland and Northern Ireland (similar to Ireland) developed their community service sanctions using the blue print of the English CSO. While all of the community service sanctions may have originated from a similar point, there have been variances in how the sanctions have developed in each of these jurisdictions over the years. England and Wales, Scotland and Northern Ireland are also Ireland's neighbouring jurisdictions. They have strong social, political, cultural and economic ties to Ireland. This makes them ideal jurisdictions to examine and learn from.

#### *England and Wales*

As set out in Chapter 1, England and Wales was one of the first jurisdictions to introduce a community service sanction within its formal criminal justice system. The CSO was introduced there in 1972. Since then, community sentencing in England and Wales has seen many developments. These developments have been made, however, in a somewhat haphazard fashion (Mair *et al* 2007). In 1991 a 'Combination Order' was introduced. This combined

probation with community service. It was then renamed the Community Punishment and Rehabilitation Order in 2001. Also that same year the CSO was renamed the Community Punishment Order. Other developments during this time included the replacing of the Probation Order with the Community Rehabilitation Order and the creation of new requirements that could be imposed on offenders as part of that order as well as the creation of a new sanction called the Drug Treatment and Testing Order. By 2002 there were four main community sanctions available in England and Wales. The Community Rehabilitation Order (with 15 possible requirements that judges could choose from when imposing the sanction); the Community Punishment Order (community service); the Community Punishment and Rehabilitation Order (community service with the option to attach any of the 15 requirements of a Community Rehabilitation order); Drug Treatment and Testing Order.

Curfew Orders and Attendance Centre Orders were also available for offenders over the age of 21 but only in certain parts of the country. The Criminal Justice Act 2003 then, in an attempt to simplify community sentencing and make it more appealing to judges, replaced all of the above non-custodial community sanctions with one single non-custodial community sanction called the Community Order (CO). The sanction now allows judges to pick and choose between a wide range of requirements (13 in total) when sentencing an offender, combining them if needs be, depending on the nature of the crime committed and the underlying issues that need to be addressed in order to stop the offending behaviour. When imposing a CO, judges can attach one or more of the following requirements: Supervision (up to 36 months); unpaid-work (between 40 and 300 hours); drug rehabilitation programme (between 6 months and 3 years, offenders consent required); alcohol treatment (between 6 and 36 months, offenders consent required); mental health treatment (between 6 and 36 months, offenders consent required); residence (must live at a place agreed by the court up to 36 months); specific activity (carry out activity to improve skills for up to 60 days); prohibitive activity (bans an activity for up to 36 months); exclusion (stop going to a particular location for up to 24 months); curfew (up to 6 months, between 2 to 12 hours in any one day); attendance centre (attend centre for 12 to 36 hours with a maximum of 3 hours per attendance - for under 25s only); foreign travel prohibition (up to 12 months).

The CO is targeted at offenders who have committed imprisonable offences that do not warrant a custodial sentence (low-level theft or criminal damage for example) as well as offenders who have committed offences that warrant a custodial sentence but due to the circumstances of the

case the judge is of the view that it would be more appropriate to impose a non-custodial sanction (S148 - S150 of the Criminal Justice Act 2003).

The 2003 Criminal Justice Act also introduced the Suspended Sentence Order (SSO). While technically it is a custodial sanction it is very similar to the CO in that it gives judges the option to impose the very same requirements as the CO (listed above) albeit with slightly different duration periods<sup>22</sup>. When imposing a SSO, the judge first imposes a custodial sentence but then suspends it on condition that the offender complies with the requirements attached and does not commit another offence during the operational period of the sanction. If the offender breaches the sanction they will be returned to court where a judge will impose the custodial sentence that had previously been suspended unless it is shown that it would be unjust to do so (Home Office, 2005, 84). If however, they comply with the order, the offender will not serve any time in prison and the entirety of the sentence will be served in the community. The SSO is a direct alternative to imprisonment and is only to be used where an offender has committed an offence serious enough to warrant a custodial sentence.

As can be seen, unpaid work (community service) can be imposed on offenders in England and Wales either as part of a CO or as part of a SSO. It is available to a wide range of offenders: those who have committed imprisonable offences that do not warrant a custodial sentence as well as those who have committed imprisonable offences that have passed the custody threshold. A positive aspect of the English approach is the flexible manner in which unpaid work can be used. It can be tailored to individual offenders depending on the seriousness of the offence committed and the specific needs of the offenders. For both the CO and the SSO, unpaid work can be imposed on its own as the only requirement of the sanction (between 40 to 300 hours) or it can be combined with one or more of the other 12 requirements. So while unpaid work is targeted at a wide range of offenders it can look very different depending on the crime committed and the type of offender it is being used on. Unpaid work can be combined with other requirements so as to allow an offender to be sentenced to carry out unpaid work in the community while also addressing, where necessary, the root cause of their offending behaviour.

The approach taken in England and Wales is not, however, without its flaws. Firstly, while technically there are a wide range of requirements that can be imposed on an offender as part

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<sup>22</sup> Supervision (maximum of 24 months), Drug Rehabilitation (maximum of 24 months), Alcohol Treatment (maximum of 24 months), Mental Health Treatment (maximum of 24 months), Residence (maximum of 24 months), Prohibitive Activity (maximum of 24 months)

of a CO or a SSO, many are rarely used (mental health treatment, alcohol treatment, drug treatment, attendance centres) (Mair et al 2007, p.28; Mair and Mills 2009, p.18). For example, despite the high levels of mental illness amongst those convicted of criminal offences, in 2010 only 783 mental health treatment requirements were commenced, which is less than 1% of all community sentences imposed that year (Ministry for Justice 2012). As for alcohol treatment, research by the Ministry of Justice found that the level of ‘criminogenic need’ in relation to alcohol misuse for those serving community sentences was 46% (Salomon and Silvestri 2008, p.27). Yet in 2010 only 4.5% of orders involved an alcohol treatment requirement (Ministry for Justice 2012). One of the primary reasons for it is the lack of resources and availability of these requirements in many areas. According to the National Audit Office (2008), the availability of the alcohol treatment requirement varies greatly across the 42 probation areas. It found that in nearly half of the areas (19), the alcohol requirement was not available or rarely used. There were similar findings in relation to mental health treatment (Khanom 2009). The potential flexibility of the sanction is, therefore, not being fully utilised. There is little point in having a wide range of options available in legislation if they are not properly resourced and made available in practice. The significant regional variances in the availability of requirements is also problematic in that it leads to an uncertain and inconsistent use of the sanction nationwide.

Secondly, there is little evidence to suggest that the introduction of the CO and SSO has had any significant impact on diverting offenders away from prison. There is, however, evidence to suggest that up tariffing has occurred. Despite a significant rise in the number of community sentences imposed in recent years there has not been a decrease in the number of people being sentenced to imprisonment (Mills 2011). Statistics indicate that the CO is increasingly being used on lower level offenders, offenders who would previously have received a fine or even a discharge and the SSO is increasingly being used on offenders who would previously have received a community sanction (Mair and Mills 2009, p.15; Salomon and Silvestri, 2008 p.11; Home Office 2006, p.7). Concern has also been raised that the wide selection of requirements available under the one sanction is resulting in judges attaching additional requirements that may not be necessary and this is causing the CO and SSO to become more punitive, more onerous and as a result more difficult to complete which in turn is leading to an increase in breach proceedings (Salomon and Silvestri 2008, p.23; Mair et al 2007, p.21).

Thirdly, the English scheme appears to prioritise punishment over other penal objectives. A key policy aim when introducing the CO and SSO was to make community sentences more

appealing to judges and the public by making them more demanding and more punitive. The continued lack of funding and lack of availability of many of the rehabilitative requirements suggests that punishment continues to be prioritised over other objectives to this day. This policy aim is likely contributing greatly to the high and increasing use of punitive requirements (unpaid work, curfew) and decline in use of the more supportive and rehabilitative requirements such as supervision and accredited programmes (Mair and Mills 2009, p.11).

Fourthly, there are problems with the enforcement of some requirements and this is resulting in judges losing confidence in those requirements. For example, it is extremely difficult to enforce the Prohibitive Activity Requirement. If an order states that a person must not enter a certain area while a football match is taking place how can this be realistically and effectively enforced? There are also difficulties enforcing other requirements such as the Mental Health Treatment requirement. Medical personnel treating offenders are often not comfortable informing a Probation Officer that a person has missed an appointment and causing the person to be returned to court and possibly imprisoned (Mair and Mills 2009). This is also true for the drug treatment and accredited programme requirements.

In principle, the approach in England and Wales appears to have many positive features, particularly its flexibility and potential ability to address offenders' criminogenic needs. The implementation and operation of this approach however, has not allowed for these positive features to be fully utilised and it has also resulted in a number of other problems that are negatively impacting the effectiveness of the sanctions in diverting offenders away from imprisonment.

### *Scotland*

In Scotland, from the late 1980s to the late 2000s the prison population rose by one third, despite there being a 10% reduction in recorded crime during that same period (Scottish Government 2007, p.5). Research at the time was also showing that Scotland, alongside England and Wales, had one of the highest rates of imprisonment in all of Europe (Scottish Government 2007, p.5). Policy-makers believed there was scope to reduce Scotland's use of imprisonment, particularly ineffective short-term imprisonment, if better use was made of non-custodial sanctions. It was concluded following a consultation process that the existing range of non-custodial sanctions were not very well understood and were perceived by many to be too soft (Scottish Government 2007, p.7). To address these concerns the Government sought to create and introduce a new flexible and robust non-custodial sanction that would

enjoy judicial and public confidence; that would provide judges with a viable alternative to custody and that would significantly reduce the use of short-term imprisonment. In developing the new sanction, strong emphasis was placed on designing it and packaging it as a reparative sanction that would allow an offender to 'payback' society for his/her offending behaviour (McIvor 2010, p.54). Payback was defined, however, as more than an offender just carrying out work or paying a financial penalty. It also encompassed the rehabilitation of the offender (Scottish Government 2015, p.15). McNeill (2010, p.3) notes that there was a clear attempt to move away from the way the term was used in England and Wales and the approach of simply making community service more demanding.

In 2010 the Criminal Justice and Licensing (Scotland) Act was passed into law and it introduced a new sanction called the Community Payback Order (CPO). It replaced the existing Community Service Order, Probation Order and Supervised Attendance Order. The sanction allows judges to impose one or more of the following requirements when sentencing an offender to a CPO: unpaid work or other activity requirement (level 1= 20-100 hours to be completed within 3 months; Level 2 = 101-300 hours to be completed within 6 months); offender supervision requirement (maximum 3 years; must be imposed in addition to all other requirements with the exception of the unpaid work requirement); compensation requirement; programme requirement (attend programme arranged by a social worker); mental health treatment requirement; drug treatment requirement; alcohol treatment requirement; residence requirement (order to live at a certain address); conduct requirement (ordered to do certain things or not do certain things for a maximum 3 years)

The sanction is only to be used where an offender has committed an offence that is punishable by imprisonment however, a modified limited version of the sanction can be imposed as an alternative to a fine or where an imprisonable offence has been committed but the court is of the view that it would not be appropriate to impose a prison sentence or a standard CPO. The restricted version only allows for a level 1 unpaid work requirement (between 20 and 100 hours), a conduct requirement and/or an offender supervision requirement to be imposed as part of the CPO. Under the 2010 Act when imposing any CPO the Court can require that the sanction be reviewed at specified dates. These reviews, referred to as 'Progress Reviews', require that offenders attend court where their progress is reviewed by the sentencing court.

The Criminal Justice and Licensing Act 2010 also introduced a presumption against prison sentences of less than 3 months. S17 of the Act states that a court must not pass a sentence of

imprisonment for a term of 3 months or less on a person unless the court considers that no other method of dealing with the person is appropriate. Where a court passes such a sentence it must state the reasons why it holds the view that no other method of dealing with the person is appropriate.

There are many positive features to the Scottish approach. The CPO provides sentencers with a flexible non-custodial option that is capable of being tailored to individual offenders. Within the CPO the unpaid work requirement also offers criminal justice social workers an additional degree of flexibility with regard to the operation of that particular requirement. It allows for criminal justice social workers to place an offender on a work placement that suits their needs and abilities. It also allows them to grant up to 30% or 30 hours (whichever is lower) of an offender's unpaid work requirement hours to be spent doing some other activity. This can include an educational or training course, counselling, treatment or some other activity that will further the offender. It seeks to allow for the correct balance between punishment, reparation and rehabilitation to be achieved in each case.

In Scotland the focus has not just been on developing an alternative to imprisonment. Efforts have also been made to expand the range and credibility of other lower level non-custodial options. As set out above, a limited version of the CPO is available when sentencing an offender for an offence that has not passed the custody threshold as well as being available as an alternative to a fine. Developments have also been made to the range of alternatives to prosecution that are available to police and prosecutors. By improving and enhancing the non-custodial options available at various levels it seeks to reduce the extent to which net widening of the CPO will occur.

The CPO also allows the sentencing court, if it so wishes, to maintain a high degree of control over the sanction which it has imposed. By providing the court with the option to conduct 'Progress Reviews' it seeks to enhance judges' confidence in the sanction and increases the likelihood of the CPO being used in borderline cases. The court can impose a CPO knowing that it can review the case at a set date and if the offender is not complying with the requirements of the sanction, it can immediately revoke the sanction and resentence the offender.

Finally, in seeking to further enhance confidence in the CPO, Scotland has not simply tried to make the sanction more and more punitive in order to satisfy the actual or perceived public punitiveness but instead has tried to make the operation of the sanction more efficient and

more visible. Guidelines have been introduced which state that if a work requirement is imposed it should begin within 7 days and should be completed within 6 months or if the work requirement is for less than 100 hours, within 3 months.

As for the negatives, while the CPO gives judges the flexibility to impose a wide range of requirements, in practice this flexibility is curtailed to some extent due to the way in which the CPO operates and the availability of resources. For example, when imposing one of the treatment requirements a medical assessment must be obtained. Often there can be difficulty obtaining this assessment and it can therefore limit the likelihood of a treatment requirement being imposed. Even where an assessment can be obtained the waiting times for treatment in many areas are very lengthy and are often longer than the CPO itself (Scottish Government 2015, p.5). So while technically the requirements can be imposed, in reality they are often viewed as being unworkable and are therefore used sparingly.

Similarly, with the unpaid work or other activity requirement, the flexibility afforded to criminal justice social workers to place an offender on a project that best suits their needs and abilities or to grant them permission to undertake another activity can also very often be limited due to a lack of available projects and lack of other resources (McIvor 2010, p55; Scottish Government 2015, pp.3-5). The options available can be further limited due to the rules requiring that the work or the other activity be completed within 3 or 6 months. While these rules were put in place to make the CPO more efficient the unintended negative consequence of the short completion periods is that criminal justice social workers must place offenders on whatever projects or other activities (courses, workshops, treatment etc.) that are immediately available when the sanction is imposed and this can significantly limit the social worker's ability to tailor the sanction to individual offenders.

The presumption against prison sentences of less than 3 months has also been criticised and shown to have little or no impact since being introduced (Tata 2016; Scottish Government 2015). Tata (2016, p.23) argues that the presumption as set out in legislation, which in his view essentially says do not impose a sentence of 3 months or less unless it is considered appropriate, is practically meaningless as sentencers will only ever impose sentences that they believe are appropriate. It has also been suggested that in some cases the presence of the presumption may actually have led to longer sentences being imposed rather than diverting the offender from prison (Scottish Government 2015).

### *Northern Ireland*

The Community Service Order (CSO) was first introduced in Northern Ireland in April 1979. The legislative basis for the sanction was initially contained in the Treatment of Offenders (Northern Ireland) Order 1976. It is now found in Section 13 of the Criminal Justice (Northern Ireland) Order 1996. The Order gives sentencers the power to impose between 40 and 240 hours of unpaid work on offenders provided that they are over the age of 16, have been convicted of an offence that is punishable by imprisonment and have consented to the imposition of the sanction. Section 15 of the 1996 Order also created a new sanction called the Combination Order (CO). This essentially allows sentencers to combine a Probation Order with a CSO. It allows for the imposition of a period of Probation supervision from 1 to 3 years along with 40 to 100 hours of unpaid work. The Court may also attach additional requirements to the probation element of the order if it deems it necessary (residential requirement, activity requirement, attendance requirement, mental treatment requirement, drug treatment requirement, electronically monitored curfew). The aim of the sanction is to combine reparation with rehabilitation and is targeted at persistent offenders (PBNI 2010, p.3).

At the time of writing, the Probation Board for Northern Ireland (PBNI) have just concluded an 18 month pilot of a sanction called the Enhanced Combination Order (ECO). As the name suggests this is an enhanced and more intense version of the CO and is aimed at diverting more serious offenders, those who are currently being sentenced to imprisonment, away from prison. The sanction has a number of key features. Firstly, they attempt to help offenders desist from criminal activity. They look to address issues such as substance misuse, physical and mental health, accommodation problems, education and training, employment, social relationships and lifestyle amongst other things (OECD 2016, p.302). Secondly, they focus on public safety. It can include intensive probation supervision and in appropriate cases, curfews enforced by electronic monitoring can be used. Thirdly, they seek to enhance judicial confidence. ECOs can be reviewed by the Court and adjustments can be made to the supervisory requirements if necessary. There is also an increased focus on ensuring enforcement standards are strictly adhered to (OECD 2016, p.302). Fourthly, victims can be incorporated into the sanction and can have a role in certain cases. This can be done by way of a restorative justice element such as a letter of apology from the offender, mediation or a face to face meeting with the victim. Finally, collaborative working is central to the sanction. PBNI works closely with the Police Service and with the community and voluntary sector in operating and enforcing the sanction (OECD 2016, p.302).

An evaluation of the pilot scheme has been conducted but has not yet been published. Early indications from the PBNI are that it has achieved positive results. The pilot scheme has been extended for a further 6 months and the PBNI have indicated their desire for the ECO to be extended beyond the pilot phase (PBNI 2017, p.5).

It can be seen that community service in Northern Ireland is targeted at and can be used on a wide range of offenders. To facilitate this, community service can be imposed in a number of different forms. It can be imposed on its own as a CSO, it can be combined with probation and other requirements as part of a CO or it can be combined with intensive probation and other requirements as part of an ECO. Judges have the power to use community service in different ways depending on the level of offence that has been committed and the type of offender that is being sentenced.

Another positive feature of the Northern Ireland approach is the high use of individual/community placements. Community service can be carried out in Northern Ireland in work placement squads that are supervised by PBNI supervisors or in individual/community placements that are supervised by members of the host organisations. The split between work squads and individual placements is close to even (PBNI, 2010, 24). This is much higher than in Ireland or in the other jurisdictions mentioned above. The large network of community organisations that the PBNI now work with and their willingness to continue to source additional placements increases their capability to place individuals on projects that are close to where they live and are suitable to their needs and abilities. This, combined with a policy to pay travel expenses of offenders also increases the capability of CSOs to operate successfully in rural areas (PBNI 2010, p.21).

The absence of key data and the limited number of evaluations or academic studies of community service in Northern Ireland makes it difficult to critically assess the existing non-custodial/community service scheme and to identify aspects of it which are not working well. There is a lot of important information missing that we need to know in order to properly discuss the Northern Ireland sentencing scheme. One example of this is that we do not know how many or what type of requirements are being attached to the probation element of COs. Nor do we know if there are any issues with the availability of these requirements and if it is impacting judge's sentencing practices. It is also unclear to what extent, if any, the CSO, the CO, and more recently the ECO, are having on diverting offenders who were being sentenced to prison away from custody and to what extent net widening or up tariffing is occurring. More

in-depth research and analysis is needed before one can make definite conclusions about how the community service sanctions are being used in Northern Ireland and to what extent they are achieving their goals and diverting offenders away from prison sentences.

### *Discussion*

There are two standout features that are present in the sentencing schemes of all of the jurisdictions mentioned above. The first is that community service sanctions are targeted at and can be used on a wide range of offenders; those who have committed offences that have not passed the custody threshold as well as those that have passed the custody threshold. To facilitate this, the community service sanctions in these jurisdictions are designed to be flexible and capable of varying depending on the level of the crime committed and type of offender being sentenced. The second stand out feature is that the community service sanctions are capable of incorporating rehabilitation. Both the flexibility of the sanctions and the ability to incorporate rehabilitation are achieved primarily by providing judges with the option to combine community service with a range of other requirements.

It is also worth noting how Ireland's neighbouring jurisdictions have overcome or attempted to overcome some of the issues and problems that have been shown to exist in Ireland. A lack of judicial confidence in community sanctions is one example. Scotland sought to address this not by making community sanctions more and more punitive but rather by providing judges with the option of having more control over the operation of the sanctions if they so wished. This was done by introducing judicial progress reviews. Scotland has also sought to make community sanctions more efficient and their impact more visible in order to further increase judicial confidence in community sanctions. Another example is the low use of community service in rural areas. Northern Ireland looked to overcome this by making greater use of individual work placements and by paying travel expenses of offenders. In doing so it has made it easier for people in rural areas to access community service projects and made community service a more viable option for judges when sentencing offenders in rural areas. As for the risk of net-widening, Scotland has attempted to address this by developing and increasing the credibility of community sanctions at various levels. It is believed that by providing judges with a range of well-developed community sanctions as opposed to just focusing on one higher level community sanction designed as an alternative to prison that it will reduce the risk of up tariffing and net-widening of that one higher level community sanction taking place.

Finally, it is worth highlighting aspects of these other community sentencing schemes that have given rise to some concerns and may be causing negative outcomes so that they can be avoided when developments are being made to the community sentencing options in Ireland. In all of the jurisdictions highlighted in this chapter legislation has been introduced that allows for community sanctions to be flexible and to incorporate rehabilitation. These legislative developments have not, however, always been supported by sufficient funding for the services that are needed for the sanctions to properly operate. The net effect of this is that the sanctions that exist in legislation often differ from the sanctions that exist in practice. A judge may technically be able to combine community service with drug treatment in legislation but if drug treatment services are not properly funded and available throughout the jurisdiction then it is unlikely that it will be imposed in practice.

Another concern, arising out of England and Wales in particular, has been the impact of policy-makers desires to make community sanctions more punitive. It likely has contributed to the high use of punitive requirements which in turn has increased the likelihood that community sanctions will be breached and offenders ultimately be imprisoned. Scotland took a completely different approach and instead of trying to make community sanctions more punitive they focused on trying to make them more efficient. But this too has given rise to some difficulties. For example, by introducing short timelines for community service sanctions to begin and end, it means very often it is not possible to place offenders in a suitable treatment or educational/training course within the set time limits that the sanction must operate. It also makes it more difficult to place offenders on community service projects that best suit their needs, abilities and interests. This can reduce the flexibility of the sanction and its rehabilitative potential.

### **The Integrated Community Service Order (Pilot Scheme)**

In 2014 the Penal Policy Review Group published a comprehensive review of Penal Policy in Ireland (Penal Policy Review Group 2014). In their report they recommended, amongst many other things, that the Probation Service should examine the feasibility of introducing, on a pilot basis, an integrated CSO where community service could be imposed with additional conditions (Penal Policy Review Group 2014, p.49). The Probation Service took this on board and at the time of writing this thesis has begun a pilot scheme. The pilot scheme that has been initiated however, is somewhat different from what was originally recommended in the report.

Instead of allowing for additional conditions to be attached to a CSO by judges, the Integrated CSO that is being piloted allows for Probation Officers to grant an offender permission to spend up to one third of their CSO hours in education, training or treatment. The offender must want to participate and the Probation Officer must be satisfied that the programme is suitable. The judge does not have any role in choosing the programme. The Integrated CSO does not operate alongside the existing CSO but rather replaces it.

The Integrated CSO provides a degree of flexibility to the existing CSO. It also incorporates rehabilitation into the Irish CSO which was shown in the previous chapter to be lacking in the CSO as it currently operates nationwide. Both of these are achieved by enabling Probation Officers to work with offenders to locate suitable educational, training or treatment programmes and allowing Probation Officers to grant offenders permission to spend a portion of their community service hours addressing their needs or furthering their abilities on one of these programmes.

Based on a growing body of academic research and opinion (Moore *et al* 2006; Hedderman 2005; Tonry and Lynch 1996; McIvor 1992) one could argue that moving away from the approach of allowing judges to attach requirements to community sanctions which is used in jurisdictions such as England and Wales, Scotland, and Northern Ireland may give rise to some benefits in certain areas. It has been shown that the approach used in these jurisdictions can lead to the stacking of requirements which in turn can result in community sanctions becoming more punitive and more difficult for offenders to successfully complete. The design of the Integrated CSO removes the possibility of this occurring. It also seeks to further increase the likelihood of offenders successfully completing beneficial programmes by structuring the sanction in a way that does not force offenders to participate in educational, training or treatment programmes but rather encourages them to participate and rewards them if they choose to do so.

An area of potential concern with the Integrated CSO, however, is how it could be perceived by judges. Riordan (2009) in his study highlighted that some judges in Ireland were slow to use CSOs because of the lack of control that they had over the operation of the sanction and the belief that CSOs would not operate or be enforced by the Probation Service in a manner intended by the Court. The Integrated CSO further removes control of the sanction from judges. The concern is that this may negatively impact judicial confidence in the sanction which in turn may make judges more reluctant to use the Integrated CSO.

## **Recommendations for Change in Ireland**

Previous chapters of this thesis have set out what exactly a CSO is in Ireland and have identified issues and problems with its current operation. This chapter examined the operation of community service sanctions in other jurisdictions as well as a pilot scheme operating in Ireland. This was done in order to learn from them and to identify aspects of the sentencing schemes/sanctions which could be introduced in Ireland to overcome the previously identified issues and to enhance the existing Irish CSO. Based on this, as well as all of the analysis in the previous chapters, it is recommended that the following changes be introduced in Ireland:

### **1. The CSO should be flexible, capable of being tailored to individual offenders and incorporate rehabilitation.**

Two methods of achieving this have been discussed above. The first is the method used in England and Wales, Scotland, and Northern Ireland of allowing judges to combine community service with other requirements. The second is the method used in the Irish pilot scheme of allowing probation officers to grant a person permission to spend a portion of their community service hours in an educational, treatment or training programme.

It is submitted that the most beneficial way to make the Irish CSO more flexible, capable of being tailored to individual offenders and incorporate rehabilitation is to use the second method and to expand its use across the country. This method not only achieves these important aims but also eliminates the risk of judges stacking requirements and making the sanction more punitive and more difficult to successfully complete. It gives the responsibility and power of developing a rehabilitative plan to probation officers. They are in a better position than judges to carry out this role due to their social work training and experience and their ability to interact closely with offenders. This method also increases the likelihood that offenders will benefit from participating in rehabilitative or educational programmes due to them not being forced to participate, as is the case with the first method, but rather them being assisted and positively rewarded if they choose to do so.

It is suggested that this approach could be further improved by clearly setting out that if an offender fails in his/her rehabilitative efforts or fails to complete an educational or training course that it would not cause the entire sanction to be breached. Only the rehabilitative

element of the sanction will be breached, therefore, instead of an offender being returned to court to be re-sentenced they will simply be required to carry out all of their outstanding hours doing unpaid work in the community and only if they fail to comply with this will they be in breach of the entire sanction. This would reduce the rate at which offenders will be returned to court and imprisonment. It would allow offenders to address their needs or learn new skills without the fear that they will be imprisoned if they do not immediately succeed.

## **2. Efforts should be made to increase judicial confidence in the CSO**

Judge Riordan (2009) hypothesised in his thesis that some judges may be reluctant to use CSOs due to a lack of confidence that CSOs will operate as they intended. It could be argued that if the first recommendation is implemented it will further remove control from judges and this could then have an even greater impact on judicial confidence in the sanction.

To address this it is recommended that three actions should be taken. The first is to introduce a progress process similar to that which exists as part of Scotland's Community Order and Northern Ireland's Enhanced Combination Order. This would allow judges, when imposing a CSO, to set a date for an offender to return to court where his/her progression through the sanction and co-operation with the Probation Service could be reviewed. In the legislation that would be needed to introduce this review process it would be made clear however, that the review should only be used in borderline cases, where a judge has contemplated imposing a CSO but is not fully convinced that the offender will comply with the order. This would encourage them to impose a CSO in those cases because they would know that if the person does not comply with the order they will have the opportunity to revoke the CSO and re-sentence them a short time later on the review date. It gives judges additional control over the sanction in those borderline case: cases which they are currently imposing prison sentences.

The review process would operate as follows: A judge, when imposing a CSO, would set a date (for example two months after the sentencing hearing) for the offender to return to Court for his/her progress to be reviewed. A probation officer would be required to submit a report outlining the offender's progress and co-operation to date. The judge would then use this report and any submissions made on behalf of the offender to decide whether the order should continue or be revoked. The standard would be, based on the evidence before the judge on the date of the review, whether they think that the offender is likely to successfully complete their

CSO within the required 12 month timeframe. If the judge concludes that the answer is yes then the CSO would continue as normal. If the judge concludes that the answer is no then they would be able to revoke the order and re-sentence the offender. The legislation would state clearly that if a judge is re-sentencing an offender then they must take into account the number of community service hours completed prior to the order being revoked. It would also state that when re-sentencing an offender the sentence that is imposed must not be greater than the sentence the judge would have originally imposed had they not decided to sentence the person to a CSO.

The second action is to improve the communication and the flow of information between judges and the Probation Service, at a local and national level. Communicating with judges is not a new idea. It has been recommended in the past (Dept. of Justice 2009, p.57) and it appears there is some communication and flow of information between the Probation Service and the Judiciary currently. This occurs mostly at a national level (for example senior management speaking about community service at the Annual Judges Conference or part of the ‘Probation Works’<sup>23</sup> campaign run by the Probation Service). It is the author’s understanding, from speaking with probation officers as part of this study, that there are also some districts where there is a good line of communication between the presiding judge(s) and the local Probation Service. This is not the case in every district though. What is suggested here is that a two-tier national communication strategy be developed. The first tier would be communication with the judiciary at a national level. This would involve promoting the benefits of CSOs, highlighting new research and outlining any new developments. The Probation Service are already doing this to some extent. They should continue to do so and where possible enhance these efforts. The second tier would be communication at a local level. This would be a communication strategy that is tailored to individual districts. Each district would have its own strategy that is designed in consultation with local offices but with the approval and backing of senior management. It would promote local community service projects and the benefits they have for local communities (the purchase of a new bus for the Dublin Graffiti Removal Project is very relevant to a judge in Dublin, but not so much to a judge in Kerry). It would seek to identify issues judges may have with CSOs locally and where possible, with the support of senior management, seek to overcome them. It would also allow judges to give their

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<sup>23</sup> A series of short videos which have been produced to showcase the positive work of the Service and its partner organisations.

views to the Probation Service as to the types of projects that they would like to see operating in their area.

The third action to be taken to enhance judicial confidence in the CSO is to reduce the levels of actual and perceived inconsistency in how CSOs operate and are managed by the Probation Service. The way in which this can be achieved is outlined in recommendation 7.

**3. Legislation should be introduced requiring judges, in all cases where they are imposing a prison sentence of less than 12 months, to state in writing why a CSO is not being imposed as an alternative.**

A duty to give written reasons has been suggested in the past. In its 2003 Report on Penalties for Minor Offences, the Law Reform Commission recommended that District Court judges give brief written reasons, outlining the aggravating and mitigating factors influencing the decision, with particular emphasis on why the non-custodial options available to the judge were not appropriate. The recommendation was then considered by the Working Group on the Jurisdiction of the Courts but was rejected by them. The basis for the rejection was that the recording of written reasons would be onerous, time-consuming and impractical (Working Group on the Jurisdiction of the Courts 2003).

Since then there have been renewed calls from O'Donnell (2004), Hamilton (2005) and more recently by the Penal Policy Review Group (2014) to implement the Law Reform Commission's Recommendation or some variation of it i.e. to impose a duty on judges to give written reasons when sentencing a person to imprisonment. Leaving aside the benefits that would arise if the recommendation was implemented, it has been argued that the basis for the Working Group on the Jurisdiction of the Courts rejection of the recommendation is unconvincing and does not hold up to scrutiny.

‘...the right to effective reasons in a case where an individual's liberty is at stake should be not be sacrificed at the altar of administrative convenience. It is simply not acceptable to say to offenders we cannot explain the factors motivating our decision to imprison you in any level of detail (if indeed, at all) because we do not have the staff/time/resources to do so’. (Hamilton, 2005 14)

Also of note here is the recent Supreme Court decision in *Oates v District Judge Browne & anor* [2016] IESC 7 which made clear that there is a duty on District Court judges to give reasons for decisions they make in the currency of a criminal trial. Burges and Dempsey (2017) suggest that while this does not necessarily extend to a duty to give written reasons

when sentencing a person to imprisonment, it does indicate a growing intolerance of the Superior Courts towards judges not giving reasons and explaining their decisions.

It is submitted that it is now time to impose an obligation on judges to give written reasons when it comes to sentencing. While it is possible that the judiciary will end up imposing some obligation upon themselves, policy-makers should not wait for this to happen. Legislation should be passed which imposes an obligation on all judges when sentencing an offender to a prison sentence of two years or less to clearly state in writing the reasons why they did not impose a CSO as an alternative.<sup>24</sup> This need not be onerous. One or two lines would suffice.

An obligation to give written reasons would give rise to many benefits. While the researcher has previously stated, when critiquing the 2011 Amendment Act, that it is his view that judges will always ‘consider’ all of the options available to them when sentencing an offender, it is argued that this type of obligation will enhance the extent to which some judges do so by forcing them to think about the reasons why they are not imposing a CSO as an alternative to sentencing a person to imprisonment. Furthermore, it will increase transparency in sentencing, for offenders as well as for victims, researchers, and the general public. It will also allow policy-makers and Probation Service officials to gain a greater insight into the reasons why CSOs are not being used in certain areas and by certain judges. This, in turn will make it possible for them to take action, in certain instances, to address the stated reasons in order to enhance judicial confidence in the sanction and ultimately to increase the use of the CSO as an alternative to imprisonment.

#### **4. Treatment, training and educational programmes should be available nationwide.**

As already outlined in this chapter, many jurisdictions have attempted to combine rehabilitation and community service. While levels of success vary, there is one constant problem that is present in all of the jurisdictions examined and that is the negative impact that a lack of treatment services or educational or training programmes has on the rehabilitative abilities of these sanctions. It is clear that there is little point in making legislative or procedural changes that provides for rehabilitation to be incorporated into CSOs if the rehabilitative

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<sup>24</sup> An argument could also be put forward for an expanded version of this which would impose an obligation on judges firstly to state in writing the reason why they are of the view that the custody threshold has been surpassed and then to state why they did not suspend the sentence or impose a non-custodial sanction as an alternative.

services are not available when needed to allow for the CSO to operate as reformers of the sanction intended.

It is vital that efforts are made to ensure that treatment, training and educational programmes are available for those being sentenced to CSOs throughout Ireland. For this to be achieved, however, it is the author's view that there would need to be fundamental reform that stretches beyond the parameters of the criminal justice system. There would need to be a rethinking of how we as a society spend public funds. Within the national budget there would need to be a significant increase in funding for health and treatment services as well as educational and training services in the community. As for the criminal justice system there would need to be a restructuring of criminal justice spending with a greater portion allocated to the Probation Service to fund and support these services that are necessary for the new CSO to operate to its full capabilities.

In the absence of this, or while this fundamental change is occurring, the Probation Service must continue to engage and build strong relationships with existing community organisations and treatment providers to ensure, as best they can, that treatment, training and education services are available for CSO participants when needed. This needs to occur not only in the major cities but nationwide.

#### **5. CSOs should be made gender responsive and capable of addressing female offenders' vulnerabilities, needs and childcare commitments.**

As noted in Chapter 5, the CSO in Ireland has historically been a predominantly male-oriented sanction and as a result the use of the CSO amongst females has been relatively low. In recent years, however, the Probation Service (Irish Prison Service and Probation Service 2014; 2013) have set out their intention to develop and implement a gender informed approach to working with female offenders in the community and have indicated a desire to introduce gender responsive CSOs. It is widely believed that in order for community sanctions to be gender responsive they must take into account the vulnerabilities, needs and childcare commitments of female offenders. Evidence now suggests that the most beneficial way of achieving this is by using 'one stop shop' female only centres and by adopting a holistic approach when addressing female offenders needs (Clarke 2004; Bloom *et al* 2005; Corston 2007; Gelsthorpe *et al* 2007, Convery 2009; Malloch and McIvor 2011; IPRT,2013; Irish Prison Service and Probation Service 2014). At present there is one such centre operating in Dublin City. It is

recommended that these centres should be set up, firstly, in other major cities and then in large towns around Ireland. Female offenders would carry out their unpaid work in these centres or in an organisation linked to a centre and the work would be supervised by someone with specialist knowledge and expertise in working with women. This would allow them to perform their community service hours in a supportive and safe environment while also receiving the necessary supports and services to assist them in addressing their criminogenic and non-criminogenic needs.

Due to Ireland's disperse population, however, difficulties will inevitably arise in ensuring that women all around the country will have access to a centre. It is vital in addressing this that not only are centres set up around the country but also that assistance is made available to women to travel from outside a town or city to attend a centre if they so wish. Even if this is done there will still likely be areas that will not have easy access to a women's centre. In these areas greater efforts should be made to source individualised work placements and also to operate women only supervised work projects. This should be done even if there is a very low offender/supervisor ratio (for example 1:1 or 2:1). One supervisor could cover a number of towns in an area where there is no women's centre nearby, operating women's only supervised work projects one or two days a week in each town. A support/link worker should also be hired in these areas. Their role would be to assist and support female offenders in accessing services to overcome and address their specific needs. While these recommendations will require some additional funding, if done it should increase the use of CSOs for female offenders. This will allow for savings to be made elsewhere by reducing the number of female offenders that will be imprisoned. It will also increase the likelihood of female offenders overcoming the issues and problems that lead to their offending behaviour and in doing so improving their lives, their families and their communities.

## **6. Efforts should be made to increase the use of CSOs in rural areas**

In Chapter 5 it was shown that a CSO in a major city can be very different to a CSO in a rural area. For example, in major cities an offender will often have some flexibility in choosing the day of the week that they wish to do their community service and in choosing a project that best suits their needs, abilities and interests. Also in major cities a person will most likely be able to attend a project close to where they reside, if they so wish. If they do not want to work in their local community or if there is a particular project that interests them in another part of

the city, access to public transport makes it easier for them to attend these other projects. In rural areas, however, there is often no such flexibility. In many towns there is one community service project, operating one/two days of the week. In some towns there are no community service projects. So a person who lives in one of these towns with no projects or who lives outside of a town that has a community service project, may have to travel a considerable distance, without the availability of public transport, in order to carry out their community service hours. This inevitably impacts how judges view community service in these areas and is likely a significant contributing factor to the low use of CSOs in many rural areas.

To address this and to increase the use of the CSO in rural areas it is recommended that greater use should be made of individual work placements. An individual work placement is where a person carries out their community service hours in a charitable or community organisation. This would allow for people in rural areas to carry out community service in their locality, without the need to travel considerable distances. It would also allow for a greater degree of flexibility in the type of work that could be performed. This approach has been used in Northern Ireland. Almost half of all placements in Northern Ireland are individual work placements and the PBNI have indicated that it has a positive impact on the use of community service in rural areas (PBNI 2010, p.24). For this approach to be successful in Ireland the Probation Service would need to take proactive steps to build and maintain strong relationships with a range of suitable organisations operating in rural areas so that they can place individuals within these organisations when needed. This would also allow the Probation Service to highlight to judges in rural districts that offenders will have access to meaningful work projects in their own communities if they were to impose CSOs.

It is clear, however, that individual work placements will not be suitable for all offenders, particularly those with substantial criminogenic needs. When sentencing these offenders, community service will often only be deemed a suitable option if the offender can do their community service on a supervised work project. When this occurs in a rural area, where the nearest supervised project is a considerable distance away from where the offender resides, it is recommended that the Probation Service should consider, under certain circumstances, paying the cost of travel for an offender to attend a supervised project. It should never be the case that community service is not available to a person simply because they do not have the ways or means to attend a supervised community service project. The cost of travel would not need to be paid for all offenders. It would only be required for those who meet strict criteria,

which would be adjudicated and decided upon by the Probation Service at the assessment stage.

The other action that should be taken to increase the use of CSOs in rural areas is to develop and implement the second tier of the communication strategy set out in recommendation 2 (a communication strategy that is tailored to individual districts). This would not only involve promoting local projects and the benefits local communities can receive from offenders performing community service but would also involve communicating with judges in rural districts to identify issues they may have with the operation of community service in their area and where possible, the Probation Service working to overcome and address them.

### **7. Variances in how CSOs operate and are managed should be reduced.**

Probation officers have a high degree of discretion when it comes to the operation of CSOs. In Chapter 5 it was shown how this can give rise to both positive and negative outcomes. On the positive side it enables probation officers to deal with incidents that arise on a case-by-case basis and this allows them to take into account their clients' individual needs and circumstances, which are often extremely complex. On the negative side it can lead to inconsistencies in how CSOs operate, particularly in relation to breaches. This can create an unfairness and inequality amongst offenders and can also create uncertainty about how a CSO will operate which in turn can lead to a lack of confidence amongst the judiciary that CSOs will be enforced and operate as they intended.

In attempting to reduce the negative outcomes it is important that Ireland does not also reduce the positive outcomes. So when reducing the levels of inconsistency, Ireland must protect and maintain the ability of probation officers to deal with their clients on an individual basis. It is, therefore, suggested that Ireland should not seek to reduce probation officers' discretion. Instead, inconsistencies in how CSOs operate should be reduced by improving the communication and the sharing of knowledge between probation officers. It is clear from the interviews conducted as part of this study that many probation officers are not aware of their colleagues' work practices, particularly of colleagues from other parts of the country. To overcome this, it is suggested that a forum should be set up for probation officers to discuss how they perform their duties. It would allow them to share new innovative ideas and for work practices that are achieving positive results to be shared with probation officers from around the country. It is also suggested that through this forum, efforts should be made to

develop best practice guidelines. These would be developed by probation officers in consultation with senior management and would be regularly updated. They would be informed by the views of probation officers and the best available research evidence. While probation officers would not be obliged to adhere to these guidelines it would nevertheless make them aware of how CSOs operate in other parts of the country and this should go some way towards helping to improve consistency. Where best practice is not being followed or unable to be followed in an area it could be easily identified. Efforts could then be made to understand why a variance exists and where possible the Probation Service could work to overcome any issues or problems that are preventing best practice being followed.

#### **8. Efforts should be made to limit the extent of net widening of the CSO occurring**

The experience of many jurisdictions around the world, including those discussed above, has been that when enhancements are made to a non-custodial sanction and its use increases, it increases in both directions. It will increase for higher level offenders but also for lower level offenders. Net widening will take place. If this were to occur to the Irish CSO it would mean that for some offenders, not only would they be receiving what is likely a more punitive sanction but due to the fact that the CSO is a direct alternative to imprisonment and positioned higher on the sentencing scale, in the event of a breach, their risk of being imprisoned would also be higher.

It is, therefore, extremely important that efforts are made to reduce the extent of net widening occurring. It is suggested that this can be done by ensuring that reforms to the CSO are not made in isolation i.e. that other lower level non-custodial sanctions (Probation, Fines) do not get neglected and are developed and enhanced along with the CSO. This would require evaluations to be conducted of the other existing non-custodial sanctions in order to identify issues and problems with their operation and for work to be done to overcome them once they have been identified. This has occurred to some extent already with regard to fines. The Fines (Payment and Recovery) Act 2014 made a number of improvements to the operation of Fines in Ireland, most notably it allowed for fines to be paid by instalment. The sentencing options available to judges should also be reviewed regularly. Sentencing trends and patterns should be analysed and where gaps in the sentencing options emerge, the development of new non-custodial sanctions should be explored.

## **Conclusion**

This chapter began by examining community service sanctions in England and Wales, Scotland and Northern Ireland. It identified the positive and negative aspects of the sentencing schemes of each jurisdiction. It discussed how Ireland might incorporate some of the positive aspects in order to improve its CSO and to overcome some of the issues and problems with its current operation. It also discussed the importance of avoiding introducing the negative aspects of these other sentencing schemes so as not to produce the same detrimental outcomes.

The chapter then examined the Integrated Community Service Order, a new sanction that is being piloted in a number of locations in Ireland. It highlighted how this new sanction addresses some of the key problems with the existing Irish CSO but also highlighted the potential concerns that would arise if the sanction was rolled out nationwide in its current form.

Finally then, based on the issues and problems identified with the CSO in Chapter 5 and the analysis of the various community service sanctions in the present chapter, it concluded by making a series of recommendations and suggestions as to how the Irish CSO could be developed and improved in order to increase its use and divert a greater number of offenders away from prison sentences.

## Conclusion

The central research question of this thesis was as follows:

*How do Community Service Orders operate in Ireland and what changes can be made to the sanction to increase its use and to divert a greater number of offenders away from sentences of imprisonment?*

In order to comprehensively answer the central research question, the thesis began its examination of the CSO at its point of origin. It began by locating where the original concept of Community Service as a penal sanction emerged. It identified two jurisdictions, Tasmania and England and Wales, as being the ‘first’ jurisdictions to introduce a community service sanction within the formal criminal justice system. After examining the links between the Irish CSO and these two sanctions, it became abundantly clear that the roots of the Irish CSO lay in the original concept of community service that emerged and was introduced in England and Wales. Having identified the roots of the Irish CSO in the English sanction, the thesis then looked to detail what the original concept was and how this concept developed into an operational sanction in England and Wales.

It noted the social, political and cultural factors that existed in England and Wales at that time which would have contributed to the development of the CSO (the conditions of emergence) and that are key to understanding the assumptions and commitments inherent within the concept, and ultimately the sanction that came into being. It analysed how the concept went from being words on paper to an operational sanction. Government reports, Parliamentary debates, Legislation and Home Office studies were examined in order to allow for a clear description of the original concept of community service as a penal sanction and the CSO that was first introduced in England and Wales. It was shown that the CSO sought to achieve a range of penal functions. It was to punish offenders by requiring them to give up their time to perform unpaid work in the community. It was to rehabilitate offenders by having them perform meaningful work in the community alongside other non-offending volunteers. It was to symbolically repair the damage caused by offenders through the completion of community service tasks which were of benefit to the ‘community’. The CSO also had an overarching goal of diverting offenders away from prison sentences and reducing the number of people being imprisoned each year.

The use of the sanction was then examined along with its spread to other jurisdictions around the world, until the point it emerged in Ireland. It was shown that despite early evaluations of the CSO indicating modest successes (Pease 1975; Pease *et al* 1977), there was a high degree of enthusiasm surrounding the sanction. There was a general acceptance amongst politicians, academics and the media that the idea was good and the focus should be on improving the operations of the CSO so as to allow it to fulfil its potential. This resulted in many jurisdictions around the world in the late 1970s/early 1980s introducing sanctions which imitated closely the design of the English CSO (Scotland in 1978; Ontario, Canada in 1978; New Zealand in 1980; All of the States in Australia by 1982). It was highlighted that it was within this landscape that Ireland began to explore the possibility of introducing a community service sanction of its own.

The thesis identified the factors which existed in Ireland in the late 1970s/early 1980s which contributed to the introduction of the sanction. While others (Riordan, 2009; Jennings, 1990) have credited a wide range of factors as having played a role<sup>25</sup>, it was argued that the emergence of the CSO was primarily as a result of a very limited number of factors. It was shown that Ireland was experiencing a prison crisis which was being fuelled by an increase in crime. It had become clear to politicians from all of the major parties that something needed to be done. In trying to find a solution to the problem, politicians in Ireland did as their predecessors had done many times before them and looked to England and Wales for a solution. What they found was the CSO – a sanction that had been introduced in 1972 to deal with the prison crisis that existed there at that time. Reviews of the sanction were positive and the sanction had also found favour in the Council of Europe (Jennings 1990, p.120). Encouraged by this, policy-makers in Ireland used the CSO which was operating in England and Wales as a model when drafting legislation for a similar sanction in Ireland.

Once presented to the Dáil, the Criminal Justice (Community Service) Bill quickly made its way through the Houses of the Oireachtas receiving widespread support from all of the major parties. It was obvious that Ireland was experiencing a prison crisis which needed to be addressed and CSOs were seen as a legitimate solution to the crisis. The Irish legislation resembled almost word for word the legislation in England and Wales. There was one major difference. In Ireland a CSO could only be used as an alternative to imprisonment, whereas in England and Wales it could be used when sentencing an offender for any imprisonable

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<sup>25</sup> A rise in the ideology of community (Riordan 2009, p.133), a demand for sterner penalties and a growth in concern for the needs of victims (Jennings 1990, pp.117 -121) to name just a few.

offence.<sup>26</sup> It was clear that reducing the use of imprisonment was a primary objective of the Irish legislation. With crime rates rising and crime becoming more of a concern for the public, the Government did not however, want to be seen to be introducing a measure which would give offenders the option of avoiding imprisonment simply to allow the Government to reduce prison numbers and save money. Opposition politicians similarly did not want to be seen to be supporting such a move. There was, therefore, a strong focus throughout the Oireachtas Debates on the many benefits of the CSO and the many penal functions it could achieve (punishment, rehabilitation, reparation). Unlike England and Wales, however, in Ireland the CSO was passed into law without any in-depth analysis of the core concepts inherent within the CSO or without any examination as to how the CSO was going to achieve its many touted functions and benefits. It was just accepted that the CSO would be capable of doing so.

On the 13<sup>th</sup> of June 1983 the Criminal Justice (Community Service) Act was signed into law. It would appear from reading this legislation that Ireland had introduced a sanction very similar to the one which was operating in England and Wales at the time and this has been the predominant view in Ireland for many years. This thesis, however, delved a little deeper and examined the implementation of the Irish legislation. In particular, it examined the processes that were put in place within the Probation Service to allow for the CSO to operate (Probation Service 1984). By doing so, it highlighted that there were significant differences between the Irish CSO and the CSO that was operating in England and Wales. It was shown that in Ireland there was not the same focus on rehabilitation. The sanction that was implemented in Ireland was at its core an alternative to imprisonment that punished offenders while also allowing for them to make general reparations to the community. While it was hoped that offenders would benefit from performing community service, the Irish sanction, unlike the English sanction, was not designed or set up to rehabilitate offenders. Rehabilitation was not a primary objective of the Irish CSO but rather was only a potential beneficial side effect of the sanction.

Having set out what exactly the Irish CSO was when it was first introduced, the thesis then examined the developments and changes that have been made to the sanction over the years. It also looked at how the sanction has been used. It highlighted that there was little or no research conducted on the CSO during its early years making it very difficult to analyse or assess the early operation of the CSO. This dearth of research contributed to the lack of development of the sanction during its first 20 or so years in operation. As more research was

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<sup>26</sup> There are many imprisonable offences which seldom result in an offender actually being sentenced to imprisonment, for example, low-level theft.

conducted on the CSO, it became easier to identify aspects of the sanction that were not working well. This ultimately led to the Probation Service introducing changes to how CSOs operated and introducing what they called a 'new model' of community service in 2010.

The thesis also examined the legislative developments that have been made to the CSO. It examined two in particular, the Criminal Justice (Community Service) (Amendment) Act 2011 and the Fines (Payment and Recovery) Act 2014. The 2011 Amendment Act introduced a requirement on judges to consider using a CSO in all cases where they would but for the Act have imposed a prison sentence of 12 months or less. The Fines Act 2014 provided judges with the power to sentence fine defaulters to a CSO where previously they had no option but to sentence them to imprisonment. It was stressed, however, that while operational and legislative changes have been made to the CSO, they have not altered, in any way, the core elements of the CSO. It was made clear the CSO that existed after these changes, was, at its core, the same sanction that had been introduced in 1983.

As for the use of the sanction, it was shown that despite the initial enthusiasm that surrounded the CSO when first introduced, the use of the sanction did not reach the heights its proponents had anticipated. Furthermore, while numerous efforts have been made by policy-makers to increase the use of the sanction in recent years they have been unable to achieve any significant sustained increase (See Graph 1, p78).

To further enhance our understanding of the existing Irish CSO, the thesis detailed the current processes that are in place from when a CSO is first contemplated by a judge, right through to the completion of the order. It examined, in particular, the initial consideration of a CSO, the requesting of a community service report, the community service assessment, the induction meeting, the performance of the community service hours, the supervision of CSOs by the Probation Service and the non-compliance process. This part of the thesis was informed by interviews with Probation Officers and Community Service Supervisors. This, not only allowed for a clear description of the CSO but also allowed for issues and problems with the existing CSO to be more easily identified. These included issues relating to availability of community service projects, the suitability of CSOs for female offenders, the inability of the sanction to address offenders' criminogenic needs, the inflexible nature of the CSO and variations in CSO processes within the Probation Service.

The operation of community service sanctions in England and Wales, Scotland and Northern Ireland were then examined. So too was the Integrated CSO that is being piloted in Ireland.

First, it identified positive aspects of these sanctions and aspects of the sanctions that are working well. It was noted that all of these sanctions were designed to be flexible and capable of being tailored to the individual needs of offenders. Other examples noted were Scotland's attempts to increase judicial confidence in their community service sanction, not by making it more punitive but rather by providing judges with the option of having more control over the sanction, if they so wished, through the use of judicial progress reviews. Northern Ireland's approach to making community service a more viable option for judges when sentencing offenders in rural areas was also reviewed. This greater access is achieved by making better use of individual work placements and by paying the travel expenses for some offenders.

Aspects of these other community sentencing schemes that are giving rise to some concerns and may be causing negative outcomes were also highlighted. Despite the sanctions being designed to be flexible and to incorporate rehabilitation in all of the jurisdictions examined, they are often not supported by sufficient funding for services needed to allow the sanctions to properly operate. The net effect of this is that the sanctions that exist in legislation often differ from the sanctions that exist in practice. They appear on paper to be flexible and capable of addressing offenders' needs but in reality they are not operating in this way. Another concern noted was the desire amongst policy-makers, particularly in England and Wales, to make community sanctions more punitive. This has likely contributed to the high use of punitive requirements which in turn increases the likelihood that community service sanctions will be breached and offenders ultimately imprisoned.

The purpose of this comparative analysis was to identify aspects of these other sanctions which could possibly be incorporated in Ireland to overcome the issues and problems that have been identified with the Irish CSO. It was also done to identify aspects of the sanctions that should be avoided when amending the Irish CSO so as not to give rise to some of the same negative outcomes that have been experienced in these other jurisdictions.

Based on this, as well as all of the analysis in the previous chapters, the thesis concluded by making a series of recommendations for change to the Irish CSO. The recommendations were made with the view to increasing the use of the CSO and diverting a greater number of offenders away from sentences of imprisonment.

## **Recommendations for Change in Ireland**

- 1. The CSO should be flexible, capable of being tailored to individual offenders and incorporate rehabilitation.*

This could be achieved by allowing probation officers to grant an offender permission to spend a portion of their community service hours in an educational, treatment or training programme. This approach could be further improved by clearly setting out that if an offender fails in his/her rehabilitative efforts or fails to complete an educational or training course, it would not cause the entire sanction to be breached. Only the rehabilitative element of the sanction would be breached, therefore, instead of an offender being returned to court to be re-sentenced, they would simply be required to carry out all of their outstanding hours doing unpaid work in the community. It is only if they fail to comply with this would they be in breach of the entire sanction.

- 2. Efforts should be made to increase judicial confidence in the CSO*

It is recommended that three actions should be taken to achieve this. The first is to introduce a progress review process similar to that which exists as part of Scotland's Community Order and Northern Ireland's Enhanced Combination Order. The second action is to improve the communication and the flow of information between judges and the Probation Service, at a local and national level. The third action is to reduce the levels of actual and perceived inconsistency in how CSOs operate and are managed by the Probation Service (see recommendation 7).

- 3. Legislation should be introduced requiring judges in all cases where they are imposing a prison sentence of less than 12 months to state why a CSO is not being imposed as an alternative.*

The requirement would not be onerous. One or two lines would suffice. This would not only ensure that judges had considered a CSO but would also ensure that they clearly set out why they were not imposing the sanction. This would allow for a greater understanding as to why CSOs were not being used in certain areas and by certain judges. It would highlight issues and problems with the CSO in real time and it would allow, in some instances, for policy-makers or the Probation Service to address the reasons why CSOs were not being imposed.

*4. Treatment, training and educational programmes should be available nationwide.*

For this to be properly achieved there would need to be fundamental reform that stretches beyond the parameters of the criminal justice system. In the absence of this, some improvements can be achieved by allocating additional funding to the Probation Service for distribution to the providers of services that are most needed. In the absence of additional funding, the Probation Service can make minor advances by developing new relationships with organisations and treatment providers to ensure, as best they can, that treatment, training and education services are available for as many CSO participants as possible across the country. The importance of this to the success of the CSO cannot be overstated.

*5. CSOs should be made gender responsive and capable of addressing female offenders' vulnerabilities, needs and childcare commitments.*

It is suggested that 'one stop shop' female only centres should be set up, firstly in major cities and then in large towns around Ireland. Female offenders would carry out their unpaid work in these centres or in an organisation linked to a centre and the work would be supervised by someone with specialist knowledge and expertise in working with women. It is vital in addressing this that not only are centres set up around the country but also that assistance is made available to women to travel from outside a town or city to attend a centre if they so wish. In areas that will not have easy access to a women's centre, greater efforts should be made to operate women only supervised work projects and also to source individualised work placements. A support/link worker should also be hired in these areas. Their role would be to assist and support female offenders in accessing services to overcome and address their specific needs.

*6. Efforts should be made to increase the use of CSOs in rural areas*

This could be achieved by making greater use of individual work placements. For this approach to be successful in Ireland the Probation Service would need to take proactive steps to build and maintain strong relationships with a range of suitable organisations operating in rural areas so that they can place individuals within these organisations when needed. For offenders that are not suitable for individual work placements, the Probation Service should consider, under certain circumstances, paying the travel costs of offenders to attend the nearest supervised work project. The other action that should be taken to increase the use of CSOs in

rural areas is to develop and implement a communication strategy with judges that is tailored to individual districts.

*7. Variances in how CSOs operate and are managed should be reduced.*

In reducing the levels of inconsistency it is vital that Ireland protects and maintains the ability of probation officers to deal with their clients on an individual basis. It is, therefore, suggested that Ireland should not seek to reduce probation officers' discretion. Instead, inconsistencies in how CSOs operate should be reduced by improving the communication and the sharing of knowledge between probation officers. It is suggested that a forum should be set up for probation officers to discuss issues relating to the performance of their duties. It is also suggested that through this forum, efforts should be made to develop non-binding best practice guidelines.

*8. Efforts should be made to limit the extent of net widening of the CSO*

This can be done by ensuring that reforms to the CSO are not made in isolation i.e. that other lower level non-custodial sanctions do not get neglected and are developed and enhanced along with the CSO (Probation, Fines). This would require evaluations being conducted of the other existing non-custodial sanctions in order to identify issues and problems with their operation and for work to be done to overcome them once they have been identified. It is also important that the sentencing options available to judges in Ireland are kept under regular review.

### **Important Outcomes and Advancing the Existing Scholarship**

In answering the central research question the thesis achieved a number of important outcomes and advanced the existing scholarship in a number of ways. Firstly, it presented a comprehensive history of the Irish CSO and provided clarity as to what exactly a CSO was when it was first introduced in Ireland. Previous studies have suggested that the CSO that was introduced in Ireland was almost identical to the CSO that was operating in other jurisdictions (Jennings 1990; Walsh and Sexton 1999; Riordan 2009). In this thesis it was shown that there were in fact significant differences between the Irish CSO and these other community service sanctions. Most notably, the Irish CSO was not designed or set up to be rehabilitative. The Irish CSO did not incorporate into its design the rehabilitative element of the original concept

of community service as a penal sanction. The primary objective of the Irish CSO was to punish and allow for symbolic reparation. While it was hoped that offenders would benefit from completing a CSO, rehabilitation was not a primary objective of the sanction (Probation Service 1984).

Secondly, it provided clarity as to what a CSO now is in Ireland. It did this by tracing the development of the sanction and by detailing how CSOs operate from start to finish. This is something that is missing from the existing scholarship. It has led to uncertainty and confusion when CSOs are being discussed and has led some to expect CSOs to deliver more than they are designed to achieve. It has also negatively impacted the development of the sanction. By providing this clarity and by setting out how CSOs operate in practice, this thesis creates the necessary base upon which one can begin to properly examine the existing Irish CSO.

Finally, the thesis carried out and accomplished its primary purpose. It examined the current operation of CSOs in Ireland and identified ways in which the sanction can be changed in order to increase its use and divert a greater number of offenders away from sentences of imprisonment. This means increasing the number of people being sentenced to a CSO each year as an alternative to imprisonment as well as reducing rates of recidivism amongst those who serve a CSO. The thesis made 8 recommendations for change aimed at achieving this important goal.

### **The Future of the CSO in Ireland**

The negative effects prison sentences have on offenders, their families and their communities are well documented. As a result of this there is now a clear desire amongst policy-makers in Ireland to reduce the number of people being sentenced to imprisonment. The question is how can this best be achieved? Significant reductions will likely require significant change, not just to penal policy but also to Government spending. In the absence of this, the recommendations set out in this thesis, if followed, can go a long way towards achieving this important goal. They have the potential to increase the use of CSOs as an alternative to imprisonment and reduce recidivism amongst those who serve a CSO which will ultimately result in a greater number of offenders being diverted away from sentences of imprisonment.

In the past, Ireland went through long periods where there was little or no significant developments to the CSO but in recent years this has begun to change. There have been two

legislative developments in the last seven years (the Community Service Amendment Act 2011 and the Fines Act 2014) as well as the Probation Service introducing a 'new model' of community service. In the last year the Probation Service have also begun piloting the 'Integrated CSO'. It is clear that the desire is now there to develop and improve the CSO.

The problem in the past however, has been that many of the developments have not been guided by research and when changes have been made, systems were not put in place for the developments to be properly evaluated. This meant that even when developments appeared to be achieving positive results it was not clear how exactly these positive results were being achieved and therefore it was not possible to grow or even maintain the positive outcomes.

It is, therefore, extremely important in moving forward that not only do policy-makers in Ireland continue to seek to develop and improve the CSO but that these efforts are guided by research and when developments are introduced or piloted, they are evaluated from the outset. If this is done, then, even if each development does not achieve its intended outcome we will still continue to learn and the CSO, as well as penal policy generally, will continue to develop and progress in the right direction.

# Appendix 1: Consent Form



## FACULTY OF ARTS, HUMANITIES AND SOCIAL SCIENCES RESEARCH ETHICS COMMITTEE CONSENT FORM

I, the undersigned, declare that I am willing to take part in research for the project entitled '*An Examination of the Community Service Order in Ireland*'.

- I declare that I have been fully briefed on the nature of this study and my role in it and have been given the opportunity to ask questions before agreeing to participate.
- The nature of my participation has been explained to me and I have full knowledge of how the information collected will be used.
- I am also aware that my participation in this study may be recorded (audio) and I agree to this. However, should I feel uncomfortable at any time I can request that the recording equipment be switched off. I am entitled to copies of all recordings made and am fully informed as to what will happen to these recordings once the study is completed.
- I fully understand that there is no obligation on me to participate in this study.
- I fully understand that I am free to withdraw my participation at any time without having to explain or give a reason and if I do so all recordings or transcripts of the interview will be immediately destroyed.
- I am also entitled to confidentiality in terms of my participation and personal details.

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Signature of participant

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Date

## **Appendix 2: Information Leaflet**

### **Title of Project:**

An Examination of the Community Service Order in Ireland

### **What is the study about?**

The negative effects of prison sentences are by now well documented and the need for a greater use of alternatives to imprisonment is widely accepted. As a result policy-makers in many jurisdictions around the world sought to introduce measures to try reduce the use of imprisonment. While other jurisdictions have sought to do so by providing judges with a wider and more flexible range of non-custodial sanctions, in Ireland policy-makers have taken a slightly different approach. The approach taken in Ireland has been to focus primarily on increasing the use of just one sanction in particular – the CSO. In 2011 the Criminal Justice (Community Service) (Amendment) Act was passed into law, the aim of which was to try increase the use of the CSO as alternative to short-term prison sentences. Unfortunately, however, it has not had the impact which proponents had advocated. The use of the CSO remains low and Ireland continues to rely heavily on imprisonment as a penal sanction.

This project will seek to critically examine the CSO in Ireland. The project itself will be broken down into three parts: the past, the present and the future. It will begin by detailing the introduction of the CSO in Ireland. It will set out what the Irish CSO was when it was first introduced. This will then be used as a base upon which to highlight and discuss subsequent shifts or changes to the sanction over the years. Once this has been done the focus of the project will turn to the present. It will examine the current use of the sanction and explore some of the major issues and problems with the CSO today. Finally the project will look to the future and engage in an in-depth analysis of the various options which could be taken in order for Ireland to achieve a significant reduction in the use of imprisonment.

### **What will your involvement in the study be?**

I am asking that you agree to participate in a 30 minute interview. The purpose of the interview is to allow the principal investigator to gain a greater insight into the current operation of the CSO and ensure that he is properly informed of the perspective of the Probation Service and its staff who operate CSOs.

### **Who else is being asked to participate?**

There will be 8 interviews in total. From the Probation Service it will include a senior manager (Director, Deputy Director or Assistant Director), a senior probation officer, a probation

officer and a community service supervisor. From the Judiciary it will include two Circuit Court Judges and two District Court Judges (one rural and one urban).

### **What happens if you agree to participate?**

The principal investigator will arrange to interview you at a time and location that is convenient to you. All interviews will be completely anonymous and no participant will be identifiable from the study (the only exception to this being the interview with a member of the senior management of the Probation Service). All recordings of interviews will be immediately transferred from a digital dictaphone to the principal investigator's password protected computer and then encrypted. Recordings on the dictaphone will then be deleted. Transcripts will be made of the interviews as soon as possible and all audio recordings will then be deleted. Interview transcripts will be anonymised, encrypted and stored on the same password protected computer. Only the principal investigator and the project supervisors will have access to this saved data. Upon completion of the study all data will be stored safely and securely for a period of 7 years after which it will be permanently destroyed.

Participants can refuse to answer any question and can withdraw from the study at any time. If a participant wishes to withdraw from the study all recordings and transcripts of the interview will be immediately destroyed. Participants also have the right to contact the Faculty of Arts, Humanities and Social Science Research Ethics Committee if they have any concerns about participating in the research.

### **What do you do if you need more information?**

For further information about the research project, participants can contact Eoin Guilfoyle (principal investigator) at [eoin.guilfoyle@ul.ie](mailto:eoin.guilfoyle@ul.ie). Alternatively you can contact either of the project supervisors - Prof. Shane Kilcommins at [shane.kilcommins@ul.ie](mailto:shane.kilcommins@ul.ie) / +353 61 234952 or Dr. Susan Leahy at [susan.leahy@ul.ie](mailto:susan.leahy@ul.ie) / +353 61 202386

**This research study has received Ethics approval from the Arts, Humanities and Social Sciences Research Ethics Committee (2015-09-10-AHSS). If you have any concerns about this study and wish to contact an independent authority, you may contact:**

Chair

Arts, Humanities and Social Sciences Research Ethics Committee

AHSS Faculty Office

University of Limerick

Tel: +353 61 202286

Email: [FAHSSEthics@ul.ie](mailto:FAHSSEthics@ul.ie)

## Appendix 3: Probation Officer Interview Guide

- Greeting and Introduction

### *Overview*

- Could you describe your role in the Probation Service?

### *Process*

- Judge requests a Community Service Report – What happens next?
- Offender Assessment – How is the assessment arranged?
- Is there always a Probation Officer present in Court?
- Could you detail the assessment process? How is it arranged, how many meetings take place, how long is each meeting, what are you screening for, are there guidelines that you follow, what are the most important factors in your opinion?
- How long is the written Community Service Report? What information is contained in it?
- How long does it generally take from when the report is first requested to when the report is submitted?
- Is it common for a person to be deemed unsuitable? What are the most common reasons for deeming a person unsuitable for community service?
- Judge imposes a CSO – What happens next?
- How is the person's work schedule and type of work they are to do decided upon?

- Do offenders have any say in the type of work they will be carrying out?
- What types of work projects are available?
- What is the difference between an open work project and a closed work project?
- Does the process change in any way for female offenders? If so how? Are there any female only projects?
- What is the role of the Community Service Supervisor?
- Could you describe the relationship that exists between Probation Officers and Community Service Supervisors?
- How often do you meet with a person during their CSO?
- What happens if a person does not turn up to a work project when they are supposed to or is disruptive while they are there?
- What type of behaviour would result in a warning being issued to a person?
- What type of behaviour would result in breach proceeding being initiated?
- Who decides if a particular action is sufficient to issue a warning or initiate breach proceedings?
- Are there strict rules or is it left to the discretion of the Community Service Supervisor/Probation officer?
- Could you describe the procedure for issuing a warning?
- Could you describe the procedure for initiating breach proceedings?

- What happens when a person successfully completes all of their community service hours?

*General Questions about the CSO*

- What in your view is the purpose/objective of a CSO?
- There have been many efforts to increase the use of the CSO over the years. Despite this the use of the sanction has not increased. Why do you think this is?
- Is there much communication between the Probation Service and the Judiciary at a local level?
- Do you think the CSO could be improved in any way? If so what improvements do you think should be made?
- Is there anything else that you would like to add?

## **Appendix 4: Community Service Supervisor Interview Guide**

- Greeting and Introduction

### *Overview*

- Could you describe your role in the Probation Service?
- How many projects do you supervise?
- How many people do you supervise on each project?
- Could you describe these projects?
- How are projects sourced?

### *Process*

- At what point in the process do you first meet with the offender.
- How much do you know about them when you first meet them?
- Could you describe a normal day?
- Could you describe how you deal with a person that is enthusiastic and co-operative?
- What do you do if a person does not turn up when they are supposed to?
- Could you outline the process for dealing with a person that is not working as they should and/or is disruptive?
- How do you decide if it is sufficient to inform the probation officer? Are there any written guidelines?

- What happens when a person completes their CSO hours?
- Do people have any say in the type of work they do while on a work project?
- Is there an option of doing a few hours per day or do they have to work full days?
- Could you describe your relationship/interaction with probation officers?

*General Questions about the CSO*

- What, in your view, is the purpose/objective of a CSO?
- Why, in your view, has the use of the CSO being decreasing?
- Do you think the CSO could be improved in any way? If so, what improvements do you think should be made?
- Is there anything else you would like to add?

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