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A tripartite strategy for unpaid work in the community

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Foreword

HM Inspectorate of Probation is committed to reviewing, developing and promoting the evidence base for high-quality probation and youth offending services. *Academic Insights* are aimed at all those with an interest in the evidence base. We commission leading academics to present their views on specific topics, assisting with informed debate and aiding understanding of what helps and what hinders probation and youth offending services.

This report was kindly produced by Dr Eoin Guilfoyle and Dr Louise Kennefick, setting out the benefits to be gained from a clear underpinning philosophy and strategic direction for unpaid work which meets the needs of victims, those who have offended, and the community as a whole. A tripartite strategy is proposed to guide future policy and operational developments, based on the principles of desistance, restorative justice, and social justice. Taken together, these principles highlight the importance of multi-agency responses and working practices, alongside meaningful co-production and community participation. The goal is to support positive pro-social changes at the individual, interpersonal and community levels, repairing harm, supporting reintegration, tackling social exclusion, and promoting community solidarity.



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The views expressed in this publication do not necessarily reflect the policy position of HM Inspectorate of Probation

1. Introduction

Making communities safer requires an evidence-based approach to reducing reoffending. There is growing consensus across criminal justice literature and wider socio-political contexts that imprisonment is not only an ineffective response to offending behaviour but further serves to entrench conditions of social injustice, which ultimately reinforce recidivism (e.g. Ewing, 2017). The literature has supported the growth of a strong decarcerative movement across Anglo-American jurisdictions (e.g. Epperson and Pettus-Davis eds., 2017), and informed international protocols calling for the reduction in the use of incarceration as a response to offending (e.g. United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)). Alternatives to imprisonment, particularly community supervision and unpaid work, have gained ground over incarceration in the past decades, though this rise does not always correlate with a reduction in prison rates. As a result, the literature cautions against mass supervision and the negative impacts of criminal justice net-widening (Phelps, 2013; McNeill and Beyens, 2013). This trend aligns with growing international support for the principle of minimum intervention in the penal context (Acosta et al., 2012; Viglione, 2018; Tokyo Rules 2.6; 10.4; 12.2).

Unpaid work in the community has the potential to adhere to the principles of decarceration (through diversion from custody) and minimum intervention (as a more proportionate response to certain forms of offending) with a view to reducing recidivism. However, the underlying purpose of the sanction is often confused, hindering its strategic design and impact as an alternative to prison.

This Academic Insights paper proposes the advancement of a tripartite strategy, based on the principles of desistance, restorative justice, and social justice, to guide policy and operational developments relating to unpaid work in the community:

- a review of national and international research findings, policy materials, reports and publications relevant to unpaid work, points to the potential of **desistance** theory to reconcile the core functions of this sanction, and to reinforce a wider cultural message that people who offend can change their behaviour
- **restorative justice** research findings highlight the significant, functional contribution that practices and techniques can make towards facilitating desistance in terms of repairing harm and supporting reintegration
- underpinning these two approaches with a firm **social justice** ethos not only aligns with international social policy signals, but frames unpaid work resolutely as a community-based endeavour with a view to making our localities safer, through better reoffending outcomes, in a way that minimises the collateral harm to the individual that can arise from punitive attitudes and practices.

The proposal draws on findings from a report commissioned by the Irish Probation Service as part of its strategy to maximise the potential benefit of community service in the Irish criminal justice system, and to reform and revitalise the current operating model (Kennefick and Guilfoyle, 2022).¹

¹ This paper includes some extracts and case studies from the report with the permission of the Irish Probation Service.

2. Enhancing the delivery of unpaid work

2.1 Policy foundations and legal framework

Unpaid work (the Community Service Order as it was then called) was first introduced as a penal sanction in England and Wales in 1972. From the outset, it lacked a clear penal philosophy. It was put forward as a sanction that could achieve a range of penal purposes or functions: decarceration, punishment, rehabilitation, and symbolic reparation (Young, 1979). Over the years, community service/unpaid work in England and Wales has been the subject of numerous reforms. These reforms were often made in a 'haphazard fashion' (Mair and Mills, 2009, p.5) and tended to be introduced in an effort to increase the punitiveness (real and perceived) of unpaid work and other community sanctions, as well as to increase the ability of community sanctions to be tailored to the individual.

By 2002 there were four main community sanctions available in England and Wales (with Curfew Orders and Attendance Centre Orders also available for offenders over the age of 21):

- the Community Rehabilitation Order (with 15 possible requirements that judges could choose from when imposing the sanction)
- the Community Punishment Order (community service/unpaid work)
- the Community Punishment and Rehabilitation Order (community service/unpaid work with the option to attach any of the 15 requirements of a Community Rehabilitation order)
- the Drug Treatment and Testing Order.

The Criminal Justice Act 2003 sought to increase the 'credibility' of community sanctions by simplifying and rationalising the 'confused array of community penalties that had existed before it' (Mair, 2011, p.222). This was done by replacing all of the orders listed above with a single community sanction called the Community Order (CO). The CO allows magistrates and judges to pick and choose between a range of requirements (13 in total) when sentencing a person, combining them if appropriate, depending on the nature of the offence committed and the underlying issues that need to be addressed to prevent reoffending. Unpaid work is one of these requirements, and it allows a judge to impose on a person a requirement to carry out between 40 and 300 hours of unpaid work in the community within 12 months.

Further changes were made in 2013 in an effort to increase the punitiveness of the CO. The Crime and Courts Act 2013 required magistrates and judges when imposing a CO to include at least one requirement for the purpose of punishment, to impose a fine in addition to a CO or to do both, unless there are exceptional circumstances that would make it unjust to do so. It is a matter for the court to decide which requirements amount to a punishment in each case (Sentencing Council, 2017). There is little doubt that the unpaid work requirement would be capable of being the requirement imposed for the purpose of punishment.

The CO can only be imposed where a person has committed an 'imprisonable offence.' This does not mean that it can only be used as a direct alternative to prison as there are many imprisonable offences that rarely result in a person being given a custodial sentence (for example, low level theft or low-level criminal damage). In cases where a custodial sentence is not deemed to be appropriate, the court must only impose a CO where it is satisfied that the offence itself is serious enough to warrant it. If it is not serious enough, then the court should impose a fine or a conditional discharge.

2.2 A tripartite strategy

The lack of a clear guiding penal philosophy for unpaid work has impeded its delivery, in addition to the strategic design of related policy. Below we put forward a tripartite strategy for unpaid work, underpinned by desistance, restorative justice, and social justice principles. We will set out the components of the tripartite strategy and show how each can be used to support the delivery of unpaid work, guide policy developments, and help to re-legitimise the unpaid work requirement for relevant stakeholders: the judiciary, the community, the state, victims of crime (and victim representatives), and individuals who have offended.



A desistance-informed agenda

Unpaid work has the potential to form an important step on a person's desistance journey, and therefore reduce reoffending, if implemented in a way that supports change at both the individual and social level.

Over the last two decades, desistance theory has played an increasingly significant role in shedding light on how people turn away from crime and build more constructive lives. An extensive body of literature demonstrates that desistance is a complex process of behavioural change that is unique to each individual in accordance with their own criminogenic needs (e.g. Farrall, 2002; Healy, 2012). Further, findings suggest that individual change is heavily contingent on wider social supports. In particular, people are more likely to desist from crime when they have '... strong ties to family and community, employment that fulfils them, recognition of their worth from others, feelings of hope and self-efficacy, and a sense of meaning and purpose in their lives' ([Academic Insights paper 2019/01](#) by Maruna and Mann, 2019:7; see further, Farrall and Calverley, 2005; Rocque, 2017). Beyond this, the importance of desistance as a reciprocal process, as between the individual and the community, has been recognised as integral to achieving reintegration (Maruna, 2017; McNeill, 2006; Weaver, 2012).

Desistance studies in the field of community supervision, in particular, reflect this broader approach by framing individualised behaviour programmes and treatment services (e.g. addiction services, CBT etc.) as one vector of support for the change process (McNeill and Weaver, 2010; see also Robinson and Raynor, 2006), alongside recognition of the role that communities and wider society can play in promoting desistance and reintegration.

Unpaid work has the potential to play a more prominent role in advancing desistance. As it stands, literature indicates that unpaid work in the community can support individuals in their desistance efforts through its rehabilitative function (McCulloch, 2010), and that community service experiences can reduce recidivism (Killias et al., 2000; Wermink et al., 2010). A reduction in reoffending is particularly evident where the individual has a sense that the sanction was fair, (McIvor, 1992; Killias et al. 2000), meaningful to them and the recipient(s), and has a degree of reciprocity in terms of building relationships with others (McIvor, 1998).

To further reinforce a desistance approach through the delivery of unpaid work, it is necessary to ensure that implementation strategies respond to the needs of the individual, their family and their community. As such, there is no formal practice guidance nor singular 'desistance' intervention recommended (Kemshall et al., 2021; Maruna and Mann, 2019). The ultimate goal from a policy perspective, therefore, is to provide genuine opportunities and tailored resources that promote human and social capital (Farrall, 2004; Maruna, 2017; [Academic Insights paper 2021/06](#) by Albertson, 2021). To this end, a desistance model has been proposed by Farrall (2004), McNeill (2006), Porporino (2010), and Weaver and McNeill (2012), the key principles of which acknowledge the fact that change can take time and that the inclusion of a broad range of stakeholders is central to promoting reintegration.

Maruna's (2017) work also signals the broader significance of desistance as a social movement in its own right, beyond the confines of the criminal justice sector. When desistance is understood as a collective duty to promote individual capabilities and social capital, it acts as a route connecting the criminal justice aim of reintegration with the broader justice aim of social inclusion. Viewing unpaid work at a macro level, a desistance-informed agenda channels local, national and international intentions in promoting social justice principles through tackling social exclusion, and promoting community solidarity through community participation and multi-agency responses, as discussed further below. This wider frame would acknowledge that the operation of unpaid work is not just the responsibility of probation services. Desistance happens in the community, and so the CO and the unpaid work requirement have the potential to support desistance, in particular, where that support comes from a variety of sources that promote the pro-social identity of the person who has offended, including: local government, state agencies, community stakeholders, voluntary organisations, and the private sector.

In order to imbed a desistance-informed agenda, some jurisdictions place legal obligations on stakeholders to engage in planning for and supporting desistance at various stages. For example, the Norwegian government legally requires state agencies and private and voluntary organisations to commit and implement a 'reintegration guarantee' for those who have served their sentence (McNeill et al., 2012). Further research is required in order to identify whether or not placing a legal obligation on public/private entities to engage with an aspect of the management of unpaid work is necessary and/or desirable.

The role of restorative justice

The development of a desistance-informed approach can be strengthened by the practices and techniques of restorative justice, which facilitate the collective resolution of the aftermath of an offence (Marshall, 1999). The compatibility of the two approaches lies in their understanding of the individual. As Maruna notes: 'both bodies of research are fundamentally premised on a belief in redeemability or the idea that human beings are not of fixed moral character and even the worst behaved among us have something positive to offer society' (Maruna, 2016, p.290). Moreover, the markers of a social justice approach, particularly multi-agency working and community participation, also underpin restorative justice.

Restorative justice has made significant inroads into the international (Van Ness, 2005; [Academic Insights paper 2020/04](#) by Marder, 2020), European (European Parliament (2012) Directive 2012/29/EU; Council of Europe, 2018; Dünkel et al., 2015), and national penal landscapes, particularly in a procedural context (e.g. Victim's Code, 2021). Yet despite these developments, the provision of restorative justice across communities is inconsistent and inaccessible for many, with victim participation levels remaining low (Banwell-Moore, 2022).

Beyond the victim-offender mediation format, however, there is an increasing awareness of the role restorative justice principles can play, not just as an addition to mainstream justice, but at the core of criminal justice processes (Aertsen, Daems and Robert, 2012). For instance, Marder (2020) recommends the use of restorative justice as a default approach to decision-making at all stages of the criminal justice process, which would imbed a presumption in favour of offering and enabling stakeholder participation in order to repair harm, unless the circumstances of the case dictate otherwise.

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

Social justice

There is a strong international literature on the contribution of social exclusion to the crime problem, and the resultant need to view crime through a social justice framework (Drake et al., 2009). For instance, child policy studies focus on the link between adverse childhood experiences and crime involvement in adulthood (Baglivio and Epps, 2016; Fox et al., 2015; Wolff and Baglivio, 2016). Moreover, numerous studies have found correlations between criminal activity and homelessness (Burton et al., 2018; Roy et al., 2014; Wardhaugh, 2000), and criminal activity and poverty (Imran et al., 2018; Newburn, 2016; Zhao et al., 2014).

At present, social responses to crime largely focus on early intervention (Karoly et al., 2005; Murphy, 2010) and diversion strategies (McAra and McVie, 2010). There is therefore potential for the CO and the unpaid work requirement to play a greater role in recognising and responding to crime as a social problem at the post-conviction stage. There is an opportunity to reframe the sanction as a tangible means of aligning penal policy with wider social policy concerns, through the reduction of prison sentences and the promotion of practices that support social inclusion and build safer communities.

Social justice, in the context of community sanctions is achievable through the advancement of key markers: co-production, community participation, and multi-agency responses. There is an advanced literature on the co-production of public services as a means of promoting

social inclusion (Booth, 2019; Community Work Ireland, 2016; Strokosch and Osbourne 2016). The approach is further reflected in international protocols, like the Tokyo Rules, which recommend including public participation in the management of criminal justice in order to contribute to the protection of society (Tokyo Rules, 1.2; 10.4; 17.1; 17.2).

A social justice response to offending also calls for the promotion of multi-agency approaches in a way that spans penal and social policy. An example of this can be seen in the Netherlands, where it is acknowledged that the response to crime ‘... is becoming wider than the judicial domain alone, and the social domain is also coming more and more into the picture’ (de Kok et al., 2020, p.54). Recognition of the need to involve both public and private sectors in rehabilitative initiatives is also growing. For example, in Japan, public-public and public-private partnerships across the housing, education, employment, welfare, health and social services sectors form the basis of a government-wide strategy to realise rehabilitation (United Nations, 2020). Support for multi-agency responses is also evidenced in international protocols relating to criminal justice. The Tokyo Rules recommend the introduction of mechanisms that facilitate linkages between services responsible for non-custodial measures, other branches of the criminal justice system, social development and welfare agencies, and both governmental and non-governmental services dealing with health, housing, education, labour, and even mass media (Tokyo Rules, 22.1).

Applying a social justice approach to unpaid work and community sanctions more generally requires developing responses around the needs of the individual in their community, as distinct from structures deriving from the responsibility of a particular agency. This approach can be achieved through devising new multi-stakeholder structures to drive national policy at the local level, or through the optimisation of existing structures.

Taking seriously the implementation of social justice markers in the community sanctions space requires an extensive review of working practices across all stages. In the context of multi-agency responses, Scotland’s Community Justice model uses language and principles based on a social justice ethos and a localised vision of community justice taking place under the direction of a national strategy (Scottish Government, 2016a; Scottish Government 2016b; Community Justice Scotland, 2020). The model is at a relatively early stage and so a definitive evaluation has not yet emerged. However, the 2020-21 Annual Report indicates that progress is being made towards achieving community justice outcomes at a national and local level. Core challenges identified include the impact of the Covid-19 pandemic, issues relating to monitoring and reporting performance, and digital innovation.

Case study: Community Justice Model, Scotland

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

Key features:

- **Multi-stakeholder input through community planning partnerships.** Individuals, local businesses, victims of crime, people who have committed offences, families, community bodies and representatives, third sector, agencies and services across housing, employment, health, wellbeing welfare etc., work together to support, manage and supervise those who have offended in the community until the point of reintegration.

- **Based on principles of desistance, social inclusion and citizenship.** Focused on challenging stigma, employing people who have offended in the community, participating in community justice planning. Inclusion of victims, those who have committed offences, families and representatives. Holistic, person-centred approach to responding to complex needs of people who offend e.g. education and training, restoring relationships, addressing addiction, addressing financial problems, developing pro-social attitudes, accessing employment opportunities, accessing mental and physical health supports, addressing housing needs.
- **National level strategy based on local and third sector input.** Planning occurs at the local level by those with knowledge of the area. To promote participation, statutory partners (e.g. health boards, courts, local authorities, police, prison service) are under a legal obligation to engage in and support the planning process and to report on progress at national level. The third sector are included at the planning stage.
- **Tracking progress and continuously improving.** Development of an 'outcomes, performance and improvement framework' in conjunction with the strategy in order to support the recording and sharing of positive outcomes and the identification of learning and innovation opportunities.
- **Community understanding.** Changing the conversation to reduce stigma and support reintegration and desistance, leading to more responsive services and better community justice outcomes. Creation of a strategy that targets education of communities, local media, and local decision-makers (e.g. judiciary). Developing the local evidence-base to better understand issues in a particular community, and to identify and capitalise upon existing practices and structures that support good outcomes.
- **Community participation.** Involving community stakeholders in the planning, delivery and evaluation of community justice policy, practices and services.
- **Strong national and local leadership.** Leadership at the national and local level is essential to ensuring the effective execution of group decisions that align with the national strategy.
- **Response based on risk and need.** Delivery of evidence-based interventions appropriate to the risk level and need of the person who has offended.

2.3 Key challenges

The development of a tripartite strategy faces numerous challenges pertaining to both legitimacy and practical implementation. This section discusses briefly two key areas of concern: (i) public perception; and (ii) monitoring and evaluation.

Public perception

'[C]ommunity-based approaches cannot be achieved without the understanding and acceptance of the community and the public at large' (United Nations, 2020, p.11).

The effectiveness of the tripartite strategy is contingent on the level at which the community, wider society, the media and the state buy into the message that people can

change (e.g. Maruna and King, 2004). One line of evidence suggests there is limited awareness of what community sanctions are available and a marked lack of understanding of the purposes of community sanctions and their effectiveness (Jansson, 2008; Allen and Hough, 2007), which can breed scepticism and misinformation. Further, there is a perception that public attitudes are generally punitive, which can have an impact on judicial sentencing practices (Anderson et al., 2015) and on policy development.

There is, however, a strong line of literature which undermines the assumption of public punitiveness (Marsh et al, 2019; Annison and Moffatt, 2014; Hough et al, 2013; Hough and Roberts, 2011; Maruna and King 2004). In particular, Maruna and King's (2004) study found that public support for the notion of 'redeemability' is widespread. Moreover, Annison and Moffatt's (2014) study suggests confidence in public understanding and being on board with the idea of desistance as a process. Taken together, this suggests that public attitudes tend to be driven by emotion rather than simply by empirical fact (Maruna and King, 2008). As such, ideas around redemption and forgiveness can impact and inspire to the same degree as ideas around retribution and condemnation. The key point is that a focus on retribution brings harm to both the individual who has offended and society because it impedes desistance and undermines social cohesion. Conversely, a careful and measured focus on the sentiment of redemption supports desistance and builds towards safer societies (Maruna, 2001).

Therefore, appealing to the compassionate side of society, which is based upon an emotive instinct, can increase confidence in community sanctions, particularly where supported by stories of personal transformation (Maruna and King, 2008). Such an approach can be a powerful tool in shaping how people think about crime (Applegate et al., 2000), those who commit it, and their place in the community. An example of a campaign that galvanises public sentiment in respect of those who have offended is Singapore's 'Yellow Ribbon' Project (see case study below). Community Justice Scotland has also run an effective 'Second Chancers' campaign that promotes positive attitudes towards those who have offended through sharing their stories on audio, video and social media platforms (Community Justice Scotland, 2019).

Developing strategies for unpaid work that imbed public engagement of this nature can assist in the process of legitimising the requirement in a way that promotes reintegration and desistance, as opposed to promulgating punitive discourses.

Case Study: Yellow Ribbon Campaign, Singapore

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

- **Awareness:** *raising awareness of the need to give second chances to those who have offended, in addition to their families.*
- **Acceptance:** *encouraging people to accept those who have offended, and their families, into the community.*
- **Action:** *inspiring community action towards advancing the goals of rehabilitation and reintegration.*

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

Monitoring and evaluation

As discussed above, unpaid work has a number of discrete, though necessary, functions which can make the evaluation of the sanction challenging. Effective monitoring with comprehensive performance indicators is vital in order to accurately assess the operation of the sanction. In particular, there needs to be a comprehensive understanding of what is working well and what is not in order to ensure that unpaid work as a penal sanction/requirement can be continuously developed. It is also vital in order to highlight to judges, organisations, and the public generally, the extent to which the unpaid work requirement is achieving its aims. Consequently, evaluation mechanisms should be ongoing with the results published bearing in mind the communication needs of key stakeholders.

One of the most common tools used to evaluate unpaid work and community sanctions more generally has been recidivism rates (Heard, 2015). This approach is problematic for a number of reasons. First, recidivism rates measure just one aspect of unpaid work; they do not evaluate whether or to what extent unpaid work is achieving its other aims. Second, in their current form, recidivism rates are a blunt and inadequate measure of rehabilitation and desistance, as they do not capture incremental changes that form part of the desistance process. For example, they fail to reflect reductions in the type and/or seriousness of the offences committed, in addition to any benefits a person might have gained from completing an unpaid work requirement, such as developing pro-social attitudes and behaviours, gaining skills, securing employment, accessing housing, improving relationships with family, building community links etc. (Heard, 2015). Third, recidivism rates are solely outcome focused and, as a result, are not helpful in assessing the operation of unpaid work in identifying ways to improve the sanction/requirement.

Therefore, further measurements of effectiveness should be mobilised in order to allow for a much greater understanding of the operation of the unpaid work requirement and its outcomes. Notably, greater efforts need to be made to identify performance indicators that capture progress towards desistance from crime. The newly established Ministry of Justice Data First project which links datasets across departments is one promising development in this regard (Ministry of Justice 2020; ADR UK).

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