

# Community Sentences and Financial Penalties



## Use of community sentences

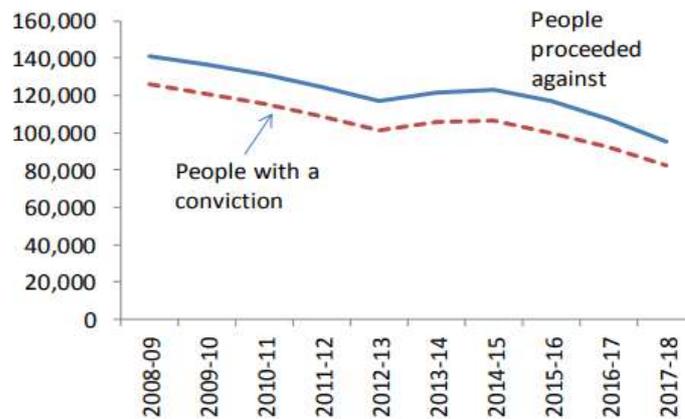
Community-based sentences are a form of criminal sanction handed down by the courts. Often they are defined and discussed with reference to what they are not: imprisonment. Hence, they are referred to as ‘alternatives to custody’ or as ‘alternatives to prison’. Prisons tend to dominate our thinking about punishment but, in fact, community sentences are much more frequently used than imprisonment – and many prisoners are also subject to supervision in the community after release. However, both community sentences and sentences of imprisonment are much less frequently used than financial penalties (fines and compensation orders).

Chart 1, taken from a Statistical Bulletin by the Scottish Government titled [Criminal Proceedings in Scotland, 2017-18](#), illustrates the penalties issued by the courts for charges that have been proved in court (for more information about how the court system and wider criminal justice system work, see [SCCJR ‘Scottish criminal justice system’](#)).

Some key findings for the period April 2017 to March 2018 include:

- In 2017-18 there were a total of 87,716 people who had a charge proved in court.
- Financial penalties accounted for the majority of court sentences (47%).
- Custodial sentences accounted for 14% of all penalties in 2017-18.
- 20% of all convictions in 2017-18 resulted in a main penalty of a community sentence.
- ‘Other sentences’ accounted for 18% of all penalties. These include:
  - o an absolute discharge (when the court decides to impose no penalty).
  - o admonishing of the offender (when the court warns the offender not to do it again). The overwhelming majority of ‘other sentences’ are admonishments.
  - o referral of the case to a Children’s Hearing (see [SCCJR ‘Youth justice’](#)).
  - o making a guardianship order if the accused is suffering from a mental disorder.

**Chart 1: Number people proceeded against and those convicted**



Access the [publication](#) for more information, including about the characteristics of individuals who have faced criminal proceedings, and the **disposals** given for various types of crime/offence.

While this briefing is primarily concerned with community sentences and financial penalties issued by the courts, it is important to recognise that prosecution in court is only one of a range of outcomes available for individuals who have been identified by the police as having committed an offence (see [SCCJR 'Scottish criminal justice system'](#)). In 2007-2008 new options became available to the police for dealing with minor offences. This means that the police can issue 'direct measures', rather than handing over the case to the Crown Office and Procurator Fiscal Service (COPFS). These include:

**Disposal:** a disposal is a sentence given in a court or action taken in non-court cases

- Anti-Social Behaviour Fixed Penalty Notices. In 2017-18 there were 11,008 people who received these as a main penalty. The vast majority were issued for: breach of the peace (54%); and consuming alcohol in a public place (19%) and urinating (19%) etc.
- Formal Adult Warnings. 17,291 people were given these in 2017-18. 'other' offences eg. Shoplifting, possession of drugs, threatening or abusive behaviour (77%); consuming alcohol in a public place (10%) and breach of the peace (5%).

The police may, however, decide to arrest and charge an individual and send a report to the COPFS. When the COPFS receive a report about an individual who has been charged, it must reach a decision about whether the case should proceed to court or proceed out of court. The COPFS has had long-standing powers to issue Fiscal Warnings and Fiscal Fines as an alternative to court prosecution for a range of offences. It also has the power to issue Fiscal Fixed penalties, mostly used for motor vehicle offences. (Fiscal Fines are discussed further below.)

## Community sentences vs Imprisonment?

The 2008 report published by the Scottish Prisons Commission, [Scotland's Choice](#), made the following recommendations:

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

The commission judged there to be a need for a more effective and credible community sentence that would command public support and through which people who had offended would be ordered to provide 'payback' in the community while being able to access opportunities for positive personal change. By arguing for community payback as the default option, they hoped to shift thinking about punishment away from imprisonment.

The Prisons Commission found that Scotland's prisons (like those in England and Wales) faced an issue of overcrowding and expressed concern that "*prisons can increase the likelihood of reoffending more than often than reduce it*". The review claimed prisons were not being used mainly to tackle crime, as many in the prison population were there for very short periods. Although this may provide communities with very short-term respite, there is not enough time to engage the offender in a meaningful rehabilitation programme. The commission also expressed concern about the impact of imprisonment on families affected by it (See [SCCJR 'Impact of punishment – families of people in prison'](#)) and the cost of short-term sentences, believing this money could be directed to other programmes to reduce offending.

One of the commission's proposals was that courts be required in most circumstances to replace short-term prison sentences (of up to six months) with community sentences. Under subsequent reforms introduced under the Criminal Justice and Licensing (Scotland) Act 2010, passed by the Scottish Parliament, although it was decided not to *abolish* short-term prison sentences, there is now a *presumption against* short-term sentences of less than three months. In 2015 the Scottish Government has opened [a consultation](#) on whether the three months minimum for custodial sentences should be increased.

The results of that consultation led the Scottish Government to bring forward necessary secondary legislative changes to extend the presumption against short sentences from 3 to 12 months in May 2019.

SCCJR's Dr Hannah Graham (University of Stirling) wrote a blog on the issue called '[Penal Reform: pragmatic plan and cross-party consensus.](#)'

### Case Study

Community Justice Scotland launched a campaign 'Second Chancers' in 2018 that encouraged a new way of thinking as Scotland tried to adopt a 'smarter justice system'. The [Second Chancers](#) website has a series of case studies from people affected by crime and their experiences.



### What is meant by 'community payback'?

A 2010 [briefing paper produced by SCCJR](#) explored this issue:

- The paper notes that the 'operational definition' of 'payback' used by policy-makers in Scotland seems to be that stated in the 'Scotland's Choice' report: *"In essence, payback means finding constructive ways to compensate or repair harms caused by crime. It involves making good to the victim and/or the community. This might be through financial payment, unpaid work, engaging in rehabilitative work or some combination of these and other approaches. Ultimately, one of the best ways for offenders to pay back is by turning their lives around."* (Scotland's Choice).

- The paper also notes that a report released in England on community-based sentences suggested that “*payback should be about making community service more visible*”: it should be more painful or punishing, and shaming on the offender.
- It is suggested that there are two ways to think about paying back. One interpretation is linked to vengeance – that the debt the person who has offended owes to society must be paid in pain, which should provide an advantage to society by the offender suffering a disadvantage.
- Under the other interpretation of payback, the person must do something constructive to the benefit of society, rather than being compelled to suffer some personal harm.
- However, it is pointed out that the difference between these two interpretations of payback – retributive (or punitive) payback and reparative payback – might not be as large as some people think, as any kind of payback perhaps hurts the person who has to provide it.
- The paper also raises an alternate view: does the community, society, or country owe something to the offender, whose “limited life chances” may have played some part in the origin of this or her offending? Does the community need to pay back?

## So, what’s the point of community sentences?

In a 2007 Scottish Government review of the use of community sentences, the government laid out what it sees as the main purposes of *punishment*:

- *“Public Protection/Safety: Where an offender presents a real risk to the public they must be imprisoned in the interests of public safety. Where they do not, punishment in the community may be more likely to reduce offending.*
- *Punishment and Deterrence: Offenders must realise that crime does not pay and that their actions will lead to a stern consequence. When a crime is particularly serious, prison will rightly be regarded by the courts as the only viable sentencing option.*
- *Payback: Where an offender can remain in the community they should be made to pay back. Crime causes damage – wherever possible punishment should include an element of reparation to make good on that damage and force offenders to face up to their actions.*
- *Rehabilitation and Reintegration: With the exception of a small number of very serious crimes, “offenders” will return to (or remain in) a community. Where*

*possible, penalties should do what they can to help people tackle underlying problems that contribute towards their offending and help them move back towards a law-abiding lifestyle.”*

See [SCCJR ‘What is prison for?’](#) to compare this to the purported purposes of imprisonment.

Criminal Justice Social Work (CJSW) has responsibility for delivering community- based sentences in Scotland (See [SCCJR ‘Scottish criminal justice system’](#)). In its publication [National Outcomes and Standards for Social Work Services in the Criminal Justice System](#), the Scottish Government states three **key outcomes** for CJSW services:

1. Community safety and public-protection.
2. The reduction of re-offending.
3. Social inclusion to support **desistance** from offending.

**Desistance:** while there is no complete agreement on the definition of desistance, it is defined in the Scottish Government document as “an offender’s cessation of criminal activity”. Academic commentators however have drawn attention not just to changes in crime-related behaviour, but also to associated changes in identity and in the person’s sense of belonging in and acceptance by a community.

**Key interventions** of CJSW services required to achieve the key outcomes set out above are characterised as ‘the four Rs’:

- Restriction – punishing the person for their crime by restricting their movement, e.g. a prison sentence.
- Reparation – the person paying back to society, either financially or through activities such as unpaid work in the community.
- Rehabilitation – rehabilitating the person to reduce their chances of offending.
- Reintegration – reintegrating the person back into society.

## Community Sentences available

- Community Payback Order (CPO) – the main penalty for 16% of all charges proved in court in 2017-2018

- Restriction of Liberty Order (tagging) – the main penalty for 3% of all charges proved in court in 2017-2018
- Drug Testing Treatment Order (DTTO) – the main penalty for 1% of all charges proved in court in 2017-2018

\*above figures from [Criminal Proceedings in Scotland, 2017-18 Statistical Bulletin](#).

### ***Community Payback Order (CPO)***

Community Payback Orders (CPOs) were introduced by the Criminal Justice and Licensing (Scotland) Act 2010 and came into effect from February 1 2011. The CPO replaces the formerly separate Community Service Order, Probation Order and Supervised Attendance Order.

According to [guidance issued by the Scottish Government](#), the CPO is designed to ensure that those who have offended ‘pay back to society’, first by requiring them to make reparation (make amends), and second by requiring them to address and change their offending behaviour.

The government’s advice also states that by bringing together different options for judges, courts will have the ability to not only punish individuals but also do so in a way that addresses the areas of their lives that need to change.

A CPO may contain a number of different requirements, including:

- unpaid work or other activity requirements (20 to 300 hours; to be completed within three months for 20-100 hours and six months for 101-300 hours)
- offender supervision requirement (this is mandatory when an order is imposed on an individual aged under 18, or in addition to other requirements of the order)
- compensation requirement (requiring an individual to pay compensation for any personal injury, loss, damage or anything else resulting from the offending behaviour)
- programme requirement
- mental health treatment requirement
- drug treatment requirement (if the offender is dependent on or is susceptible to drug abuse)
- conduct requirement (for example, the court may require the individual not to enter a certain street or not enter a play park)

Orders will usually be made for a period of between six months and three years, other than an order consisting of unpaid work of up to 101 hours. When the court imposes a CPO it

can arrange for the case to be reviewed at a later stage. These reviews are called 'progress reviews' and are carried out by the court. If the person on the CPO has been found to have breached the order's requirements then the court can impose sanctions, such as custody or electronic monitoring.

*So, have CPOs been effective?*

Scottish Government (2018) [Criminal Justice Social Work Statistics in Scotland 2017-18](#).

- ✓ An important part of CPOs is that direct contact with the person should take place on the same day as the order is imposed, or the next working day. In the majority of cases (77.3%) in 2017-18, first contact took place within one working day of the order being imposed.
- ✓ Out of a total 17,965 terminations of CPOs in 2017-2018 12,112 were terminated because they had successfully completed their order or received an early discharge. Only 3,049 were revoked following a breach application to the courts (where the offender had failed to meet the requirements of their order).
  - ✗ For CPOs revoked due to breach, the most likely outcome was that a custodial sentence was imposed (in 26% of cases) or a new order was imposed (in 26% of cases) or another outcome (28%).
  - ✗ The completion rate for community payback orders was 79% for those aged over 40, compared with 67% for those aged 40 or under. Rates were also higher for the employed/self-employed (84%) than for the unemployed/economically inactive (64%)
    - The majority of CPOs (61%) included only one requirement. This was largely unpaid work/other activity or supervision. A further 29% had two requirements (usually including supervision).
    - Of the 19,438 orders that were imposed in 2017-18 drug treatment and testing orders accounted for a small proportion of the orders issued (573). It is not known if this is appropriate to those being sentenced

### ***Restriction of Liberty Order (tagging)***

Restriction of Liberty Orders have been available in Scotland since 2002. Such orders require that the person be:

- restricted to a specific place for a maximum period of 12 hours per day for a maximum of 12 months;
- and/or restricted from a specific place or places for 24 hours a day for up to 12 months.

In Scotland, someone on an RLO has to wear an electronic tagging device on his or her ankle, which emits a signal that is picked up by a monitoring unit when the wearer is within

range. See the [Scottish Government website](#) for more information.

Electronic monitoring is also used to monitor the Home Detention Curfew (HDC), which allows prisoners controlled access to the community. (See [SCCJR 'The penal system: reducing reoffending?'](#) for further information on this).

### ***Drug Testing Treatment Order (DTTO)***

Drug Treatment and Testing Orders (DTTOs) were introduced in the UK in 1998. In Scotland, DTTOs were first introduced in Glasgow, then Fife, and are now available across the country.

The emphasis of a DTTO is on treatment for drug problems as the primary means of reducing the offending behaviour of people whose offending is drug-related, such as people who steal to fund their drug habit (See [SCCJR 'Drug crime'](#) for further information on this), and who might otherwise receive a custodial sentence.

*So, have DTTOs been effective?*

'Effectiveness' can refer to outcomes including (i) reductions in offending and (ii) reductions in drug use; as well as an analysis of the cost (cost of programme vs. cost if it was not in place from reoffending, prison time etc).

A 2004 Scottish Executive Social Research report – [Reconviction Following Drug Treatment And Testing Orders](#) – assessed whether DTTOs had been successful in reducing **reoffending**. It focused on those who received DTTOs in Glasgow and Fife in the first two years of operation of these schemes.

- ✓ Almost half of those who completed their orders had no further convictions within two years.
- ✓ The percentage of people on DTTOs convicted in the two-year period after being placed on a DTTO was lower than the percentage convicted in the two years before. The report notes that this is impressive given the criminal histories and long-standing drug problems of those made subject to DTTOs.
- ✓ The frequency of reconviction was lower in the two-year period after being placed on a DTTO than in the two years before. This was particularly the case for individuals who had fully completed their DTTOs.
- ✗ 41% of those given DTTOs were reconvicted within 12 months and 66% within 24 months of the order being made.

A [Statistical Bulletin of Criminal Justice Social Work Statistics in Scotland: 2017-2018](#) published in February 2019 found that:

- ✓ Of DTTOs terminated in 2017-2018, 70% of individuals had successfully completed or had early discharge from their DTTO.
- ✗ The successful completion rate for drug treatment and testing orders was 40% in 2017-18, the lowest in the last seven years, with around the same proportion revoked due to review.

Further points made about DTTOs in a 2011 report by SCCJR – [Interventions for Drug Users in the Criminal Justice System: Scottish Review](#) – include:

- ✓ The cost of an average length DTTO in Scotland was estimated to be £9,129 per year compared to the average cost of a six-month prison sentence estimated to be £7,029 (figures from 1999/00), highlighting possible cost benefits of the programme.
- ✗ A study of DTTOs in England and Wales noted that after 12 months on DTTOs, 70% of participants tested positive for opiates (heroin).
- ✗ Women in Scotland have been found to breach DTTOs at a higher rate than men, with 41% of women and 33% of men given DTTOs in Scotland having their orders revoked as a result of breach in 2008/09.

### **Drug Courts**

Drug Courts were introduced in 2001 in Glasgow and in 2002 in Fife as a pilot scheme, which was subsequently reviewed and extended. The Drug Court is a special court that deals exclusively with people who have committed crime because of their addiction to drugs. It has the same powers as any sheriff court and can impose the full range of sentences as well as a special 'Drug Court Order' (which include DTTOs and other conditions of drug treatment). The most common order handed down to offenders across both courts has been the DTTO. When placed on a Drug Court Order, offenders must be willing to undergo treatment for drug misuse, undergo regular and random drug testing, attend court regularly so that the sheriff can review their case, and be supervised by the supervision and treatment team. The independent report [The Operation and Effectiveness of the Scottish Drug Court Pilots](#), published in 2005 for the then-Scottish Executive, provides more information on the early implementation of the scheme.

A distinctive feature of Drug Courts is the use of pre-review meetings prior to an individual's Court Order being reviewed in court. This is a meeting that takes place between the Drug Court sheriffs, Criminal Justice Social Work (CJSW) and addiction

workers. A 2010 [report by the Scottish Government that reviewed the Glasgow and Fife Drug Courts](#) found the pre-review meetings were popular with the professionals who were questioned, who felt that they helped to guide their approach to the actual review hearing.

The report analysed data over a four-year period from the point each court was introduced in order to determine reconviction rates. Across the two Drug Courts, 70% of offenders had been reconvicted within 12 months and 82% within 24 months.

In order to assess the effectiveness of orders imposed by Drug Courts used in Fife and Glasgow compared to orders handed down by Sheriff Courts in the rest of the Scotland, the report included an analysis of reconviction rates for those individuals who had been given DTTOs. Over the four-year period, 70% of those who had received a DTTO in the Drug Courts had reoffended, compared to 71% of those who had received a DTTO in other Sheriff Courts in the rest of the country. In other words, it appears that DTTOs imposed by a Drug Court have had no impact on reoffending rates when compared to those imposed by Sheriff Courts in other parts of the country.

**However**, there are limitations to this research. As the report points out:

- The comparison of reconviction rates of Drug Court participants poses particular challenges because the very nature of the Drug Court process means cases dealt with are highly selected through a rigorous process of assessment of suitability for drug treatment and the Drug Court regime. Therefore, offenders appearing in Drug Courts are not directly comparable to those appearing in courts elsewhere.
- The number of cases on which the analysis is based in the report is relatively low and a larger sample size would be required to obtain statistical proof of findings.

### ***Monetary Disposals (fines)***

All criminal courts in Scotland have the power to issue financial penalties. Figures from the Scottish Government's (2019) statistical bulletin – [Criminal Proceedings in Scotland, 2013-2014](#) – show that 47% of all sentences issued in 2017-2018 were financial penalties. This means monetary disposals are by far the most common sentence handed down by the courts. The second most common disposal was community sentences (20%). As noted above, the Crown Office and Procurator Fiscal Service (COPFS) also has the power to issue Fiscal Fines as a way of disposing of cases before they reach court. The police, too, can issue a fine as a direct measure, rather than referring the case to the COPFS.

Issues:

- Collection of fines: The Scottish Courts and Tribunals Service (SCTS), which replaced the previously separate Scottish Court Service and Scottish Tribunals Service, is responsible for collecting Sheriff Court Fines, Justice of the Peace Court Fines, Fiscal penalties and Antisocial Behaviour Fixed Penalty Notices. Non-payment of fines has been an ongoing issue, though, as the SCTS points out, its record on collecting fines is improving.

The [most recent figures released by SCTS](#) (under 'Statistics' – '2018/19 Quarterly Fines Report') show that:

- For the full three-year period as at April 2019, 83.9% of the value of Sheriff Court fines has either been paid or is on track to be paid through instalments.
- As at 15 April 2019, 80% of the value of JP Court fines imposed between 1 April 2018 and 31 December 2018 has either been paid fully or is on track to be paid through instalments.
- For Fiscal direct penalties (imposed by COPFS) registered in 2017/18, 57% of the value had been paid as at April 2019.
- For Police Fixed Penalties registered in 2017/2018, 62% of the value has been paid as at April 2019.
- Measures to pursue outstanding fines include using enhanced tracing facilities that make it easier to act by: deducting benefit payments, freezing bank accounts, arresting wages and seizing cars.

*So, are fines an effective sentence?*

Academic Lucia Zedner (2004), in her book *Criminal Justice* (Chapter 6: Financial and Community Penalties), has made the following points:

- The fine is mainly a 'punitive device' that is designed to inflict pain of financial

deprivation upon a person in return for wrongdoing. The financial pain it inflicts is designed to deter the individual from further offending, while, if properly publicised, it is assumed that it may also deter others.

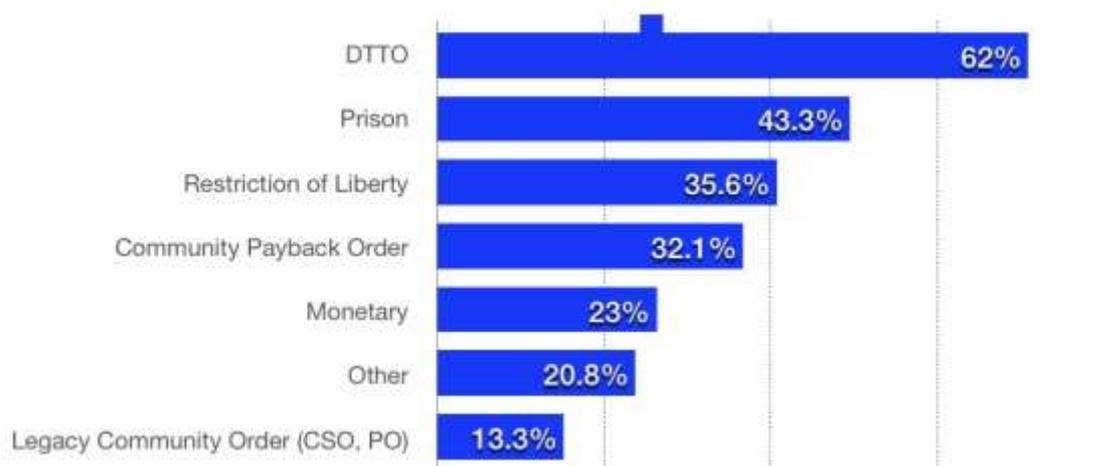
- Fines do not repair damage done by the original crime, and do not offer the person who has offended an opportunity to be rehabilitated.
- The fine is quite different from other penalties in that:
  - o It is the only penal sanction for which the person can (and routinely does) get someone else to bear the burden. There is nothing in place to prohibit others, for instance family or friends, from paying a fine on behalf of the fined person. In the case of young people, it is assumed by courts that it is parents who will pay the amount due.
  - o The fine relies on the co-operation of the person to a greater extent than other penalties. The setting of the term of the fine routinely involves negotiations about payment, and people can refuse to pay the fine. If they do however, they risk being imprisoned.
- The fine is *“commonly hailed as a success: flexible, ready calibrated to reflect the gravity of the offence, minimally intrusive, it is followed by fewer reconvictions than other penalties”*.
- However, the fine is not unproblematic. The same sum of money does not have the same impact on all those who are fined. For example, 10 individuals fined the same amount could be affected in very different ways, depending on their wealth and ability to pay. It is also important to consider the existing financial disadvantage experienced by a number of offenders (See [SCCJR ‘Who’s in prison? Snapshot of Scotland’s prison population’](#) for further information on this). It could be argued that because the amount of a fine is based primarily on the seriousness of a crime, and not on the person’s ability to pay, it is an unfair penalty.

### **Are community sentences and financial penalties more effective than prison?**

One of the stated objectives of the criminal justice system in Scotland is to reduce reoffending.

A [report published by SCCJR in 2012](#) found that in all the countries reviewed, reconviction rates were higher for those leaving prison than those who had served community services. It is noted that the reoffending rate in Scotland for those who had completed prison sentences or were given non-custodial sentences during 2008-2009 (between April 1 2008 and March 31 2009) was 47%, compared to 39% for all community-based disposals.

More recent statistics from the Scottish Government, in the report [Reconviction Rates in Scotland 2012-13 Offender Cohort](#), highlight the link between the sentence received by offenders and reoffending rates. The reoffending rate for those who completed a sentence during 2012-2013 (between April 1 2012 and April 31 2013) was 43.3%. This compares to 35.6% for Restriction of Liberty disposals and 32.1% for Community Payback sentences. Chart 2 below is an adaptation of Table 8 from this report.



**Chart 2: Reoffending rates for the 2012-13 cohort in Scotland by disposal**

Chart 2 Notes: Legacy Community Order refers to Community Service Orders and Probation Orders (POs) which were replaced by Community Payback Orders for crimes or offences committed after 1 February 2011. Legacy community orders given after 1 February are for crimes or offences committed prior to 1 February 2011.

**But, we must be careful about the conclusions we draw from these figures!**

As noted both in the SCCJR report and in Audit Scotland’s 2012 report [Reducing Reoffending in Scotland](#), we cannot directly compare those who have served a prison sentence with those who have been given a non-custodial sentence. For example, people in prison are more likely to have longer criminal histories than those on community sentences.

See [SCCJR ‘The penal system: reducing reoffending?’](#) for further information on the effectiveness of community sentences.

## Further Reading

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SCCJR's learning resources for schools (*Modern Studies*) were initially developed by Rebecca Foster and Greg Duncan. They are regularly reviewed and updated by SCCJR researchers. Any

*queries (including notes of broken links, ideas for development and new topics) about these resources should be sent to [enquiries@sccjr.ac.uk](mailto:enquiries@sccjr.ac.uk)*

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