

The Community Order and the Suspended Sentence Order three years on:

*The views and experiences of
probation officers and offenders*

George Mair and Helen Mills

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Report overview

The introduction of the Community Order and the Suspended Order (SSO) in the 2003 Criminal Justice Act, on paper at least, radically reconfigured community sentences in England and Wales. This report assesses the use and impact of these orders since their implementation. It is the final publication in the Community Sentences series undertaken by the Centre for Crime and Justice Studies, funded by the Esmée Fairbairn Foundation.

The report is divided into five chapters. The Introduction provides general background and sets out methodology. Chapter 2 charts trends in the use of the two orders and the 12 order requirements through an analysis of government statistics. The chapter also considers the evidence about order breach rates and the extent to which the orders have achieved the hoped-for impact on reducing the use of short-term custody.

Chapter 3 draws on interviews with 25 probation officers in four probation areas in England and Wales. It discusses how well probation officers consider the orders are working, including their perceptions about sentencers' use of orders, the availability of requirements and the impact of the new arrangements on probation practice, particularly for the management of orders and enforcement practice.

Chapter 4 explores the views and experiences of 16 people currently serving a Community Order or SSO, including their perceptions of the order they are serving, their experiences of particular requirements and their opinions of their supervising officer. The chapter also presents interviewees' views of what they have found useful about their order and whether and how it has made a difference for them.

In the final chapter we sum up the main findings of this report and pull together the overall conclusions of the Community Sentences project over the past three years.



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Introduction

This is the last in a series of reports produced as part of the Centre for Crime and Justice Studies' Community Sentences project, funded by the Esmée Fairbairn Foundation. The project was established in 2005 to investigate and monitor the new Community Order, which had been implemented in April of that year, by providing good quality, objective information about the ways it was used in its first three years of operation. However, it quickly became clear that use of the Suspended Sentence Order (SSO), introduced alongside the Community Order, greatly exceeded Home Office expectations. The project was therefore expanded to include the SSO in its remit.

Various aspects of the two orders have been examined by the project. These include: probation officers' views of the orders at an early stage; the use of the orders for women and young adults; sentencers' attitudes towards the orders; and a summary of government data about their uses.¹

This final report focuses on the views and experiences of those who manage or undertake the two orders: probation officers and offenders. It also includes an analysis of trends in the use of the orders. The report therefore provides an up-to-date account of how the orders, now in operation for over three years, are working and an indication of the impact they have had on the two key groups involved in their operation.

Background

The Community Order and the SSO became available to the courts in England and Wales on 4 April 2005. The Community Order replaced the various community sentences that had been available previously, which had developed in a somewhat haphazard fashion during the preceding 100 years: the Community Rehabilitation Order (CRO), the Community Punishment Order (CPO), the Community Punishment and Rehabilitation Order (CPRO), the Drug Treatment and Testing Order (DTTO), the Curfew Order and the Attendance Centre Order. In addition, a variety of specific conditions could be added to the CRO and the CPRO. The new sentence restructured this mishmash of sentences and conditions, attempting to create a more rational, ordered and simplified framework out of an incoherent agglomeration of what, following the 1991 Criminal Justice Act, had become known as community penalties (see Mair, Cross and Taylor, 2007).

The SSO, on the other hand, represents a revival of the old-style suspended sentence, which, prior to the Criminal Justice Act 2003, had virtually fallen into disuse.² The primary problem with the old suspended sentence had been its failure to lead to a reduction in the use of custodial sentences – indeed, research suggests that it led to increased use of custody, as those who received suspended sentences were likely to be imprisoned if they were convicted of another offence even if the offence were a minor one (Bottoms, 1981). But at the beginning of this century the government was faced with a difficult circle to square: record numbers in prison (with all the associated financial and human costs that entailed), and a policy that was driven by the need to be seen to be tough on crime. The SSO was part of a package that attempted to grapple with this problem.

Both new sentences were aimed at providing credible and robust alternatives to short-term custodial sentences. To increase the credibility of the new orders, the discretion that both courts and probation officers had in dealing with breach was constrained, so that a custodial sentence following a breach

1. Six reports have been published in the series: *The Use and Impact of the Community Order and the Suspended Sentence Order* (Mair et al., 2007); *The Use of the Community Order and the Suspended Sentence Order for Young Adult Offenders* (Stanley, 2007); *The Use of the Community Order and the Suspended Sentence Order for Women* (Patel and Stanley, 2008); *The Community Order and the Suspended Sentence Order: The Views and Attitudes of Sentencers* (Mair et al., 2008); *Community Sentences Digest* (first edition) (Solomon and Rutherford, 2007); *Community Sentences Digest* (second edition) (Solomon and Silvestri, 2008). All are available to download at www.crimeandjustice.org.uk.

2. Legislation prevented sentencers from using suspended sentences except in 'exceptional circumstance'.

would be more likely than it had been in the past. Indeed, for the SSO, custody is the default option: 'The court must activate the suspended sentence unless it is of the opinion it would be unjust to do so in view of all the circumstances' (Home Office, 2005a: 84). On paper, the two new sentences look the same, with the same number of requirements available to each. Formally, however, the SSO is a custodial sentence that – in the absence of any further offending or breach – will be served in the community.

The Community Order replaces all existing community sentences for adults. It consists of one or more of 12 possible requirements and may last for as short a time as 12 hours or for as long as three years. If a Community Order is breached, the court can amend it by making it more onerous, or it can revoke and resentence, which may mean custody, even where the original offence was not punishable by imprisonment.

The Suspended Sentence Order (SSO) is a custodial sentence and should only be used where the court is minded to pass a custodial sentence of less than 12 months. However, it is made up of the same requirements as the Community Order, so in the absence of breach is served wholly in the community. The SSO consists of an 'operational period' (the time for which the custodial sentence is suspended) and a 'supervision period' (the time during which any requirements take effect). Both may be between six months and two years, and the supervision period cannot be longer than the operational period, though it may be shorter. If the SSO is breached, the court must activate the suspended sentence unless there are strong reasons for not doing so. If such reasons are found, the court can impose more onerous requirements or lengthen the supervision period.

The 12 requirements available for Community Orders and SSOs

- Unpaid work (40-300 hours)
- Supervision (up to 36 months; 24 months maximum for SSO)
- Accredited programme (length to be expressed as the number of sessions; must be combined with a supervision requirement)
- Drug rehabilitation (6-36 months; 24 months maximum for SSO; offender's consent is required)
- Alcohol treatment (6-36 months; 24 months maximum for SSO; offender's consent is required)
- Mental health treatment (up to 36 months; 24 months maximum for SSO; offender's consent is required)
- Residence (up to 36 months; 24 months maximum for SSO)
- Specified activity (up to 60 days)
- Prohibited activity (up to 36 months; 24 months maximum for SSO)
- Exclusion (up to 24 months)
- Curfew (up to 6 months and for 2-12 hours in any one day; if a stand-alone curfew order is made, there is no probation involvement)
- Attendance centre (12-36 hours with a maximum of 3 hours per attendance)

Methodology

To analyse trends in the use of the two orders we have used official government data that are publicly available.

Constraints on research resources meant that only a relatively small number of offenders and probation officers could be interviewed.³ Seven probation areas were chosen to reflect different usage of the orders, although geographical location was also considered in order to reduce travel costs. Six areas agreed to co-operate with the research. Of the six, two were unable to organise interviews in time to participate. In the four remaining areas a contact person from the Probation Service agreed to disseminate information about the research to probation officers, inviting officers to be interviewed. In three areas these probation officers were asked to approach offenders who were on a Community Order or a SSO (preferably towards the end of their order) with information about the research to see if they would be willing to be interviewed. In one area a different approach to recruiting offenders was agreed; we attended two probation offices and interviewed offenders on orders who were reporting to the office and who agreed to take part. All offenders were offered a £20 voucher for taking part in an interview. Obviously, these samples cannot be taken as representative of probation officers or offenders on orders in any way. The potential for bias is clear: we had no control over how our local contact approached probation staff, nor over which offenders were approached. At the very least, our sample of offenders was likely to be more compliant, and they were more likely to get on well with their offender manager than offenders on orders in general and, as a result, to have more positive feelings about their orders.

Interviews were carried out face-to-face. They took between 30 and 90 minutes and were recorded and transcribed. All interviewees gave their written consent to use their interview in the research. The interview schedule is reproduced in Appendix 1.

A total of 25 probation officers were interviewed from four probation areas; three-quarters of respondents were female. Experience ranged from a trainee probation officer to one who had almost 30 years' experience under his belt.

The characteristics of the 16 offenders who were interviewed were as follows:

- Two-thirds were male (11).
- Two-thirds were subject to a Community Order (10); the remainder had a SSO.
- Ages ranged from 18 to over 50.
- Two-thirds were more than halfway through their orders (11).
- The most common combination of requirements was supervision + drug rehabilitation (6). (See Appendix 2 for a profile of offenders' orders.)
- Just over half (9) arranged to be interviewed in advance via their probation officer; the remainder agreed to take part following reporting to a probation office, without any previous arrangements being made.

All interviews took place between May and September 2008.

While it is important to acknowledge the limitations of the samples of probation staff and offenders in terms of size, geographical spread and possible selection bias, it is equally important to point out that this is the first time that offenders have been questioned about their views of the new orders. During the course of the project we interviewed representatives of the three key stakeholders in the new orders – sentencers, probation officers and offenders – and the material from these interviews allows a fairly full picture of the new arrangements to emerge.

3. The study was granted ethical approval from the Kings College London social science, humanities and law research ethics sub-committee (ref SSHL 07/08-29).

Trends in use of the orders

In this chapter we provide an overview of trends in the use of the two orders, using Ministry of Justice/Home Office statistics unless otherwise stated (annual offender management caseload statistics, annual sentencing statistics, quarterly probation statistics).

Table 1 shows the growth of both orders after their introduction in April 2005. Within 12 months, the Community Order had reached 30,000 commencements per quarter and it has remained at around this level ever since. The latest figures show only 1,715 of the old-style community sentences were made. The SSO took rather longer to build to what now appears to be a steady 11,000-12,000 commencements per quarter. However, the SSO started at a much lower level than the Community Order and its growth has been more explosive: while the Community Order increased just over threefold within a year the SSO increased around fifteenfold. Since then, use of the Community Order has remained fairly constant, whereas the SSO has increased by another 50 per cent. For every three Community Orders started, one SSO begins. We pointed out in a previous report that, by July 2006, the use of the SSO was double that projected by the Home Office (Mair, Cross and Taylor, 2007: 17). Indeed, the Ministry of Justice was so concerned about the use of the SSO that it proposed to exempt its use for summary offences in the 2007 Criminal Justice and Immigration Bill; however, the clause was removed prior to enactment.

Table 1: Persons commencing Community Orders and SSOs, by quarter, 2005-2008

	Community Order	SSO
Q2 2005	9,547	484
Q3 2005	21,036	1,854
Q4 2005	25,844	3,532
Q1 2006	31,192	6,081
Q2 2006	30,067	7,594
Q3 2006	30,566	9,543
Q4 2006	29,865	9,651
Q1 2007	33,165	11,057
Q2 2007	32,389	11,150
Q3 2007	33,032	11,565
Q4 2007	31,988	11,693
Q1 2008	33,045	12,051
Q2 2008	33,672	11,842

The impact of the SSO on the Probation Service's workload has been considerable: of 162,648 court orders begun under probation supervision in 2007, just over one-quarter were SSOs. The boundaries between community sentences and custody are becoming ever more blurred.

In 2007, a total of 40,688 SSOs were made by the courts with most of these (62 per cent) being made in the magistrates' courts. Table 2 shows the offences for which SSOs were made in the Crown Court and the magistrates' courts.

Table 2: Persons sentenced to SSOs by court and offence group, 2007 (%)⁴

	Crown Court	Magistrates' courts	All courts
Violence	28	12	18
Sexual	2	0	1
Robbery	3	0	1
Burglary	9	4	6
Theft	11	20	17
Fraud/forgery	10	4	6
Criminal damage	2	1	1
Drugs	13	3	7
Motoring	3	1	2
Other indictable	17	4	9
Summary offences	3	51	33
Total number	15,217	25,471	40,688

Clearly, the kind of offences that each court deals with will have a significant influence upon its use of sentences, but even taking this into account there are considerable differences in how the SSO is used at each court. At the Crown Court, 52 per cent of SSOs were used for offences of violence, theft and drugs in 2007, while at the magistrates' courts the figure is 34 per cent. However, the key difference is in SSO use for summary offences. While it is true that imprisonment remains possible for many summary offences, it is important to emphasise that, by definition, these are less serious offences than those classified as indictable. The SSO is a custodial sentence aimed at offering a credible and demanding alternative to an immediate sentence of imprisonment, yet half of the SSOs passed in the magistrates' courts in 2007 were made for summary offences (one-third of all SSOs).

A total of 126,912 Community Orders were made in 2007, with 89 per cent of these coming from the magistrates' courts. Almost half of all Community Orders were made for summary offences (48 per cent); in the magistrates' courts, 53 per cent were made for summary offences, while the figure for the Crown Court was 9 per cent. Thus, in the magistrates' courts, similar proportions of SSOs and Community Orders are used for summary offences.

Since its introduction in 2005, the average length of a Community Order has fallen from 22 months to 15.7 months in 2008. On the other hand, the average length of a SSO has remained stable, dropping only slightly from 18 months to 17.5 months. For more than half (54 per cent) of those starting SSOs in 2007, the order was for the maximum length of 24 months.

Use of requirements

For the most part, the number of requirements used for each of the orders has remained stable, as Tables 3 and 4 show. But it is worth drawing attention to what has been a slight increase in the percentage of both Community Orders and SSOs with only a single requirement. Between 2006 and 2008, fewer than 100 of each order (less than 1 per cent) had five or more requirements.

4. All percentages have been rounded up to the nearest whole number unless otherwise stated..

Table 3: Persons commencing Community Orders by number of requirements, 2006-2008 (%)

	1 requirement	2 requirements	3 requirements	4 requirements	5+ requirements	Total number
Q1 2006	47	36	14	2	0	31,288
Q2 2006	48	36	14	2	0	30,594
Q3 2006	48	36	14	2	0	30,884
Q4 2006	48	35	15	2	0	30,009
Q1 2007	48	35	14	2	0	33,165
Q2 2007	50	35	13	2	0	32,389
Q3 2007	49	35	13	2	0	33,032
Q4 2007	50	35	13	2	0	31,988
Q1 2008	51	35	12	2	0	33,045
Q2 2008	51	35	12	2	0	33,672

Table 4: Persons commencing SSOs by number of requirements, 2006-2008 (%)

	1 requirement	2 requirements	3 requirements	4 requirements	5+ requirements	Total number
Q1 2006	37	42	18	2	0	6,180
Q2 2006	37	42	17	3	0	7,799
Q3 2006	37	42	18	3	0	9,685
Q4 2006	36	42	18	3	0	9,697
Q1 2007	36	41	19	3	1	11,057
Q2 2007	37	42	18	3	0	11,150
Q3 2007	36	43	18	3	0	11,565
Q4 2007	37	42	18	3	0	11,693
Q1 2008	38	42	17	3	0	12,051
Q2 2008	39	41	17	3	0	11,842

The SSO consistently has more requirements than the Community Order: around half of the latter had two or three requirements, while the figure for SSOs was closer to 60 per cent. The mean number of requirements for Community Orders has been 1.7 for more than two years and for the SSO has been 1.9. The SSO therefore continues to be used as a more onerous and arguably more punitive sentence than the Community Order.

Table 5 sets out the requirements that have been used for each of the orders since they were introduced.

Table 5: Requirements commenced under Community Orders and SSOs, 2005-2008 (%) ⁵

	Community Order				SSO			
	2005	2006	2007	2008	2005	2006	2007	2008
Supervision	36	36	35	34	44	42	40	39
Unpaid work	31	32	33	33	18	22	24	25
Accredited programme	18	16	13	12	23	20	18	16
Drug treatment	6	6	5	6	4	4	5	5
Curfew ⁶	3	5	6	7	5	5	6	7
Specified activity	3	4	4	4	2	3	3	3
Alcohol treatment	1	1	1	2	2	1	2	2
Mental health treatment	0	0	0	0	0	0	0	0
Residence	0	0	0	0	0	0	1	1
Exclusion	0	0	0	0	1	1	1	1
Prohibited activity	0	0	0	0	0	1	1	1
Attendance centre	0	0	0	0	0	0	0	0
Total number	96,133	211,905	223,511	111,463	10,643	62,216	85,901	44,477

While overall the use of various requirements has not changed a great deal, several trends seem to be emerging. First, the use of supervision has declined slowly but steadily since 2005, by 2 per cent for the Community Order and by 5 per cent for the SSO. Second, the use of unpaid work has increased for both orders – by 7 per cent in the case of the SSO. Third, the use of curfews has increased. As both unpaid work and curfew requirements share punishment as a main sentencing purpose this can be seen to represent an increased resort to more punitive requirements. Fourth, there has been a decline in the use of accredited programme requirements. And finally, it is evident that five requirements cover 90 per cent of all those used; six requirements are hardly used at all – alcohol treatment, mental health treatment, residence, exclusion, prohibited activity and the attendance centre. The reasons for failure to utilise these requirements may be due to various factors, many of which we found to apply during this research project (see also National Audit Office, 2008):

- Lack of availability
- Lack of knowledge on the part of sentencers
- Lack of knowledge on the part of probation staff
- Failures by probation staff to keep sentencers aware of what is available
- A desire by probation staff to work within their 'comfort zone'
- Failure to think creatively and innovatively on the part of sentencers and/or probation staff
- Probation staff not being able to make full offender assessments prior to sentence due to heavy workloads

5. Figures for 2008 are for the first six months only throughout the chapter.

6. The number of curfew requirements is likely to represent a considerable underestimate because stand-alone curfews are not supervised by the Probation Service and are therefore not included in the data-set published by the Ministry of Justice.

- Confusion as a result of potential duplication (e.g. exclusion and prohibited activity)
- Uncertainty about how some requirements are monitored (e.g. exclusion and prohibited activity)
- Influence of local probation policy decisions
- Lack of resourcing leading to waiting lists that discourage use of some requirements (see also Oldfield and Grimshaw, 2008).

In addition, some requirements can present specific barriers to their use. For the mental health treatment requirement, for example, it can be difficult to gain the agreement of a registered practitioner to access mental health services, and offenders may be reluctant to acknowledge that they have mental health problems (National Audit Office, 2008; Seymour and Rutherford, 2008).

Tables 6 and 7 show the most frequently used combinations of requirements for the two orders since 2005.

Table 6: Most frequently used requirements /combinations of requirements for the Community Order, 2005-2008 (%)

	2005	2006	2007	2008
Unpaid work	32	32	32	32
Supervision	13	13	13	13
Supervision and accredited programme	16	15	12	11
Supervision and unpaid work	7	7	8	7
Supervision and drug treatment requirement	4	5	5	6
Supervision, unpaid work and accredited programme	7	5	4	4
Unpaid work and unpaid work ⁷	1	2	2	2
Curfew ⁸	1	2	3	4
Supervision and specified activity	1	2	2	2
Supervision, accredited programme and drug treatment requirement	2	2	2	2
All other combinations	15	15	17	17
Total number	53,248	111,752	117,860	66,717

7. The likely reason for this combination is when an order with a single unpaid work requirement is breached and the court decides to impose a further unpaid work requirement to the original order.

8. See footnote 6.

Although it is difficult to discern clear trends, the supervision and accredited programme combination does seem to be falling out of favour for both orders, quite substantially so in the case of the SSO. This is an interesting development, as it is on accredited programmes that cognitive behavioural work with offenders is most likely to take place. When the 'What Works' initiative was introduced in 1998, cognitive behavioural approaches were seen as the most effective method of working with offenders, but it would appear that the enthusiasm for such approaches may have waned somewhat.

For the most part, the Community Order continues to look very like its predecessors, the CRO, the CPO and the CPRO, with occasional added conditions. The SSO would seem to be becoming more punitive, as the use of unpaid work has increased considerably (a phenomenon already noted in Table 5 above) while the percentage of supervision-only SSOs has been falling. In 2005, unpaid work and supervision+unpaid work made up 20 per cent of SSOs, while supervision and supervision+accredited programmes made up 43 per cent; by the first half of 2008, the respective figures were 30 and 29 per cent.

Table 7: Most frequently used requirements/combinations of requirements for the SSO, 2005-2008 (%)

	2005	2006	2007	2008
Unpaid work	12	15	17	19
Supervision and accredited programme	24	20	17	15
Supervision	19	17	15	14
Supervision and unpaid work	8	10	11	11
Supervision, unpaid work and accredited programme	6	7	7	6
Supervision and drug treatment requirement	3	4	5	5
Supervision and curfew	2	2	2	3
Supervision, accredited programme and drug treatment requirement	2	2	2	2
Curfew ⁹	1	2	2	3
All other combinations	21	21	23	23
Total number	5,848	32,727	117,860	66,717

Breach

The significance of effective enforcement of orders for the credibility of the Probation Service has been noted in previous reports (Mair, Cross and Taylor, 2007; Mair, Cross and Taylor, 2008). A more robust approach to enforcement has developed since the introduction of National Standards almost 20 years ago, and the discretion of sentencers and probation officers in dealing with breach has been constrained even further in relation to the Community Order and the SSO (see Introduction). However, the National Audit Office study of Community Orders found variations between areas in the number and type of absences accepted and also noted that ‘occasionally Offender Managers may accept “unacceptable” reasons when more rigorous enforcement would be more appropriate’ (National Audit Office, 2008: 21).

For both orders, the percentage terminated for breach is decreasing. For the Community Order the figure dropped from 48 per cent in 2006 to 44 per cent in 2007 and 40 per cent in the second quarter of 2008. In the case of the SSO, the figures are 64 per cent, 49 per cent and 41 per cent.¹⁰ However, even though the proportion of successful orders seems to be increasing, it is notable that

9. See footnote 6.

10. Included in this figure, are failure to comply with requirements, conviction for a further offence and other reasons.

breach is the outcome for around two-fifths of orders. Indeed, for Community Orders of two years duration, the failure rate in 2007 was 59 per cent and for two-year SSOs it was 55 per cent.

It is difficult to compare the breach rates for the new orders with their predecessors as the guidelines for dealing with enforcement have changed and become more rigorous. However, it is worth noting that, in 2004, the breach rate for CROs was 33 per cent and for CPOs it was 30 per cent,¹¹ which certainly suggests that both of the new orders have higher rates of breach than previous orders. This may not be surprising given the different conditions that probation officers and sentencers now work under, but it is disturbing. No data are available for the outcomes of breach proceedings, so we do not know how many of those breached are subsequently imprisoned, a factor which may be contributing to the increasing prison population.

The orders as alternatives to custody

Both orders were expected to act as alternatives to short custodial sentences – the SSO more so than the Community Order. By acting in this way, it was hoped that the ‘silting up’ of probation caseloads with less serious offenders described by Rod Morgan (2003: 15) might be tackled. It is impossible to say with certainty how far diversion from custody has been achieved by the orders, but all the evidence suggests that it is very little.

Very crudely, the prison population increased by almost 8 per cent between September 2005 and September 2008, which suggests that there has been no diversion from custody since the new orders began (Home Office, 2005b, Ministry of Justice, 2007, Ministry of Justice, 2008a). However, Tables 8 and 9 show that, while the rate of immediate custody in the magistrates’ courts changed only slightly from 4.1 per cent in 2005 to 3.9 per cent in 2007, in the Crown Court there was a decrease from 58.2 to 54.1 per cent. On the face of it, this may suggest that the orders have had a slight impact on the use of immediate custody at Crown Court, but it is important to note that the decreasing custody rate in both courts has been ongoing since the beginning of this century and there is no evidence to suggest that the drop has been more marked since the orders were introduced.

Table 8: Persons sentenced to immediate custody at magistrates’ courts, 2000-2007 (%)¹²

Percentage sentenced to immediate custodial sentence				
	Up to and including 3 months	Over 3 months to less than 6 months	6 months+	Total
2000	2.8	1.3	0.4	4.5
2001	2.9	1.4	0.5	4.8
2002	2.9	1.4	0.4	4.7
2003	2.7	1.4	0.4	4.5
2004	2.5	1.3	0.4	4.2
2005	2.5	1.3	0.3	4.1
2006	2.4	1.3	0.3	4.0
2007	2.4	1.2	0.3	3.9

11. Included in this figure are failure to comply with requirements, conviction for an offence, warrant unexecuted and other reason.

12. Percentages are given to one decimal place.

Table 9: Persons sentenced to immediate custody at Crown Court, 2000-2007 (%)¹³

Percentage sentenced to immediate custodial sentence							
	Up to and including 3 months	Over 3 months to up to and including 6 months	Over 6 months to less than 12 months	12 months	Over 12 to up to and including 18 months	Over 18 to up to and including 36 months	Total
2000	5.8	9.1	7.4	7.1	8.9	13.8	62.3
2001	4.8	8.2	6.9	7.0	8.8	14.3	61.8
2002	4.0	7.2	6.7	6.7	8.9	14.7	61.4
2003	3.8	6.9	6.2	6.3	8.3	13.9	58.3
2004	3.8	6.8	6.7	6.3	8.1	14.0	59.0
2005	3.6	6.7	7.0	6.6	8.0	13.7	58.2
2006	3.2	6.0	6.6	6.2	7.9	13.5	55.7
2007	3.2	6.0	6.8	6.2	7.5	12.8	54.1

The new orders were not expected to have an impact across the board on the prison population, but on those who would receive shorter custodial sentences. There is little in Tables 8 and 9 to suggest that the introduction of the two orders has had any real impact in terms of providing alternatives to short-term custody. Despite some reduction in the use of custodial sentences of six months or less, there was no overall change between 2006 and 2007 in the use of custodial sentences of 12 months or less in either court, and it is in these years that the two orders might have been expected to make an impact. The use of the Community Order in the magistrates' courts increased slightly from 7.9 to 8.5 per cent during these two years, while in the Crown Court it decreased from 17.9 to 16.6 per cent. For SSOs the figures for the magistrates' courts show an increase from 1.7 to 1.9 per cent, while in the Crown Court the growth is considerable – from 13.4 to 18.7 per cent.

Other data tend to support the conclusion that there has been no significant diversion from custody. We have already noted that around half of both orders are made for summary offences, which implies that these are not acting as alternatives to custody. Offenders are classified according to the level of intervention required, with Tier 1 being the lowest and Tier 4 the highest, and if the orders are acting as alternatives to custody we might expect that relatively few offenders would be found in the lowest Tier. In 2007, just over one-quarter of those commencing Community Orders and 14 per cent of those commencing SSOs were in Tier 1. Perhaps more disturbing is the fact that, since the second quarter of 2007, the percentage of those in Tier 1 for both orders has increased consistently: for Community Orders there were 25 per cent in Tier 1 in the second quarter of 2007 and 31 per cent in the second quarter of 2008; while for SSOs the figures were 13 per cent and 19 per cent respectively. This, combined with the increased use of requirements primarily aiming to fulfil the sentencing purpose of punishment noted earlier, suggests the orders seem to be getting tougher with offenders who have less serious needs. These data also suggest that 'uptariffing' has continued, a conclusion that is supported by a recent House of Commons Justice Committee report (2008: 44):

The intended switch from the use of short custodial sentences to community punishments in the form of Community Orders and Suspended Sentence Orders has not occurred. Instead all evidence points to these sentences displacing fines. The 2003 Act, in common with other legislation, seems only to have achieved an inexorable rise in sentences ... legislation is not a useful mechanism to prevent 'uptariffing'.

Government too acknowledges the problem:

It is ... likely that some SSOs have been given to offenders who would previously have received community sentences.

(Ministry of Justice, 2008b: 1)

13. See footnote 12

[In the magistrates' courts] the use of immediate custody ... has declined relatively little despite the introduction of SSOs ... It is clear that the new SSO is considerably decreasing the use of community sentences at the Crown Court while having a much smaller impact on the immediate custodial rate.

(Ministry of Justice, 2008c: 6-7)

The views of probation officers

By the time interviews with probation staff were being carried out, the Community Order and the SSO had been in operation for three years – ample time for teething problems to have been resolved. The views of probation staff on how the orders were working were therefore based on a reasonable period of time of use. Consequently, whatever issues or problems that were mentioned can be seen as ‘real’ in the sense that they have not disappeared as the sentences have settled down. Whether or not they are capable of resolution is another matter; probation officers have long-standing grievances about various matters (resources especially) that the political masters of the Probation Service might not agree with. The point is that our interviews with probation staff at this stage of the project give a more reasoned and mature set of views about the orders than the focus groups organised for the first part of the study (Mair, Cross and Taylor, 2007). This is not to discount what probation officers told us two years ago, but simply to emphasise that the context is different now.

The Community Order and use of requirements

For the most part, respondents were very positive about the Community Order. They felt that it was working well and was an improvement on the old orders. The flexibility of the order was mentioned repeatedly, which meant that it could be tailored to the needs of offenders better than the old community sentences and could be more focused upon perceived problems:

I think that the structure of both of them is far improved from what they were under the old Act, particularly Community Orders where you’re able to put a menu of requirements rather than having everybody having supervision, not being able to enforce programme attendance rigorously because they weren’t always made for conditions under the old Act, and stuff like that. So I think in many respects it works very well really – it gives you a lot more flexibility and it enables you to target criminogenic needs much better than the old act did.
(02)

Especially when we write reports it makes it easier for us to sort of give proposals to the courts now because we can be quite sort of structured in saying we want these requirements, so I think it’s easier for us to be able to direct the court or propose to the court what would work for the particular offender and their offence and their circumstances.
(13)

Even those who were positive, however, were likely to add that things were still not perfect (whether such a state could ever be achieved was not discussed). Several respondents mentioned that they had become more ‘creative’ in using requirements over time – no longer did they work on the assumption that a Community Order had to have a supervision requirement. An offender could, for example, have an accredited programme requirement without supervision. There was a feeling that sentencers – especially magistrates – were still prone to using too many requirements at times, although this was not as common as it had been in the early days of the order. Several felt that the new order was not much different from what had gone before:

In everyday practice, there’s not a lot of change between how it was and how it is now.
(11)

To be quite honest, I haven’t noticed that much difference.
(18)

Overall, most of the teething problems associated with the first 12 months or so had disappeared and probation staff seemed to be reasonably content with the Community Order and how it was working.

Previous reports for this project have noted that a key problem has been that not all of the 12 requirements for the new orders available in theory have been available in practice (Mair, Cross and Taylor, 2007; Mair, Cross and Taylor, 2008), and this continues to be the case. Three out of the four probation areas covered in the interviews still did not have the opportunity to impose all of the requirements, while respondents from the fourth area seemed to think that everything was available but continued to demonstrate some uncertainty. In all, three-quarters of respondents stated that not all requirements were available. The most common requirement mentioned as being unavailable was the alcohol treatment requirement, and this was seen as a major limitation as so many offenders had alcohol-related problems. The ability to impose attendance centre and mental health treatment requirements was also lacking.¹⁴ In a handful of cases, access to some requirements had only recently become available. And even where requirements were available, problems were noted – particularly with mental health services:

... a significant issue for the criminal justice system [is] that the threshold for mental health services is too high in my view ... At the assessment stage, if mental health services are saying no, then there's no service to provide, so you can't use the requirement anyway. And I think many of the offenders would consent to treatment ... but they're just not being offered the service, it's as simple as that really. And I think, you know, it's the most significant issue facing the criminal justice system.
(01)

I don't believe we can go down a mental health requirement at the moment. From my understanding, it's very difficult, because although it's available it's almost impossible to propose because you need a named psychiatrist; we'd monitor the order, we'd breach it and all that kind of stuff, but you'd need a named psychiatrist and that's almost impossible to get. It's much easier to sentence under the Mental Health Act and stuff like that.
(10)

Mental health workers were considered to be 'not interested' (17) and 'reluctant to have anybody tied up to an order' (08). Attendance centres, even if they were available, tended not to be used as they were not really part of the probation 'family'. And some requirements, although available, were not very useful as they were felt to be unenforceable – the exclusion and prohibited activity requirements being specifically mentioned in this respect.

In terms of the requirements that were used most frequently, it was very much a case of the 'usual suspects': supervision, unpaid work and accredited programmes were mentioned most often, with curfews and drug rehabilitation requirements close behind. As one respondent noted, 'Half of the requirements aren't used really' (14). The reasons put forward to explain the widespread reliance on the three most commonly used requirements were that these requirements had been associated with probation for some time and were, for the most part, run directly by probation staff. Sentencers were used to them and had confidence in what probation could offer.

Respondents from one area in particular claimed they had noticed an increasing use of prohibited activity and exclusion requirements:

... we are beginning to use prohibited activities and exclusions a lot more as a punitive measure, particularly with cases who are already working ...
(02)

There had been some changes since the early days of the order. Several respondents thought that negative requirements such as curfews and prohibited activities were being used more often now, while others felt that the number of requirements for orders was less. In the beginning there had been a tendency for Community Orders to be overloaded with requirements simply because so many

14. A National Audit Office report, 'The Supervision of Community Orders in England and Wales', (NAO, 2008) also noted that there were specific barriers to the provision of alcohol treatment and mental health treatment requirements.

were available, whereas both probation staff and sentencers were now more aware of how to target an order and felt more confident about focusing on what was available and relevant to the offender.

In one area, the local politics of having to meet National Offender Management Service (NOMS) targets had been responsible for changes in the use of programmes:

At the moment, we've got programme requirements that are being pushed through because we didn't have enough people going on programmes, so that's been a bit of a drive at the moment. But, I mean, it goes in swings and roundabouts really, what is in vogue at the moment ... You have to, I think, have a reason not to have a programme requirement rather than a reason to have a programme requirement.

(20)

Programmes definitely became more sort of prominent, I think, but the problem with this is that it depends, and I'm sure this is the same for all areas, but what targets you are or are not meeting.

(22)

Most respondents thought that all of the 12 requirements were relevant. The problem was that it was rare for them to have had experience of using all of them. Another issue that was mentioned several times was that the problem was not one of irrelevant or unhelpful requirements, it was to do with the engagement of the offender – a long-standing issue for probation officers.

I think sometimes programmes are given to people that they aren't necessarily going to benefit from. Sometimes people will just go along and they sit there and they listen and they'll attend every time but they won't actually get anything out of it.

(24)

I feel a bit like, if they don't want to do that [a requirement] in the first place, they'll go but they won't necessarily engage, and because it's a partnership programme they just tell us whether they've attended or not, they don't tell us that this guy attended and he wasn't engaging, he wouldn't talk to us and all that kind of stuff. They probably would if after a while it was still happening, but they can't be breached because they don't engage in a partnership programme which begs the question, how good is that programme, how relevant?

(21)

The requirements that were considered to be irrelevant or unhelpful were prohibited activities, exclusion, residence, and attendance centre (all mentioned by three or four respondents). The mental health requirement was mentioned by two respondents. With regard to attendance centres, they were seen as being aimed mainly at young people and therefore not suitable for those receiving Community Orders. The age range for the attendance centre requirement is 18 to 24, and in 2007 38 per cent of males who commenced a Community Order fell into this age group (Ministry of Justice, 2008b). Also, as already noted, attendance centres were not associated with probation in the eyes of the courts.

Reservations about the usefulness of prohibited activities and exclusions were related to how such requirements could be monitored in any meaningful way – 'there's nobody there to enforce them so they have absolutely no use whatever' (15):

My only reservations are with prohibited activities and exclusions; we are working very closely and very hard with the police to get these monitored but I still have my reservations about how readily people comply with them because if you're excluded from a pub, if you continue to go to that pub and you don't cause any trouble it's not going to come to anybody's attention unless you're a very well known face. But to expect every police officer who goes into a pub to be scanning the room and spotting people and then wondering? ... I think it's a bit telling that we have yet to breach somebody for one of those requirements.

(02)

The residence requirement was seen as 'pointless' by a few respondents because as far as they were concerned it only meant that an offender had to live and sleep at a specified address and how

that could be justified as punishment or rehabilitation was unclear. What is interesting, however, is that the requirement was seen as helpful in certain cases of breach. If the breach was a technical or minor one that, in the past, would not have gone back to court, a residence requirement (sometimes for a 24-hour period) could be made to mark the breach as the possibility of a fine was no longer available.

The Suspended Sentence Order and use of requirements

Around half of those interviewed thought that the SSO was working well – certainly in comparison to its initial use. In the early months, the SSO had been used too often, with too many requirements, but over time things had settled down and it was used more sensibly now. The other half of our respondents were more critical of the SSO; it was being overused, overloaded with requirements and breach was not dealt with rigorously enough:

The magistrates really love imposing them. And on the one hand that's good inasmuch as not everybody needs to go to custody immediately, but on the other hand they will use them when they look in their little packs and see the starting point is custody. And we have problems with multiple requirements, not just at magistrates' but at Crown. I think Crown are probably worse because magistrates will listen to us and if we say they only need this requirement, then they will impose that requirement. At Crown, we will say they only need a maximum of two requirements but they will probably impose three. So straight away somebody's struggling to stay out of prison by virtue of the number of requirements and the length of those requirements ... I think there needs to be some sort of guidance about when they can be used, and not just dished out because somebody's crossed the custody threshold.

(14)

I think they're being used too much in this area ... We are always trying to tell them [magistrates] but the courts love them so they will make them and they'll make them with a large number of requirements as well. We're always trying to hit the point home that if they're putting in SSOs the requirements should be less onerous, but that message hasn't quite filtered through as much as we would like yet ... And the problem that you then have is that if somebody breaches or re-offends, because too many lower risk cases are getting SSOs, the courts will say OK we'll make them a little more onerous, that can sometimes happen around here two or three times without the SSO being enacted. That gives completely the wrong message and the SSOs don't carry the weight they should in this area because, particularly on unpaid work, you go to court for a breach and you don't get sent to prison, you go back on the van next week and all your mates tell everybody else about it. It doesn't have the deterrent effect that it's meant to have; you can't let somebody breach an order two or three times before you enact the custodial part because it gives out the wrong message.

(02)

Even those probation officers who thought that the SSO was working well made negative comments about how breach was dealt with in the magistrates' courts. Perhaps a little surprisingly given the image of probation as being fairly soft on offenders, the comments all pointed to breach being dealt with too leniently. This was perceived as being damaging not just in terms of offenders thinking that the SSO was less punitive than it really was, thereby weakening it as a deterrent, but also damaging to probation officers who lost credibility because they had warned offenders that any breach of a SSO would lead to custody. It was magistrates who were seen as the culprits – they made too many SSOs on low-risk cases, they loaded SSOs with too many and too lengthy requirements, and then they failed to activate the custodial sentence when breach occurred.

Although there was a tendency to claim that SSOs were being overloaded with requirements, respondents did not mention as many requirements as they had for Community Orders when asked about which requirements were used most often. Supervision and unpaid work were most often mentioned, followed by accredited programmes and curfews. Some claimed that fewer requirements were being used now than previously, while others argued that too many were being used. (Chapter 2 suggests there has been no change overall in the number of

requirements used.) In the former case, this was seen as an improvement and as evidence that probation's message had got through to the courts; in the latter, sentencers were seen as liking the SSO too much. Several respondents from one area stated that they had been told not to use SSOs if possible: 'We've been told that unless it's absolutely necessary suspended sentences shouldn't be recommended' (24); 'The current guidance that we have here is not to recommend suspended sentences' (18).

As was the case with the Community Order, most respondents thought that all of the requirements were helpful; it was just that they did not have personal experience of all of them – partly because they were not all available and partly because they had not had cause to use all of them. As one noted, 'You've got your handful that you know about and then, unless I went to my actual training books or something, I couldn't tell you half of them' (11). Again, offender motivation was brought up by a few of those who were interviewed – this was what was important, not so much the actual requirements that were used. One respondent argued that requirements should be more carefully considered for SSOs:

I think a bit more thought needs to go into what is a SSO, and my understanding is that the idea of the order is actually you're serving your sentence in the community. You've got a prison sentence so you've got to be really careful how to behave, and anything goes wrong you're back in court and then you are in prison. So why do you need X, Y or Z with that unless it's for rehabilitation?
(18)

The orders as alternatives to custody

Both orders were designed to act as alternatives to custody but not to the same degree. With regard to the Community Order, it is probably fairer to say that this was a hope rather than an expectation; by providing a number of requirements that could be added together to make a demanding and rigorous community penalty, it was hoped that the Community Order would offer an alternative to custody in cases where imprisonment was a possibility. For the Suspended Sentence Order, however, imprisonment was more than a possibility, indeed more than a probability; the SSO was a custodial sentence that was served in the community. Officially, an offender had to have crossed the custody threshold before a SSO could be considered.

The rather fine distinction between the two orders seems to have been recognised by our respondents. One-third felt that the Community Order was not being used as an alternative to custody, while the remainder thought that it was sometimes used in this way. A number of respondents immediately added that this was what the SSO was for. The Community Order could certainly be loaded with four or five requirements but this was asking for trouble as an offender with so many requirements to cope with was likely to fail and end up in court for breach. One respondent suggested that some probation officers offered the court two options, with the implication that the option with more requirements would be chosen, avoiding a SSO:

I suppose there could be a temptation to whack a couple more things on to make it more onerous and I know that – I don't personally do this but I know some people do and I know it's OK to do it – to give an example to the court for a SSO and perhaps two requirements and then an alternative Community Order with, say, four requirements.
(04)

Everyone thought that the SSO was being used as an alternative to custody to some extent, but certainly not in every case: 'Yes, very much so' (02); 'I think so, yes' (04); 'Yes, more so [than the Community Order]' (09); 'Definitely' (13); 'It is an alternative to immediate custody' (14); 'Yes, definitely' (22). But a few respondents claimed that they had been told to cut down on use of the SSO if possible:

I think we've had emails from assistant chief officers as well suggesting that the SSO has been used too prolifically. And then I know recently the senior officer in this district said any time we're going to propose a SSO they want to vet the report now because they want to see if they agree with the recommendation.
(12)

We don't recommend, the advice is, we don't, very very rarely recommend a SSO. We recommend a Community Order rather than a SSO and then it's up to the magistrates if they want to change it to a SSO to keep that person out of custody.

(21)

Enforcement and other problems

It is commonly agreed that courts will have greater confidence in – and therefore make more use of – community penalties if they see them enforced rigorously. But rigorous enforcement has a downside: if too many offenders are brought back to court for lack of compliance, then it is possible that the courts will lose confidence in community penalties; and, of course, breach can lead to custody. As noted in the introduction, both probation officers and sentencers have less discretion in how to deal with breach.

For Community Orders and Suspended Sentence Orders, breach can lead to:

- More onerous requirements being imposed – either by making an existing requirement longer, adding one or more extra requirements, or substituting an existing requirement with a more onerous one
- Revocation of the order and resentencing the offender, with the possibility of a custodial sentence even when the original offence was not punishable by imprisonment.

In addition, with regard to the SSO, the court can activate the custodial sentence.

More than half of our respondents thought that enforcement of Community Orders was more effective and more robust than it had been in the past. But there remained a feeling that not only was this necessary, but that enforcement might have to become even more robust because offenders were 'coming out of magistrates' court and they're laughing their heads off and giving like two fingers to the Probation Service and what does that do for us as a service?' (17). But breach was a difficult matter:

I think my only concern with the Community Order is the way that breaches have gone really now. In terms of enforcement, people can go back to court three, four times now and the courts are still not taking on board that this person will not comply, and they just keep asking for more reports. Though I wouldn't say that then they will need to be sent down, this is the problem. It's almost like, where do you draw the line, how do you encourage somebody to comply, and that's where we come back to motivation.

(15)

I quite often struggle with cases, sitting there thinking what am I going to propose for this breach, and it's sort of conflicting situations. Because if you can't propose anything then that person – there's no option in the community – so the person should go to custody, but the case doesn't fit the criteria as such, and there is no scope for people that breached an order in the first week or continuously breached and people that have breached towards the end. And we do want to make it clear, if you're breaching you will be going back to court.

(03)

Making the order more onerous was seen as helpful, but following this course could lead to custody if offenders failed to cope with even more requirements. Some respondents argued that some flexibility was needed in responding to failures to comply; and bringing back the option of fining breach cases was advocated:

On breach, consideration should be given to a financial penalty rather than making the order more onerous, because all you are doing is setting certain individuals up to fail. And it's something that's quite specific in the Sentencing Guidelines Council's advice about Community Orders that, you know, we should not be in a position where we're setting people up to fail and actually hastening their move to custody. So the return of the financial penalty upon breach, particularly technical breach, somebody could be doing, you know, attend 50 out of 50

appointments and miss two for whatever reason and you have to breach them. You have no sort of flexibility any more.
(14)

A few respondents pointed to what they saw as an anomaly that needed to be rectified:

It's a bit frustrating when you have someone who's perhaps been fully compliant with certain aspects of their order, but for whatever reason ends up in breach, and if they've not got unpaid work you have to give them a minimum of 40 hours of unpaid work. Yet you could have someone who is on unpaid work, who's not been particularly compliant at all and been messing around with it and they can have just ten hours added on. So I think in that area there needs to be a bit more consistency.
(23)

With regard to enforcement and the SSO, while some respondents wanted a bit more discretion in how to deal with it, others were adamant that if you breached a SSO then custody was the only realistic outcome and the courts should be acting on this. The SSO was a final warning and if it was not activated on breach then offenders would not take it seriously.

If they're going to recommend it, then if someone offends really they should activate it. That's all I can think of ... I just think that sometimes they make a mockery of their orders. If you recommend a SSO it's on the understanding that if somebody commits a further offence you activate the custodial sentence. And when they don't, you think what was the point of recommending it in the first place?
(11)

It's not working is it, because they're breaching them and they're not going to prison.
(17)

One respondent pointed to a problem that, as far as she was concerned, related to both new orders and affected compliance rates:

One of the problems with the new orders, the way they are, is that you can quite easily never see your case if you've got somebody with non-contact requirements, like prohibited activity or unpaid work, curfew, and somebody else is doing all the work with them. You don't get an opportunity to get to know your case, build up a rapport or a relationship, and I think that affects compliance rates very badly because if all you are is a name on the bottom of a breach letter to somebody and you phone them up and try to talk to them, what's going on, why have you breached, they're not going to start talking to a voice at the end of the phone are they?
(02)

Most respondents could see no other problems specific to the Community Order, although there were problems associated with it. A handful mentioned resources – a perennial complaint of probation officers (which is not to deny its accuracy) and which relates to the lack of availability of all requirements:

Resources are an issue. Orders are only going to be as good as the resources you put behind them, and if you start withdrawing them when they've been shown to work, like the alcohol treatment requirement, and despite the government sounding off saying that they're going to tackle alcohol offending, and then they go and take the funding away, or they cut probation's budget for the ability to contract out, it's a nonsense.
(14)

And several argued that all too often magistrates were using the supervision or the unpaid work requirements simply as default options when neither requirement had been considered necessary by the probation officer, or a conditional discharge or fine had been suggested. One respondent thought that too many low-level offenders were receiving Community Orders when they should have been fined, while another felt that too many first offenders did not seem to see a Community Order as a

punishment. In one interview, the respondent listed the key areas where difficulties could emerge, though he did not see these as specific to the Community Order:

I don't think there's a problem with the Community Order ... the person that's recommending whatever Community Order has got to have a really good knowledge of what's available and what the particular offender needs. So that's the starting point. Then it's up to the courts to make that order. So they either listen or they don't listen ... So I think it all starts with getting the recommendations right if you like. Because it's no good saying, give a 19 year old unpaid work, supervision, a programme and a curfew. I mean it wouldn't take a Brain of Britain to think, well, they're probably not going to manage that because it's really onerous. So I think it's about getting the Community Order right, the recommendations right, the magistrates going along with it and getting that right. And then it's only as good as the person who has got it, because with the best will in the world somebody can have a Community Order and think, fantastic, I'm not going to custody ... and then they walk away from court and they don't even turn up. Because we do have people who don't even turn up for their first appointment.
(21)

Most respondents saw no other problems with the SSO than the two which have already been identified: that they were being used inappropriately and that breach had to be dealt with firmly.

Comparing the Community Order and the Suspended Sentence Order

To a layperson, there is little to differentiate the two orders. Legally, the SSO is a custodial sentence but if it is served with no problems then it acts as a Community Order – albeit one with the threat of custody hanging over it. In general terms, half of our respondents thought there was little difference between the two in practice terms: 'They're much the same really' (01); 'I wouldn't say there is much of a difference, to be honest with you' (13); 'Just the same' (17); 'I don't think there's any difference at all' (20). In terms of differences, the fact that the SSO was a custodial sentence was mentioned, as was the fact that breach was a bit faster for the Community Order because it was unlikely to result in a custodial sentence. Some respondents thought that the Community Order was a bit more flexible and, as already noted, some from one area claimed that they now rarely recommended the SSO as they had been instructed to use it less often.

Thus, there was little evidence of different approaches being adopted in running the two orders. The most common difference (from six respondents) was that there was more focus on compliance in the case of the SSO: 'Basically, I suppose, the only difference is that you make someone more aware that if they fail to comply or turn up then they're more likely to get prison' (24). One can see the kind of problems that face probation officers if they impress this on offenders and then find that breach of the SSO does not lead to custody. Essentially, the same requirements were used for both orders, though, as several respondents added, there should be fewer requirements used in the case of the SSO. The SSO could actually be more demanding than imprisonment:

Well, I think feedback from people that have done them often say that they're more onerous than custody and have found them harder, in the sense that if someone's got supervision and a programme for example and they've got a drug requirement, they've got a lot of appointments, they've got a lot of time ... whereas if they were in custody they might be in and out in a few weeks even though they've got a four-month sentence, for example. So it can be seen as harder I think.
(12)

Possible improvements to the orders

Given the kinds of problems that probation officers identified with the orders, their suggestions about how they might be improved in some way are not surprising. For the Community Order, more resources were mentioned by half of our respondents – either as a general need or in terms of having certain requirements made available (and the mental health and alcohol treatment requirements were specified). Other possible improvements were for breach to be dealt with more firmly, for the option of a financial penalty to be reintroduced for breach, and for the overuse of requirements to be dealt with by a cap on the number that could be used. One respondent talked

at length of what might be done to resolve what he perceived to be the problems with the 2003 Act:

Well, I'd rewrite the Criminal Justice Act. The Act doesn't help itself because it's contradictory in many respects and it makes our life quite difficult. If there was one thing that I would change about the Community Orders ... it would be that on breach consideration should be given to a financial penalty rather than making the order more onerous, because all you are doing there is setting certain individuals up to fail ... There isn't the option to increase the supervision requirement, that's another change I'd make. If they haven't got unpaid work, they have to have a minimum of 40 hours – although I think that's changing with the new Bill where they'll be able to impose any amount of hours on a breach.¹⁵ Or you could end up with a curfew, and then you've got half a dozen of these requirements that aren't used so you can't impose them because nobody knows what to do with them ... You're just ratcheting people up and up until they've got so much to do, they're just going to end up in prison. Half these people don't know what time of day it is, let alone attend three or four appointments a week with us. Like I say, the other one, because the Act is written so badly, a Community Order can't be legal without a requirement, and in some instances where we've thought further supervision would be appropriate on breach, you can't increase it because your Community Order is only as long as your longest requirement. So to be creative we've asked for revocation and resentencing and then just asked for an order that goes on a bit longer, so you increase the period of supervision. They explored the possibility of headroom, like a Community Order of 12 months, and you have six months' supervision and then if they do breach it you can increase it, and that was something that was explored by the Home Office and they never returned any advice on it. My take on that is it would operate like a SSO then. They'd finish six months' supervision, but you've got another six months of a Community Order with no requirements. So you've got an order that technically exists and doesn't exist, so if they do anything in that six months what happens? So I think there should be an option for making some way in which you can extend supervision and the return of fines. Or no penalty on breach if there's significant mitigation.

(14)

By far the most commonly suggested improvement for the SSO was that breaches should be dealt with by custody:

It should be the last chance, you know, you're not going to custody but you breach this or you re-offend and you will go to custody.

(13)

I think if they breach they should go to prison, because that's what they're told at sentencing, but that doesn't happen ... I know prisons are full, but they're full with the wrong people. We need to send out the message that if you've got a suspended sentence and you breach it, you go to prison. At the moment people aren't and so we've got a lot of people breaching three or four times and the weightiness of it is going, because we're not doing what it says on the tin.

(15)

I think it should mean that if somebody breaches it they go to prison ... But that isn't the case. So it seems ridiculous to call something a Suspended Sentence Order when actually it isn't suspended because you can have two or three chances.

(18)

I just think if they're going to recommend it, then if someone offends they should activate it ... I think they make a mockery of their own orders. If you recommend a SSO it's on the understanding that if somebody commits a further offence you activate the custodial sentence. And when they don't, you think what was the point of recommending it in the first place?

(11)

Several comments related to the use of requirements and the SSO:

- It should be permitted without a requirement (like the old-style suspended sentence).
- There should be an upper limit to the number of requirements that can be used.

15. The Criminal Justice and Immigration Bill 2008 reduced the minimum unpaid work hours that can be imposed on those who breach orders without an unpaid work requirement from 40 to 20 hours.

- The length of requirements should be capped.
- Requirements should be closely related to offender needs/risks.

And it is worth highlighting an issue that emerged in one area, where several respondents noted that their sex offender programme ran for three years so you could not have this as a requirement with a SSO (or you could only do part of the total programme) as they only run for two years.

Changes in probation officers' work

It is quite possible that the introduction of the two new orders could have led to changes in the way probation officers work; for example, the number of requirements might make planning a focused order more complicated and the range of non-probation agencies involved could make managing the orders more difficult. We therefore wished to explore whether our respondents thought that any such changes had taken place. Only a handful thought that there had been no change. Most considered that their work had become more onerous as a result of the new orders. It had become more complicated as a result of having to deal with a variety of partnership agencies: 'It's supposed to be seamless and that is quite a task' (22). It involved far more paperwork than previously and there was more work relating to breach. Several claimed that they were no longer the welfare-based organisation that had existed in the past:

I think we're definitely steering away from the old kind of welfare-based supervision, we're almost like a little business organisation I think now ... you go off and do unpaid work or you go and do a programme and as offender managers or probation officers we kind of oversee it. We're almost signposting I suppose and ... sometimes it's nice to get a supervision because it doesn't happen hugely anymore and it's nice to sort of do that.
(04)

The offender manager role meant that there was now a distance between the probation officers and the offender that had not been there previously, and this distance was not seen as being helpful in building meaningful relationships and helping compliance. Some, however, thought that they were becoming more creative in putting together requirements to make up orders:

I think as more of us are getting quite a few years into it now, getting more used to it, you start sort of being more objective. You start thinking a little bit more, well, that would work and that would work.
(07)

Most respondents stated that there was much more partnership work now and while this was generally agreed to be a positive experience – 'I like working with other agencies' (04), 'I think we have a good relationship' (21), 'I think the partnership thing is working' (14) – it also had its difficulties. Information sharing, for example, was still not as smooth and trouble-free as it should be between probation and some partner agencies. And there could be difficulties between the styles of work of some agencies and what probation required:

A lot of drug and alcohol agencies work with people's motivation. Well, we can't do that because if we're looking a specific requirement we need to know what's planned and that really goes against how you work with addictions ... So that's caused a bit of tension. If I can just give an example of somebody that I assessed recently who's very high risk in domestic violence, and to get him back he's been remanded in custody. They've let him out for the alcohol assessment and he needs a fixed plan because of the risk – we need to know if his drinking increases and things – but the alcohol agency doing the assessment were working with what he was telling them and considered perhaps a six-month alcohol requirement. Well, a judge would have laughed that out of court. I need to know what he's doing for at least 12 months and have to go back [to the agency] and explain that and was told, well, we can review it in six months. Well, no, I can't review a court order in six months, I can't go back to the court and say, extend this ... And there's a sort of tension between voluntary agencies' understanding of the legal requirements, so that can be quite difficult.
(18)

Other problems mentioned included: chasing offenders up to find out whether or not they attended a session with an outside agency; below-standard work when re-tendering took place and a new agency won the tender with a cheap bid; and failings on the part of partner agencies which reflected badly on probation not the agency because courts did not differentiate between the two and saw probation as the responsible agency.

Relationships with sentencers had not really changed, but there was some evidence that relationships with offenders had changed as a result of the introduction of the orders. The use of outside agencies, as noted above, could make it more difficult for probation officers to build a relationship with an offender: 'I think they might perceive us as more controlling than they might have done in the past' (12). Also, if there was no supervision requirement, there might be no chance at all of a relationship developing – and it is the relationship that counts:

I think fundamentally it comes down to your relationship with your client. And that has always been the case and I think it always will be. Unless you spend time with your clients and put the effort in and they can see that you're actually interested and they're not just another number, you will get the results that you hoped for and they'll get what they hoped out of it. You can have the biggest Community Order in the world with all the requirements addressing every single problem, accommodation, employment, training, education, the lot, if you're a shit officer and somebody who's not particularly bothered, it doesn't matter, you know, that person is not going to comply with whatever.

(14)

One respondent thought that offenders were better off without such a heavy dependence on probation as they had had in the past; probation had been too central to their lives, whereas having to deal with various outside agencies helped offenders to see what support could be provided apart from probation.

Perceived views of offenders and colleagues

One-quarter of respondents felt that offenders had no serious issue with the new orders, but the same proportion felt that offenders were confused by them as they found it difficult to understand that they had received one order and not three or four separate sentences. This made matters complicated as offenders could find it hard to understand why they had to provide similar accounts of themselves to different agencies:

I think these requirements are cutting them up into different pieces before we've even found out who the whole person is. And I think they don't like having to tell their story to X, Y and Z and this is what happens when you're sending them to three or four different agencies.

(18)

... they need to feel that you are in control and you do know what's going on, otherwise they can feel like they're just being farmed out and nobody's really taking an interest.

(22)

I think a lot of them get slightly confused with the name changes ... Unpaid work is still referred to as community service, that's what people know it as. They tend to get confused when they first get an order and you say, right, you've got a Community Order or a SSO and you've got these requirements, they don't have an understanding that if they miss one appointment with, say, supervision then they miss a programme appointment that they've been breached. They think they're separate and they treat them as separate orders in a way.

(13)

I think there are some [difficulties] because there's that many requirements now. Previously, you used to have stand-alone orders and the nearest you got to what we have now is the Combination Order, which was only supervision and unpaid work combined – and you could only have a maximum of 100 hours of unpaid work, now you can have 300. You could have a programme attended twice a week in the evenings and then you've got to attend for your

probation supervision. And when you've got fairly chaotic individuals remembering four appointments a week at different times and on different days it's a problem. So you've got to be creative. If someone's in for unpaid work, see them for the probation beforehand or afterwards, get them in on the same day. That's if you don't want to end up breaching someone for missing a bloody appointment.
(14)

Such issues could lead to problems in completing orders, especially with the more rigorous approach to enforcement that was now probation policy. In some instances, probation officers worked hard to try to remind offenders of their appointments by telephoning them or text messaging, in order to maximise the chance of successful completion of an order.

For the most part, respondents thought that their colleagues were reasonably satisfied with the new orders: 'I think, overall, people are OK with them' (05); 'They see an improvement to what we had before' (07); 'I would have said people are fairly positive about them' (15). At the start, there were certainly some complaints but these had tended to disappear and probation staff acknowledged that the new orders were useful. Some noted that views about the orders depended to some extent on how long staff had been in post:

I'd probably split my colleagues into more recently qualified ones and then less recently qualified ones ... more recently qualified officers have had more training about it so it's not such a problem for them seeing it as being too punitive.
(12)

I think the people that have been around for quite a long time just don't like the fact that we're more about enforcement now. I think us newbies, we think it's great. The new ones that have qualified since the orders have come in, we think it's quite good. But I'm not sure about the people that have been around for a long time. I don't think it's necessarily because of the order themselves, I think it's because of the standards attached to the orders that you have to breach within two unacceptable [absences], that you don't have as much discretion on what is or isn't an unacceptable absence.
(20)

There were some grumbles about caseloads being too heavy, resources being too stretched, paperwork becoming too onerous, but the impression was that such complaints came from older officers:

Too much bureaucracy, too much computer, too much work because it's time and motioned, and not enough autonomy. The erosion of, you know, eroding the ability to use your own judgment and just get on with it, and also the social work aspect. These people that have come into it through the social work route would probably say that.
(17)

The future

Just over half of our respondents argued that the future for the two orders could be a good one; they were now settled in, people had got used to them and they should not be subjected to any further changes – although this was more wishful thinking than anything else. More change was not welcomed:

I think they will last the test of time ... but then, such is the nature of this work that you never really know do you?
(02)

From a purely selfish point of view, I would like to see them just staying as they are because we've had so much change. I think the thought of actually another change ... I mean, yes, we'll deal with it because we do, but it would be nice to have some stability, and I think we've only just go to the point where people, all the agencies involved, have got a clear idea of what they are and what it is possible to achieve with them. So I would like to see them kind of staying ...

I mean clearly there's always issues with resources aren't there, we're not always able to make available what we might like to have available, but I mean that's not really an issue for the orders as such, it's an issue for resourcing within the service.

(05)

I imagine that they'll probably be around for a good, probably another couple of years, but then I imagine that they will be changed again. It seems to be the general pattern, things stay around for a few years and then they decide that actually, no, that's not working let's change it.

(13)

I'm sure they'll change again at some point. A change in name but the work we do will be the same. I'm not sure how they can continue with them given that it says there are 12 when there's really six, and we're just sticking to the usual suspects. Some days it feels like probation is grinding to a stop. It's a resource issue and I don't think that will change.

(14)

Too much change was exhausting for everyone involved and it also led to loss of credibility, not just for probation but for the criminal justice system as a whole; it gave the impression that those who were responsible for criminal justice did not know what they were doing. Other pessimistic views were evident: resources would be moved to prisons so that there would be a 'dumbing-down' of Community Orders and SSOs in the sense that less work would be done with offenders; there would be even more emphasis on performance to the detriment of practical work with offenders.

There seemed to be little appetite for using more requirements, although given the framework of the orders it would be simple to make more available. The problem lay in the fact that all of the 12 requirements were still not available – and the two most commonly mentioned as being necessary were the alcohol treatment and the mental health requirements. In addition, arrangements were needed for the effective monitoring of prohibited activities and exclusion requirements. And in at least one area, there were problems with the organisation responsible for electronic monitoring. But several respondents spoke of now trying to be more creative in their use of requirements, focusing them more effectively. The mind-set that saw supervision or unpaid work as the default options for orders needed to be changed, but how this might be done was unclear. And the implications for probation as an agency if these two requirements were used less often could be serious – contestability and the possibility of breaking up the Probation Service were not far from people's minds.

There was agreement that the new orders would make it easier for contestability to be introduced – and the two requirements that were seen as prime targets for outside agencies were unpaid work and accredited programmes. But whether or not this was a positive development was unclear. Contestability remains an emotive issue:

I don't disagree with contestability in principle. I think to find the right people for the right job is a benefit for offenders, it's wrong for us to be trying to do everything. We're not specialised, we can't ever be specialised in all of these ... I don't like to think it's about cutting costs and getting the cheapest option. And I know the government spin on it is that, no, it's not about cutting costs, and I'm sure that more sceptical people would say, yes it is.

(22)

If you're delivering the best service then you've got nothing to worry about, have you? And if you're not delivering the best service, then it's not fair on our service users.

(06)

If things are privatised, I would have concerns about whether offenders and the community were receiving the same level of service because they might not have the same training. I know within the private sector of the Prison Service, the staff get paid less, they don't have the same level of training ... So that would be my concern, that they try and do things cheaper but in the long run it would affect the way orders are run. It would affect the level of service that offenders would be given and also in protecting the public and the community.

(23)

My cynical view is that these sentences, the requirements were devised as a means of breaking down the Probation Service so actually we could just end up as enforcers. All we would have to do is when any of the people that provide any of this tell us that somebody hasn't done it, we take the order back to court ... I see increasingly private sector firms taking over huge chunks – private sector could do unpaid work, they could provide programmes ... I think we'll be dealing with the prison population and the community-based sentences will be run privately.
(18)

Only a handful of respondents had heard of the planned (currently being piloted) Intensive Alternative to Custody projects, but they were not opposed to the idea, as long as they were properly resourced and clearly focused. Exactly what they might offer, however, was opaque:

I believe that the Community Order and the SSO should be good enough as alternatives to custody. However, if that message isn't getting across, or isn't being believed, or isn't being taken on board by sentencers and by the public, then, yes, something else needs to be done. Of course, we do already have the ability to be intensive ... I don't quite know what you'll do, how more intensive can you get, what, somebody turning up five times a week for an hour every morning, doing what? I don't know what the Jobcentre will say about this, they'd probably say you're making yourself unavailable for work and stuff your benefits.
(09)

Views and experiences of those on orders

All too often the views of those who receive court sentences are marginalised in studies on the use and impact of sentences. It is as if the views of those on the receiving end of court sentences are less significant than those who pass sentences or those who apply them. Despite the fact that arranging and carrying out interviews with those sentenced can be difficult, it is worth the effort because offenders have unique perspectives on the sentences they serve. In this chapter, we present the views and experiences of a sample of offenders serving Community Orders or SSOs.

It is important to bear in mind when reading this chapter that the experiences presented here are based on a small snapshot study of a selective group of people subject to these orders. They do not provide an adequate basis for wider claims to be made about the experience of those subject to the orders. The methods used to generate a sample of interviewees are likely to bias the experiences gathered in favour of those who are compliant, have a relatively 'good' relationship with their probation officer and to some extent feel positively about their probation experience.¹⁶ However, despite this caveat, we feel that it is worth examining how offenders feel about their sentences as it is they who are on the receiving end of what courts order and what probation officers do.

Being subject to an order

'Relieved' was the feeling many offenders associated with receiving a Community Order or SSO. While being subject to such a sentence was by no means a desirable situation, most respondents saw it as a preferable alternative to going to prison. As well as the physical restrictions of prison, based on personal experience or the experiences of others, most considered prison a place 'that's not going to help me' (CO12). Compared to prison at least, interviewees tended to have greater expectations that a community sentence might provide something productive, though when compared to their expectations or experience of prison as somewhere 'you get no help', this may not be saying much.

I was just a bit relieved because I was in jail, I was in prison at the time, and I said to them basically you can lock me up all you want, do you know what I mean, but that's not going to help me. I said I need help ... So I was quite happy to get the order really because it's positive. I mean it's not negative.
(CO12)

I didn't have any preconceived ideas of probation, just anything but in jail, anything but jail. I don't care what it was, anything, flog me or whatever, just don't put me in jail ... I've seen too much people go in jail and it's never helped them.
(CO3)

So as soon as they give me probation I wasn't like that, 'oh god', I was like that, 'yes, I can go back to college now for nothing kind of thing' ... So it was like, ah well, I'm going to get some certificates out of this. You've got to get the best out of a bad situation.
(CO7)

There was one notable exception – an offender who initially thought the two-year community sentence he received was 'a bit heavy' compared to the four-month prison sentence he had been expecting. However, he reflected that perhaps the community sentence was imposed as a result of:

The probation services really recognising that I'd got maybe some hope ... and they wanted to

16. See Introduction for an outline of how interviewees were selected.

make sure that that was supervised. And it has worked out for the best really.
(CO8)

Most were positive about their overall experience of the order, with those towards the end of their order feeling they had got something out of it. For some this meant that the order was not as bad as they had originally thought it would be. While experiences clearly varied in relation to the requirements respondents were subject to, there were no obvious differences between the experiences of those subject to SSOs compared to those on Community Orders. Those subject to various requirements were similar in suggesting that the structure and discipline of having to attend appointments was generally beneficial:

So really I just find it, it's just beneficial to me. It gets me out, and I structure my day round it, not just an hour, it's the full day. Wednesday, I do probation Wednesday kind of thing.
(CO7)

I've found just coming to the groups helpful because I used to be stuck in the house every day. The only time you went out was to score your drugs. And I've found having to come to these appointments it means you have to get dressed for a start off, come into town, you meet different people. While I'm here I end up walking around town looking at the shops and it's an excuse to, as well as coming here for the appointments, it's an excuse to do something different so many days a week. You know what I mean. So I find that helpful, me personally.
(SSO9)

Suddenly you've got something different to do, rather than doing the same thing as you've been doing before you know, which obviously got me into drugs.
(SSO1)

The good points about orders highlighted by respondents generally related to having help, having someone to talk to, and the difference some felt the order had made for them. When directly asked whether they had found anything difficult about their order overall, most said no, with some adding that anything bad or inconvenient was meant to be that way because it was a punishment.

Views and experiences of requirements

In examining the views of offenders about their requirements, we have considered only those requirements experienced by three or more respondents.

Supervision

Supervision appointments typically took place with an identified probation officer weekly, fortnightly or monthly in a one-to-one setting at a probation office. As a minimum, supervision was perceived as simply being 'in and out of an office' (SSO6) or 'just signing something' (CO15). More common and positive descriptions were of supervision providing an opportunity to talk about matters that were bothering an offender and to get assistance, with some respondents claiming that they frequently contacted their supervising officer for advice/support/help in addition to their required supervision times.

Supervision was generally seen positively as an opportunity to 'get things off your chest' (CO11). Although some of those on orders reflected that they had been nervous or less responsive at the start of their supervision contact, at the time of interview at least, having someone to talk to was considered a good point about the order and even 'enjoyable' (SSO9). On the surface, descriptions of supervision were often suggestive of a somewhat vague conversation rather than being explicitly task-focused. Common themes in interviewees' accounts of what was discussed during supervision included:

- Why the crime they had been sentenced for had happened and possible ways to prevent it happening in future (this was often described as the initial function of supervision)
- How they were 'getting on' on the order
- How they were feeling and coping with things in general

- Possible services that could be accessed to address issues they had raised and probation officers brokering contact with these services (examples included counselling, mental health services, housing, education and employment support).

She [probation officer] asks me how I've been doing and in general how's my life. You know, it depends what kind of situation I'm in. I talk about sometimes a bit personal, talk personal sometimes. I might be a bit distant and just say everything's all right and it's not, but I mean sometimes I'll chat for an hour and sometimes be a short 15 minutes, just want to get out of there.

(CO15)

Because it's two years and like once we'd got past the why I was actually in court, which must have took, what, a couple of hours, the rest of it has been trying to sort myself out really ... so I look in the mirror and I feel a bit more confident with myself. But it still hasn't got me a job but I feel a little bit better, you know.

(CO3)

I'm on for domestic violence ... so it's basically centred around that and, say, six questions out of that and four questions to do with how I'm coping with everything that's gone on in my criminal past, so just to keep tabs on me really, which is a good thing.

(CO7)

Probation officers were considered to be knowledgeable about what services were available as well as being able to get things moving, and to know the appropriate people to contact about a service. One respondent claimed that the intervention of a probation officer reduced the waiting time to accessing counselling support from six months to a month.

The only significant procedural issue raised with supervision was when it had not been possible to meet an allocated supervising officer for a month as he had been on holiday, with supervision described as becoming 'just having to report ... a waste of time really because they don't know what I'm like' (CO15). Only one person did not find supervision helpful in some way, describing it as 'more of an inconvenience than a help' (SSO14). Underlying this was a cynicism about talking being of any benefit. Another pointed to what might be seen as a major drawback to the supervision process that could undermine it completely:

I can just lie to my probation officer and say 'yeah everything's alright [when it's not]'.

(CO16)

Drug Rehabilitation Requirement (DRR)

Six respondents were subject to a DRR. Orders with a DRR tend to have a greater number of appointments than other requirements and are therefore more intensive, particularly in the initial period of the order when testing and attendance at support services may be more frequent.

The number and combination of activities undertaken on a DRR varied, with respondents carrying out at least two (and in some cases up to five) of the following activities:

- Drug testing (by urine or oral fluid testing between once and four times a week)
- Court review of order (monthly)
- Accessing specialist drug support agencies (for one-to-one counselling and/or group-based support)
- Accredited substance misuse programme
- Methadone programme.

In addition, some had voluntarily accessed activities made available through their DRR including alternative therapies, education programmes and psychiatric support.

A DRR can only be made with the consent of the offender. All those subject to a DRR were clear that the purpose of the requirement was to reduce or stop their drug taking – an aim, at least at the time of interview, which appeared to be considered more as an opportunity than an unwanted restriction.

Respondents were, on the whole, positive about their experience of a DRR. All claimed to have reduced or stopped their drug use since starting the order, except in one case where the offender was in the initial period of the DRR and indicated that she hoped to stop using drugs. For the most part, drug testing and talking about drugs (particularly talking about drug histories to understand drug use and discussing strategies to reduce drug dependency) with drug workers and their probation officers were the main activities described.

Despite some admitting they had felt daunted by the number of appointments they were required to undertake at the start of their order, only one person said they had actually found keeping various DRR appointments a bad point about the order. This may at first glance seem surprising, particularly given the high number of DRR appointments and the chaotic nature of the lives of many of those subject to this order. However, as has already been suggested about orders generally, the demands of the overall package of the DRR tended to be considered helpful in themselves. Some pointed out that as drugs had occupied a significant amount of their time and selves, efforts to change their drug use left them with a significant gap in their life or feeling ‘an empty shell’ (SSO9):¹⁷

You have to do ... about five appointments a week so it is quite a lot ... And I didn't think I'd get through it at the start but I did, and it's quite an achievement really for someone who, like the lifestyle what I used to lead and I used to be worse than what I am now. So I'm quite happy about that. And it takes up your day as well because you're always busy as well, so that's another, that's probably another [good] point as well.
(CO11)

I wasn't really too fussed [about the number of appointments] because I wasn't working and I wasn't really doing anything else as such [apart from] my other appointments I had through the DRR and what have you, you know, it wouldn't have really made that much difference [having more appointments].
(SSO2)

There was no element of the DRR that was wholeheartedly disliked or considered unhelpful, although the perceived contribution that the particular conditions made to reducing drug use varied.

Regular drug testing monitors the drug use of those on DRRs. Probation service guidance considers drug testing results as ‘a rather blunt instrument by which to measure progress’ and that the results of drugs tests need to be considered ‘in the context of the offender’s overall progress on the order’ (NOMS, 2005: 23). Monitoring drug use through regular testing was acknowledged to be useful to some extent by those subject to it. The perceived consequences of testing and its function, however, varied considerably.

Some considered that drug testing provided a useful deterrent to their use of drugs, believing that continued positive drug test results could result in a prison sentence. Others suggested it had strengthened their own resolve/motivation not to use drugs, acting as a test they (at least sometimes) wanted to pass, rather than feeling coerced to do so by the consequences which could be imposed upon them. In contrast to this perception of drug testing being a matter of pass or fail, drug testing results were also described as a useful basis for realistic discussion with probation/drugs workers about drug use. Interestingly, interviews with drug professionals about drug testing as part of the DRR’s predecessor, the DTTO, found similar inconsistencies amongst staff about the aims of testing and their responses to positive drug testing results (McSweeney, Stevens and Turnbull, 2008). Those who had had negative drug test results saw an additional benefit of drug testing as confirming to probation staff claims about their reduced drug use.

17. While it was not specifically asked about, no interviewees with DRRs mentioned they were in employment whilst on their order.

Court reviews were also considered to be about monitoring progress, with sentencers giving a 'tap on the back' for compliance or a 'smacked wrist' (SSO2) for missed appointments or a lack of progress. However, views were mixed about the usefulness of such reviews. For some, the additional authority of a sentencer monitoring their order was perceived as a helpful threat in encouraging compliance:

It helps really because I know that I've got to go back for reviews and that. I know that I can't do nothing because knowing that if I get breached on a DRR I'll get a two-year prison sentence. (CO10)

Others considered it was nice rather than helpful to receive positive reports about progress at court review, and seemed less convinced as to whether there was any real benefit to a sentencer's involvement in this, particularly if the offender had to travel a significant distance just for 'five minutes' (SSO1). Perhaps most significantly, concerns were raised about the accuracy of court reviews in judging progress on orders. One respondent described how since the start of his order he had substantially reduced – but not stopped – his drug use and was no longer homeless, matters he, his probation officer and drugs worker were pleased with. However, at a court review, the sentencer had reprimanded him for continued positive drug tests results (which did not detect his reduction in drug use). Not only did he feel that a sentencer assessing progress based only on drug testing results gave an inaccurate picture of his progress, but the perceived injustice of the judge's assessment could have had a detrimental effect on his drug use:

Sometimes like my probation officer and my drug worker say, 'Your report to court's going to be really good, you've got nothing to worry about.' And then you go in court and the magistrate sort of talks, 'I want to talk different tactics.' Well what's going on? You know, I thought I'd done well last month and he's sort of having a go at me, do you know what I mean? [For] some people I'm sure it can be quite detrimental can't it? You know, because you're quite fragile at times ... especially drug users, you know, somebody who's just stopped, well it's a perfect excuse isn't it? You know, I'm trying and nobody seems to notice so why do that [reduce drug use]. (SSO2)

Again, inconsistencies in feedback on progress to those on orders and the limited ability of drug testing to detect changes in drug use have been raised as issues related to the DRR's predecessor (McSweeney, Stevens and Turnbull, 2008).

Specialist drug agencies were primarily described as offering someone to talk to or as organising groups in which those subject to DRRs talked about their drug use histories and tried to understand their drug use. One or two also mentioned the possibility of specialist drug agencies brokering access to residential treatment at the end of their order. Specialist drug workers' knowledge and understanding about drug use and addictive behaviour were valued. Many referred to drug workers as having the skills and experience to provide encouragement (many said they had low self-esteem) as well as being someone they couldn't 'blag' (CO13) or lie to easily.

Criticisms raised about specialised drug agencies were: their focus on talking about drugs could act as a tempting reminder of drugs themselves when interviewees felt they needed to forget all about them; a lack of flexibility in the timing of group-based support appointments, with evening group appointments difficult for those with child caring responsibilities; and that other people attending groups were sometimes under the influence of drugs (raised as an issue at the start of a new group which was resolved by the group).

Unpaid work

Unpaid work was seen as the punishment part of the order by the three interviewees subject to it. However, the staff organising unpaid work were described as 'fine ... down to earth' (CO8) and 'nice' (SS05). Perhaps because it was considered to be a punishment, respondents tended not to talk about the extent to which unpaid work was useful or helpful. Indeed, only one respondent had been pleasantly surprised that he had got something out of unpaid work as he had learnt woodwork skills working with a joiner. Generally, unpaid work was seen as inconvenient,

although this was seen as an intention of this requirement rather than as an issue they had had with it:

The only bad point is it starts early in the morning, but it's punishment so I can't really complain... Just getting up earlier than me children and having to leave me children at like half seven, eight o'clock before school, and I normally walk them to school, me ten year old. So my eldest boy has got to do it.
(SS05)

The impact of obviously having to come out of your normal schedule to – well, I understand it's a punishment so you have to, and that side of it I understand, so you have to do it.
(CO8)

Accredited programme

Four interviewees were required to carry out an accredited programme (one as part of a DRR).¹⁸ One person failed to begin the programme that he had been required to attend (an Integrated Domestic Abuse Programme) as there had been a waiting list to start the course and his order had been revoked for a further offence before he could take up the place.¹⁹ Those who attended accredited programmes considered they had got something out of the course. In particular, the opportunity to get 'on the right train of thought' (CO8) and 'notice my problems in how I was' (CO16) were considered useful.

While no issues were raised about the content of accredited programmes, some respondents said their initial attitude towards this requirement had not been positive because they were reluctant to talk about their past or to address their drug use in the initial period of their order when their programme began:

I didn't want to do it in the first place because I didn't want to go there and tell people my name, my problems, what I'd done. But then when I got there and everyone else has to do it so ...
(CO16)

I was a bit worried about [the programme] because I'm not exactly proud of my history involved in drugs and along [with] the criminal history that I seem to have acquired as well. But yeah, things gradually came into, you know, I settled down, met the people and gradually became to trust them.
(CO8)

Negative points raised about accredited programmes were about frequent changes in people attending the course in the first few weeks, inhibiting group rapport, and that missing one session resulted in resitting a whole module.

Comparing current orders to previous community sentences

Those with previous experience of being subject to a community sentence tended to compare the experience of their current order favourably with the order(s) they had received in the past. Unlike their current order, previous community sentences were generally not considered to have offered adequate support or those subject to them did not consider they were ready to change. This included some fairly negative accounts of previous contact with the Probation Service:

I don't know whether it's me or whatever but I've found probation could be a waste of time before, you know, it'd be like gruesome and whatever, but now it seems to be, it's helped me quite a lot [Interviewee goes on to talk about her previous experience of a Community Service Order with 140 hours of unpaid work]. I was running here, problems with income support, problems with this, problems with that, and it's like they [Probation Service] couldn't help you with nothing really. You had to do it all yourself ... that was horrendous because I had children to look after.
(CO4)

I thought [probation] was just a case of dropping in [to the probation office to report] like it

18. The accredited programmes were described as an Addressing Substance Related Offending (ASRO) programme, an Offender Substance Abuse Programme (OSAP), an Integrated Domestic Abuse Programme (IDAP) and an anger management programme.

19. Long waiting lists for IDAPs have been recognised as an issue across the Probation Service (NAPO, 2008; National Audit Office, 2008). NAPO claims inadequate resources for IDAPs as the cause of delays to the start of courses which, as an IDAP is at least 27 weeks in length, can make the requirement problematic to complete within the length of a community sentence.

was [in the] early '90s. It was like just going, [mimics a probation officer] 'Hi Tony,²⁰ yeah, are you okay?' 'Yeah, fine.' 'Right, thank you, see you next week.' It was like, wow, you know, I'd leave the car running outside, and I was disqualified and wanted [support] kind of thing. It was like, well, that's probation for you. I just had no faith in it really.
(CO7)

Perceptions of supervising officer

Mike [probation officer] has made things the way they are ... I can't fault my probation, so if you're looking to, if this sort of like looks on the Probation Service, that's sort of like well you've been, you're underperforming there or you're not doing well or you're not doing what we want you to do, well I'm not saying Mike is doing what the government want [him] to do, but he done well for me. As a probation officer... He done well for me. I can't speak much more highly of him really.
(CO3)

As the above quote illustrates, many spoke extremely highly of their supervising officer. Typical descriptions were of probation officers being helpful or good, with some going as far as 'excellent' (SSO6) and 'brilliant ... a bit like a guardian angel really' (CO7).²¹

Those with experience of more than one probation officer, owing to receiving previous community sentences or a change of probation officer during their current order, thought that the individual probation officer and the rapport you had with them made a substantial difference to how beneficial and positive the order was. To a considerable extent, respondents suggested that it's not just what you do, it's with whom you do it:

[The interviewee is explaining that his probation officer changed in the initial period of his order]

It got changed to James, which I'm truly thankful for because it makes such a big difference ... I don't know, it's just the lengths that James seems to [go to]. No matter what it is he'll help me with it, you know, he'll guide me in the right direction or phone people up for me. He's even been to housing with me to try and sort housing out and stuff like that, which to be honest I couldn't see her [previous probation officer] doing. And I don't want to sound as though I'm picking on her because I'm not, but she didn't give me the impression she was even 10 per cent as helpful as what James has been personally for me.
(CO8)

I could talk to him [probation officer] and he understood where I was coming from and didn't judge me and all that. And I think that's important with a probation officer, because if you don't get on with them or there's something where you don't click and you don't really see eye to eye then you're better off speaking to management and asking them for a different probation officer, otherwise probation just ain't going to help. But if you can get on alright with your officer and that, it'll work.
(CO10)

A probation officer was seen as being there to advise and help. Some felt their probation officers had gone out of their way to help or gone beyond what they had to do, particularly when brokering contact with support services. Examples were also given of probation officers providing mobile phone contact numbers or allowing those on orders to call in to the office to see them at any time, not just for set appointments. There seemed to be little concern about the surveillance or controlling role of a probation officer. Virtually all felt their probation officer was easy to talk to, understanding and helpful with their problems:

Yeah, very, very [easy to talk to]. That's where I said that he's almost like a friend. Well he is to me to be honest. He has been very helpful, very easy to talk to, and I feel at ease when I've not got an appointment booked or anything but I've come and spoke to him without an appointment.
(CO8)

20. All names have been changed.

21. Supervising officer and probation officer are used interchangeably in this chapter as common terminology used by those subject to orders (in addition to the more frequently used reference to their probation officer by first name). No one referred to having an offender manager.

Yes, she's alright ... she's my *supporting officer*. So she helps me. I don't know, like an adviser really. She explains everything and that, and if I don't really understand it she'll explain it in a bit more depth, and see how it goes from there.

(CO10; emphasis added)

My probation officer comes in twice a week and they help me. Like they help me look for work, they can help you get a place to live ... And just helped me if I need help with whatever I need help with. They're quite good.

(CO13)

I'd say I get to talk to somebody once a week, so it's like a counsellor really ... And if I've got a problem he'd probably help me out.

(SSO5)

They're like a police officer, Jobcentre worker and social worker. Yeah they're all in one ... they can send you to prison, they worry about what you're up to, so it's just like a social worker, and yeah like a Jobcentre person because if you miss they're going to report you.

(CO16)

Many implied that because they were aware of the boundaries in terms of compliance, their probation officer became more of a supportive guidance figure than the authoritarian law official some had expected. They seemed surprised by the lack of coercion in their interaction with probation officers:

She'd tell me what I'd need to do but she wouldn't order me and be, like in the past they've been. I don't know, perhaps it was me or perhaps it wasn't but it was like they [previous probation officer] I don't know, they had control over me and they knew it. But Lauren wasn't like that.

(CO13)

He [probation officer] stated the obvious, that you'll go back in front of the judge being charged and that, but he never, he wasn't dictatorial, you know what I mean, beating me with a stick all the time ... he come more across to me like a counsellor than a probation officer, because the probation officers I've heard about in the past do not sound, they've sounded like they're doing a policeman's job and that was, and with that authority sort of thing. So he was alright, he didn't come across – I'm not saying he hasn't got the authority, he didn't come across like that, he didn't portray that.

(CO3)

I think I've been very lucky this time to have a probation officer that does understand, you know, I can say he's very good, you know, he doesn't, he's not pushing or, he's more helpful this time ... He's professional but friendly.

(CO4)

Such accounts suggest that probation officers (at least according to this selective sample of probationers) were skilful at balancing the tough and tender or caring and controlling aspects of their work – a balancing act that has characterised probation work for much of its history.

The development of a personal obligation to their probation officer was referred to by some interviewees. A number of those who had arranged to be interviewed for this research through their probation officer said they chose to take part because their probation officer had asked them to. They saw taking part in the interview as '[wanting] to give him [probation officer] the same respect back, because when I've had something on my mind which I needed help with I've just come into the office' (CO8). In one case, someone planning to move from his area was delaying doing so until the end of his order so that he could continue under the same probation officer with whom he had a good relationship.

They [probation area in which the current order was being carried out] care here. Do you know what I mean? They [probation area in which the interviewee served a previous order]

don't care what I do. And if they don't care then I don't care ... But I would now. But then I didn't. Like if they say, 'I'll send you to jail again', I say, 'Send me to jail'. But that was in the past, now I'd be upset.
(CO13)

I like Anna, she turned out to be a court officer, a probation officer ... and then becoming a friend she realised what interested me, she said, '[What] about this?' You know, rather than we just sat there and her sat there kind of thing. So yeah, it was seeing like people can put the effort in if you put the effort in which is the way it's supposed to be really.
(CO7)

Those who subscribe to the view that probation is a craft or art rather than a mechanical science (Hough, 2007) will not be surprised by the 'human-shaped' accounts given here, emphasising the importance of a good relationship between offender and probation officer.

There were a minority for whom there was a certain cynicism about the role of probation officers, though not because they were considered to be overly controlling figures, but because their relationship with those on orders was fundamentally only a professional obligation:

Interviewer: Is your probation officer easy to talk to?

Yeah, well as much as you could with a probation officer because it's their job. They might act like they care, but they come, do your thing and go, so sometimes if it's a bit harder and want to speak personal to them, of course it's just like fobbing me off sometimes so I just hold back, save that for my partner or whatever.
(CO16)

I think they [probation officers] do what they feel like they have to do, or what they think they can do to help you, as in kind of agencies to get a job. But ... I feel like I go through the motions when [I] come here, say what you've got to say, what's expected of you and sort of leave ... I feel like it's all a bit of a con. Not a con, a charade, so maybe that's just the impression I get. Maybe it's just only me, but you just say what you say to get out.
(SSO14)

Only one person did not value the type of support a probation officer could provide. But this was not due to any problems with the probation officer; it was because he considered moving away from his current area as the only thing that might be helpful:

Initially I suppose you feel like people give a shit but then it wears off ... She [probation officer] is quite nice, helpful, friendly, but I think she can only offer what help is in the surrounding area, which I can't stand it round here, there's not a lot to do round here. There's paths to work [Pathways2Work] and all that but I've lacked motivation since I've lived round here to be honest.
(SSO14)

Compliance

At the time of interview, all respondents were compliant with their order. However, four had at some stage breached the order to which they were originally sentenced – two owing to a conviction for a further offence and two for failing to attend required appointments.

It was clear that all interviewees understood that there were consequences for missing appointments without acceptable reasons. For many the threat of going to prison loomed large in their mind. To be breached but not receive a prison sentence was considered to be fortunate by those on both orders.

It's strict [the order] ain't it? It's strict, I have to see him [probation officer]. And if I break it I know what's going to happen, straight back inside.
(CO15)

My thing is, bottom line, do not get arrested in that two years [while on order] ... [If you get arrested you'll go] to jail, minimum, you know what I mean. It's going to be in front of the [same] judge that said, 'You come in front of me, not anybody else, you come to me.'

(CO3)

The word breach to me means your order's over and the police are likely to come and pick you up to take you to prison. That's what I thought a breach was, do you know what I mean? But I didn't realise that you do get a warning breach sort of thing [a formal warning letter if you miss an appointment] ... you know, even though you call it a breach, it's basically a letter, a formal warning. So obviously that made me feel a bit better [when received a warning letter]. I did panic at first.

(SSO2)

I think you get three breaches, three strikes I say and then you're out. Three strikes and you're in jail.

(SSO1)

No one suggested that they found their order impossible to comply with in terms of what was expected of them. A few respondents (all of whom were subject to DRRs) suggested it had been difficult to comply with the number of appointments they had had – particularly at the start of their orders – with interviewees citing themselves, rather than the order, as the problem:

I suppose in the beginning [of the order], you know, while I was still a bit hectic and doing daft things, you know, it was obvious it's going to be hard to keep your appointments and remember when they are and what have you, but I mean once you've got, I think once you've got those under control you can't really call it hard, you know?

(SSO2)

None of those who missed an appointment said they had done so without being aware that they needed an acceptable explanation for their absence. Some had received a warning letter for non-attendance, some an additional warning in their court review, and two of those interviewed had returned to court for breach due to non-attendance.

Most had experienced problems with attending required appointments at least once during their order. On the whole, respondents' comments suggest that when they had genuine problems affecting their ability to attend appointments, such as health problems or personal circumstances, they had discussed this with their probation officer:

I suppose people [probation staff] try as much as they could to go out of their way to help you [attend appointments], you know. Obviously there's a line isn't there that you can't cross. Yeah, they do their best obviously ... I think a lot of that [reason why he had complied with this order compared to the previous orders he had had] was down to me ... I phoned them [probation officer] up and tried to get contact back with them and that, you know, tried to explain [absences].

(SSO2)

Because I've got a relaxed relationship with my probation officer, the whole probation, the whole team, I just phone up and say what's going on and they make changes around it so that it suits both of us, so it works out. So if I do miss the appointment I know that I could have another appointment in a week or when I see them next time, I always talk to them [beforehand] so that they know why I'm not here.

(CO11)

Probation officers were generally considered to have been supportive in helping offenders to comply with their orders. Some respondents said their probation officers had motivated them and practically enabled them to comply when acceptable circumstances made their required contact difficult, such as carrying out home visits when they had been unable to attend a probation office

for supervision due to health reasons, or, in one case, by signing him off a requirement for a period of time:

I was at the end of my tether with where I lived, the position I was in regarding the people that I was living with, and drug use ... I'd sort of gone to rock bottom ... He [probation officer] took me off it [unpaid work requirement]. He recognised the fact that I was really, you know, I'd lost a lot of weight and I'd got a lot of things on my mind, and I wasn't concentrating, and he just halted it, and that was absolutely the right decision at the time because if not I would have been breached and I would have been sent back to prison maybe, and it just would have been counterproductive for myself. But he did recognise that, and I appreciate that, I really do.
(CO8)

The two interviewees who breached their order due to missed appointments explained their reasons for non-compliance as resulting from competing demands on their time, making attending appointments not the most important thing in their lives.

All those who were prosecuted for breach received either an increase in the length of a requirement, an additional requirement, or a change of requirement.²² Those who had been subject to breach proceedings were relieved not to have gone to prison and considered – sometimes by repeating a sentencer's warning to them – that any future breach risked a custodial sentence. No one described feeling overburdened by the sentence received following breach in terms of the number of appointments they had. However, a couple of respondents indicated fatigue with the length of time they had been subject to supervision, citing the combination of breach, further convictions and the length of community sentences as resulting in three or four years of contact with the Probation Service. They were relieved that the end of their order was in sight:

[Following the second breach of the order] I thought they were going to start the whole thing again and that, you know. Because I've been on probation that long that I've been on holiday three times since I've been on probation. That's how long I've been on probation. A long time, three years straight, done my head in, [I] have to finish it.
(CO16)

In fact, some reflected that their post-breach order was more suitable than their original order, either because they needed the additional help or because a changed requirement meant it would be easier to comply.

Perceptions about change and the impact of orders

The majority of interviewees were reflecting on perceived changes that had occurred over a period of between six months and two years. As has been noted, it was quite evident that most respondents nearing the end of their order felt they had got something out of their experience.

What those on orders hoped to get from their sentence tended to mirror the support they felt had been offered, such as hoping to gain education, employment, or to 'better myself' (SSO1). Those subject to substance-related requirements (DRR, ATR or an accredited substance misuse programme) hoped to stop or reduce their drug use.

Hopefully to get off drugs fully. You know. We'll just have to see if it happens or not.
(CO10)

Hopefully certificates ... I'm going to do another English and maths and a theology.
(CO7)

What do I hope to get out of it? Already what I've got really, just the help and just the initiative to try and do well, just a bit of a push in the right direction. Not such a push but a gentle sort of, you know, in the right direction.
(CO8)

22. Two of those who breached their orders were subject to a SSO and two were subject to a Community Order.

I just hope that, first and foremost, I think getting a job is a big thing, you know, having a bit of money in your pocket, a bit of self-respect back, occupying my time so I'm not looking at four walls. That's basically all I ever wanted out of it really, the only thing I think they can help me with. Like I say, I'm different to a lot of these people, I'm not a repeat offender or whatever, you know.
(SSO14)

Only a handful of respondents (all of whom were subject to substance-related requirements) said that stopping offending was something they hoped to get out of their order, speaking of their desire to end a cycle of being in trouble and to lead a 'normal' (CO11) or 'fulfilling' (SSO9) life.

Those who were towards the end of their order all thought – to some extent – that they were in a better position than when they had started the order. A common change mentioned was of feeling more positive or motivated about life than they had at the start of the order. Some put this down to the order changing how they felt about themselves/their lives, perhaps as a result of a probation officer's encouragement making them feel more confident in themselves. For others, it seemed that at least starting to address their (often described as dire) problems or circumstances, such as drug use, homelessness or depression, had brought some relief and a feeling that their outlook was brighter:

The last two years things have gone from quite like bleak to wake up and see what the next day has for you, which is a lot better for me. Whereas one time it was just basically 24 hours of nowt. I mean it's still 24 hours of nowt but I'm not so bleak, it's not as bleak, you know ... I don't know how to explain it, I'm a lot better now than I was two years ago *within myself, not in my situation just within myself*. I'm still in the same situation, unemployed and that, but like I said it's not as bleak.
(CO3; emphasis added)

I'm not on drugs, I'm not doing that crime. I've got somewhere to live. I'm just thinking more positively, doing things like I wouldn't, well that I never used to do ... Seeing things differently really. Just looking at life in a different way.
(CO11)

[The order] give me a bit more confidence in meself ... cos it's not easy is it?
(CO4)

As long as I'm stable [in drug use] and I've got a – what's the word I'm looking for now? – a different outlook on life, a more positive outlook on life and not just the hope [but] the belief that I can change. Because when I started this course 12 months ago I felt like them guinea pigs on wheels, you know, going round and there was no way off it, and that was going to be me for life, going round and round and round. And now I know I can get off it and there is a way off it.
(SSO9)

The emphasis many placed on their ability to influence their future positively is evident from the above quotes. Instigating individual responsibility for outcomes is a long-established approach to working with probationers and one which has been suggested as an important (though not sufficient) factor in desistance from crime (LeBel et al., 2008).

Those subject to substance-related offending or dependency requirements who had passed the initial period of their order all said they had reduced or, in some cases, stopped using drugs. This group gave the sharpest contrast between their lives at the time of interview compared to their lives just before their order. They described now being less overwhelmed by drug use and emphasised the substantial difference this had made to their lives:

I don't think I'm going to get clean because it's not long enough, but I think I'm going to get stable on the meth [methadone], which is what I want. I'm down to two bags [of heroin a week] which I've never been that. I used to have to have that to get up in a morning so to me that's a massive achievement ... I feel like my life's come on so much. I'm even considering getting my

licence back from DVLA. I've not bothered for years, I've just left it there, because I was always like using [drugs] and the police used to pull me [up] all the time. But I've been thinking I might even get that back. We're going to go on holiday in July, so I've something to look forward to. You know, just stuff like that.

(SSO9)

Whereas back then I felt everything was so very tiresome and I couldn't get to grips with things and it was hard work. I just didn't have the energy really to do much things, and the only bit of energy I had I was running about trying to beg, steal or borrow a few pounds just to get some drugs, you know ... I've prepared a lot of things since I've been drug free. I had this phrase what I call it, I call it the land of the living. Since I've been back in the land of the living I've been able to sort a lot more things out than what I've ever been able to do. I've been able to focus so much, because I don't want to be how I was ... I'm very much looking forward to getting back to that way now I've become so focused and left drugs alone, it's changed my life.

(CO8)

Only one person gave a more equivocal account of his recent reduction in drug use; while his heroin use had reduced, he had developed an addiction to alcohol for which he was receiving treatment.

Although for a minority engagement with support services had not extended beyond discussions with their probation officer about what was available, there were plenty of examples amongst those interviewed where support services had been taken up through a supervision requirement. Respondents typically saw this as an opportunity to improve their circumstances (particularly housing and employment) or address mental health issues:

It's been a good experience has probation, it has opened my eyes to a lot of things and like I found, when I find people on probation that I do know now I tell them they can do more than just probation for you, you know. They can help you out with your housing, you know, they've got job clubs, if you want that.

(CO3)

Those whose accommodation had improved emphasised how dramatic the positive effect of this had been:

This probation order has just opened everything up for me, you know, like [getting a] home. You know, I was street homeless and everything when I drank and it was bad, you know. So yeah, it's really helped me get on the ladder back into normality.

(CO11)

Obviously the fact that I've actually got my own flat at last, that's made a hell of a difference. It's totally changed my way of life, because I can't see all these people [who used drugs with] now, can I?

(SSO2)

Those towards the end of their order often described themselves as working towards employment by accessing training courses, gaining industry-specific requirements or working on their CV through contact with Pathways2Work and their probation officer. Many expressed a strong desire to gain employment, with the hope that by doing so they would achieve a normal, or get back to a previous life:

I'm not working yet but I've got my CSCS card [a health and safety requirement to work on building sites] through probation, did the project that they paid for, it just lightened the load ... He's [probation officer] got me what funding and courses they can get either through the probation or through, they have a job part of here that someone comes in and, you know, for the so-called criminals that's something else to do. They come in and try and get them jobs.

(CO3)

To get back into my old job I need a licence, it's called the CITB to drive heavy mobile plant

machinery ... The government have been kind enough to provide me with this money so I can take my test again. But not without some work involved, the work that I've had to put in has been quite extensive, but it's been over a period of time and it's been productive in itself. I'll just show you the amount of work that I've been doing [interviewee shows interviewer a bulky file containing CV, references, and multiple job applications].
(CO8)

Those who had voluntarily accessed educational opportunities through the Probation Service described these as providing the chance to access further learning they felt they had missed out on:

I've finished school so it's a chance [through the order] I've got [to do] GCSE English now and I'm doing my GCSE in maths at the moment.
(CO11)

I wouldn't have been able to [take education courses]. I would have had to pay for it myself, you know, because I'm disabled and unemployed so, you know, so I've always got to find funding. Probation is a way of funding, as long I'm furthering my education they're quite willing to help me out.
(CO7)

Explicitly asking those on orders what impact they thought the order had had on their offending and the likelihood of their offending in the future was an uncomfortable point during interviews. This was particularly the case for those discussing domestic violence, where there was a tendency for interviewees to elaborate little in their responses and not to acknowledge any possibility of such an incident happening again.

A few respondents rejected the premise of this question, stating that the offence they were sentenced for was a one off; they were not likely to offend again and so to suggest that a Community Order or SSO would make a difference to their likelihood of offending was farcical.

Some explicitly said they had not committed a further offence or had not been arrested since they were sentenced to their order – implying this was not usual for them. Most expressed a desire not to commit crime in the future, though it was pointed out that whether this did occur would depend on the situations they found themselves in, as 'things can happen that you do not plan to do' (CO3).

Respondents were split in their views about whether the order had affected their offending. Half said it had, all bar one of whom were subject to substance-related offending or treatment requirements. They thought their reduction in drug use had directly reduced their offending and the likelihood of future offending. In some cases, additional factors such as fear of prison or broader changes in their circumstances were mentioned. No one spoke of a similar fear of receiving a community sentence acting as a deterrent to offending.

I've done what I wanted really because I've not got a habit, and that means I'm not addicted to heroin any more. Like even though I'm on methadone but I don't have to get up every morning ill, cracking, going out, robbing. I mean you have to do it every day and it does take its toll, I mean it really, really does ... I'm not smoking [heroin] and I'm not committing crimes, you know what I mean. So basically I think I've done well, you know.
(CO12)

I don't want to use any more. And I only commit crime because I'm using.
(CO13)

I don't want to go to jail. That's the biggest reason and, well, I'm not doing the same things obviously that got me into trouble in the first place. I've turned my back on all that.
(SSO1)

Those subject to non-substance-related requirements tended to be less clear about the impact of their order on their offending. Being able to control aggression, being less stressed, changes in living conditions and in friends were all mentioned as helpful in stopping offending. However, these were not seen as having much to do with a Community Order or SSO; rather, they were related to wanting to get one's life back or simply being older and wiser. Personal motivation was the key as far as these respondents were concerned – although how far such motivation was a result of the work of probation officers is a separate issue:

Yeah, but [stopping offending] it's individual. I've chosen not to commit crime, and I've chosen to. I went as a young offender when I was a kid, I'm 28 now, I'm not going back [to prison]. So yeah, individually I've changed because I wanted to, not because someone told me to. So whether probation would change someone is totally unknown to me. It's changed me because I wanted to change. It's like sending a drug addict to Addaction. They're only going to stop if they want to. They're not going to stop because you say 'you'd better go there with your urine sample', they're still going to take drugs. And I'm different because I want to be.

(CO16)

Paula [probation officer] said this last week, 'Right, you're 37 now, if we'd have given you this order when you was 27 would it have worked?' And I've had a week to think about it, and the answer to it would be no, it wouldn't because I wasn't ready.

(SSO9)

Because it [DRR] does work, but they [people subject to DRRs] need to want to stop.

(CO13)

Back then [referring to previous community sentences received] I didn't really care about much, but now I'm older and I'm more wiser so therefore it's made me think more positive about the order, whereas before I just used to go and report [to a probation office] and think right, here we go again, and then just come out of it.

(CO10)

For the most part, respondents were clear that they were in some way better off towards the end of their order than they had been at the start. How long any improvements might continue is, of course, unknown, as is just how far their orders impacted upon their situation. But it is important to acknowledge the cautious optimism that many had about their future:

Hopefully it [the future] will be good. I've just got to keep going, you know, and obviously I ain't going to have the support from here no more so I've just got [to] get on with it myself now, you know what I mean, and hopefully it will be alright. I just want to get an apprenticeship or something and then like be a plasterer or something like that, and just get my head down and start working. You know?

(CO12)

Conclusions

In this report we have examined trends in the use of the Community Order and the SSO, and discussed the views of probation officers about the orders and the views and experiences of those sentenced to the orders. We should emphasise again that our samples of offenders and probation staff are small and cannot be taken as representative. But the probation staff interviews build upon the focus groups that were carried out with probation officers in our first report (Mair, Cross and Taylor, 2007) and provide important indications of what those who deliver the orders think about them. The offender interviews offer the first consideration of how those who receive the new orders feel about them and – despite the skewed nature of the sample – should not be ignored. The main findings of the study are set out below.

Trends in the use of orders

- Use of the SSO in particular has grown dramatically since its introduction.
- Half of the Community Orders and SSOs made in the magistrates' courts are for summary offences.
- While the average number of requirements for each order has remained stable since 2005, there seems to be a slight growth in the number of single-requirement orders.
- The use of requirements continues to evolve: while unpaid work has increased, supervision has decreased (slightly more so for the SSO than the Community Order); the use of accredited programmes has dropped steadily since 2005.
- Half of the requirements that are (theoretically) available are rarely used.
- The Community Order continues to resemble the community sentences that preceded it.
- While the proportion of orders breached has recently decreased, the breach rate for both orders remains higher (at around 40 per cent) than that for CROs and CPOs in 2004.
- There is little evidence to suggest that either order is acting as an alternative to custodial sentences of 12 months or less.

The views of probation officers

- There was reasonable satisfaction with the Community Order, although a feeling that the SSO was still overused by the courts (especially the magistrates' courts).
- Although there were some claims that the use of requirements was becoming more creative, there was an acknowledgement that both orders continued to rely upon only a handful of requirements.
- There were still problems with the availability of requirements – especially alcohol and mental health treatment.
- There were issues related to the monitoring of prohibited activity and exclusion requirements.
- The response to breach proceedings in the courts for SSOs was leading to problems with the credibility of the order and the credibility of probation officers.
- The SSO was more likely to be perceived as an alternative to custody than the Community Order.
- The use of certain requirements could mean little contact between probation officer and offender, and the implications of this could be serious for both parties.

- There was a general feeling that the new orders had made probation work more complicated, especially as a result of the growth of partnership work which was – on the whole – welcomed.
- Some probation officers felt that some offenders were confused by the new orders with their various requirements.
- A desire for stability in the criminal justice system and weariness of legislative change was evident.

The views of offenders

- Overall, orders were viewed in a fairly positive light, with most considering that they had been helped as a result of their sentence.
- Supervision was typically seen as offering someone to talk to and someone who could help to access services.
- Those on drug rehabilitation requirements were hopeful about reducing or stopping using drugs on the order. However, there were inconsistencies in views about the purpose and consequences of drug testing and mixed opinions as to the usefulness of court reviews.
- Unpaid work was perceived as punishment, but accepted as a legitimate objective of a sentence.
- The primary importance of the relationship between offender and probation officer was reiterated repeatedly.
- Offenders were fully aware of the consequences of breach, including the possibility of a prison sentence.
- Those towards the end of their order cited various improvements to their immediate circumstances prior to sentence, such as finding accommodation, reducing drug use, or being in contact with support services.
- Personal motivation was regarded as the key to not offending in the future (except where substance abuse was being addressed), although how far this might be influenced by a probation officer was not articulated directly.

The popularity of the SSO in itself may not be a problem. However, considering its level of use in the magistrates' courts for summary offences and the fact that there is limited evidence to suggest that it is diverting offenders from short-term custody, the evidence would point to the SSO exacerbating up-tariffing and failing to get to grips with the numbers of offenders being sentenced to custody. While, as sentencers noted in our previous report (Mair, Cross and Taylor, 2008), there would undoubtedly be problems if the SSO were to be restricted to indictable offences (as proposed in the Criminal Justice and Immigration Bill, 2007), there are strong arguments that something needs to be done about the way the SSO is used – at least in the form of firm guidelines to magistrates.

It does seem to be clear that probation officers are not unhappy with the new orders, but their comments about the lack of availability of requirements need to be addressed. Probation officers, by virtue of their position in the criminal justice process, are sensitive to the needs of offenders and the wishes of sentencers. Hence, their particular concern about the limited availability of alcohol and mental health treatment requirements is based upon their knowledge of offenders' needs. They will be aware, too, of sentencers' interest in negative requirements such as prohibited activity and exclusion, but if these cannot be monitored effectively they cannot be used in any meaningful way.

There is an obvious tension between the realisation that all orders do not need to have a supervision requirement and the fact that without this there can be a dangerous loss of contact between the offender manager and the offender. Given the importance of the relationship between the two that we have noted (also see Farrall, 2002), any attenuation of a good relationship is likely to have negative consequences. Thus, whether or not some form of supervision should constitute part of all Community Orders or SSOs is a key question. The increasing penetration of partnership agencies into probation work may also have consequences for the relationship between offender and probation officer.

Slightly surprisingly, probation officers recognise that a firm approach to breach is needed on the part of the courts with regard to the SSO. The popular understanding would be that probation officers do all they can to avoid breach and – if the case goes to court – to avoid termination of the order and possible imprisonment. But it would appear that while probation staff try to treat the SSO as a high-tariff sentence that can act as an alternative to custody, it is all too easy to see how their credibility as knowledgeable interpreters of criminal justice might be undermined if breach of a SSO were not to result in custody. And, of course, the implications of imprisonment following SSO breach become even more problematic where the SSO is not used as an alternative to custody.

Those on orders were effusive in their comments about the helpfulness of their probation officers, although such views may in part reflect the selective sample interviewed. They were fully aware that the probation officer was there to control as well as to care, but they saw no contradiction between the two – indeed, they were seen to complement each other. Whatever changes may have taken place in probation during the last 14 years, it would appear that the views of offenders about their probation officers have not changed: Mair and May (1997) in their survey of offenders on probation show very similar views to those expressed by our small sample. Indeed, their responses about the kind of help provided by a probation order (access to services, someone to talk to) mirror our findings, as does the failure to see how such work might act – albeit indirectly – to reduce the likelihood of offending. The importance of personal motivation in reducing or stopping offending would be difficult to minimise, but perhaps it is worth reflecting just how far probation work is involved in helping to develop such motivation and how far offenders are aware of the input of their probation officers in this regard.

Summing up the project

The Community Sentences project has been fortunate in being able to examine the use of the Community Order and the SSO over a period of more than three years. We have discussed with the key stakeholders – probation staff, sentencers and offenders – how they feel about the orders. The scope of the project has been wide and we have been able to track developments in use since the orders were introduced in April 2005. In this final part of the report we attempt to sum up what we consider to be the key findings from our work.

- Both orders have been implemented relatively smoothly and are widely used by courts. There is no doubt that both orders are considered an improvement on what was previously available for sentencers and probation officers; their versatility and flexibility are particularly appreciated.
- Reservations have been expressed regarding the SSO, which is considered to be used too often and inappropriately (particularly in the magistrates' courts).
- Despite early anxieties about the overloading of orders with requirements, thereby leading offenders to fail and end up in custody, there is no evidence that any such overloading has occurred.
- There is a persistent problem with the availability of requirements and, associated with this, a surprising lack of knowledge about whether requirements are locally available or not.
- Both orders are made up of a small number of requirements, so that the Community Order resembles its predecessors. There is little evidence to suggest innovation in the application of the new arrangements, including for women or young adults. It would appear, therefore, that there is considerable scope for more creative use of requirements (which need not mean overloading).
- Breach – particularly of the SSO – needs to be carefully monitored. The credibility of the sentence is at stake, as even probation officers acknowledge. It is also vital to know more about how often breach of the SSO does lead to custody – especially when the SSO is so often used for summary offences.
- Although both orders – and particularly the SSO – are perceived to be alternatives to short terms of imprisonment, there is no evidence to suggest that their introduction has had any impact in terms of lessening the use of custody.
- The primacy of the probation officer/offender relationship remains the key issue for offenders. Care will be needed to ensure that orders do not become fragmented leading

to offenders losing the opportunity to develop a good relationship with their offender managers.

On the whole, then, we would judge the orders to be a qualified success. On the one hand, they have been introduced without any major difficulties and the problems we have noted are certainly no more than have occurred when new sentences have been introduced previously. Furthermore, many of these problems are capable of resolution given resources and political will. However, the orders' failure to have a significant impact on reducing short-term custody and in tackling up-tariffing is a major disappointment – although it is fair to add that previous sentences that were aimed at diversion from custody, such as the Community Service Order and the Combination Order, also had no discernible impact upon short-term custodial sentences. The limited use of so many requirements is also frustrating, especially when sentencers and probation staff are keen to praise the versatility and flexibility offered by the requirements.

The Probation Service – yet again – seems to have managed the introduction of the new orders smoothly. While probation officers have their complaints (not perhaps surprising), they appreciate what partnership work can bring to the table, and are even prepared to discuss contestability relatively dispassionately. But despite their almost seamless assimilation of the new orders, in concluding this report, we wish to point to various warning signs that probation might do well to heed.

First, there is some evidence that the use of supervision and accredited programmes may be decreasing, and these are bedrock probation tasks. If they were to fall away significantly then the capability of the Probation Service would be seriously weakened. Second, and related to the first point, partnership work is leading to less offender contact with probation officers and this could have serious consequences for both parties. Third, the introduction of the SSO means that a significant minority of probation work (perhaps around 20 per cent) is spent working with offenders who have been sentenced to a custodial sentence – and this is ignoring their work with released prisoners. The blurring of the boundaries between custody and community continues, and this may have significant consequences for the Probation Service. Fourth, sentencers (who might be expected to know) see probation as under considerable strain, perhaps stretched to near breaking point (see Mair, Cross and Taylor, 2008); this perception is in keeping with figures showing the average number of offenders per qualified probation officer increasing by 28 per cent between 2002 and 2006 (Oldfield and Grimshaw, 2008: 19). And finally, current Ministry of Justice spending plans for the coming few years involve no increased resources and indeed 'a reduction over the three year period [2008-2009 to 2011-2012] of 25% for most Services' (NAPO News, 2009: 1). Whatever success the Community Order and the SSO can be said to have had is very much down to the efforts of the Probation Service. A significantly reduced service would surely threaten any such achievements.

Appendix 1: Interview schedules

Probation officers

1. How would you say the Community Order is working now?
Are all the requirements available (cf early days)?
Which requirements are used most often (cf early days)? Why?
Are there any requirements that you think are superfluous/irrelevant/unhelpful? Why?
Is it being used as an alternative to custody (cf early days)?
Could they be improved in any way?
2. And what about the SSO? How is it working now?
Which requirements are used most often (cf early days)? Why?
Are there any requirements that you think are superfluous/irrelevant/unhelpful? Why?
Is it being used as an alternative to custody (cf early days)?
Could they be improved in any way?
3. How would you compare/contrast the Community Order and the SSO?
Do they entail different approaches from probation?
What about the kind of requirements used for each?
How do they compare as alternatives to custody?
4. Would you say there were any problems with the Community Order (that we haven't covered)?
What about the breach/enforcement process?
5. What about problems with the SSO (that haven't been mentioned)?
Breach/enforcement?
6. Are there any issues arising from the way in which sentencers use the orders? (Differentiate if necessary between the Community Order and the SSO; and ensure we know what level of sentencer is discussed)
Comparing those who get CO and those with SSO?
Comparing CO and SSO with previous community penalties?
7. Do you think the new orders have led to any significant changes in the way probation officers work? (Possible probes: relationship with offenders; with sentencers; with other organisations)
What about contestability – would the new orders have any effect upon this?
8. Are there any issues that you think offenders have with either of the orders? The CO? What about the SSO?
Any problems with completion? (Differentiate between CO and SSO)
9. How would you say your colleagues feel about the orders? (Differentiate)
10. How do you see the future? What about the scope for using more/different combinations of requirements?
And what are your views about the pilots for intensive alternative to custody projects that have begun?
Anything else you want to add about the CO or SSO?

Those on orders

1. Can I just confirm that you have a CO/SSO with [name the requirements]?
2. How long have you been on the order?
3. How long have you got to go?

4. Why do you think you got [the order]?
5. For each requirement:
What is it you do on the requirement?
How often do you attend?
What do you think about the people who run it?
Is it helping?
What is good about it?
Any bad points?
6. Thinking about the order as a whole, what do you hope to get out of it?
7. Is there anything you've found difficult about the order? Did you talk to anyone about this?
What happened?
8. Have you missed any sessions? Why? What happened? If no what do you think would have happened if you had missed some sessions?
9. So you have/haven't been taken back to court for breach? If breached, why? What happened?
10. Apart from [the requirements] has your offender manager/probation officer suggested any other organisations/agencies/groups/ you might contact? What happened?
11. How often do you see your offender manager? (Need to try to ensure that it is the OM he/she is talking about)
12. What do you discuss with him/her?
13. Is he/she easy to talk to? How would you describe him/her? (Possible probes: like a counsellor/ friend/police officer/teacher/etc.)
14. Would you say the order's changed anything for you?
15. Do you think it's made any difference to the likelihood of you offending in the future? Why/ Why not?
16. Is it helpful in any other way?
17. What would help you to stop offending?
18. Have you had a probation/community service/combination order in the past? If yes, how does that compare with this? If no, has this sentence been what you expected?
19. How do you see the future?
20. Anything else you would like to say about the order?

Appendix 2: Profile of interviewees' orders at the time of interview

Requirements interviewee subject to	Number of interviewees
Supervision and DRR	6
Supervision	3
Supervision and unpaid work	1
Supervision and accredited programme	1
Supervision, accredited programme, and unpaid work	1
Supervision and curfew	1
Supervision and alcohol treatment requirement	1
Supervision and specified activity	1
DRR, accredited programme and unpaid work	1
Total	16

Length of order originally sentenced to (in months)	Number of interviewees
12	5
15	1
18	4
24	6
Total	16

How far into order	Number of interviewees
Recently completed	2
Within 3 months of completion	7
Over halfway through order	2
Between 3 months and halfway through order	2
Initial period (within 3 months of received sentence)	3
Total	16

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This report independently assesses the impact of the Community Order and Suspended Sentence Order three years on from their implementation. Its findings are based on analysis of government data on the use of the two orders and interviews with probation staff and those subject to the orders.

The report explores:

- Trends in use of the orders and their requirements to date.
- Probation officers' views and experience about how the orders are working, including issues such as enforcement practice and breach, and the impact of recent changes on the management of community-based orders.
- What those on orders think of the order they are subject to, including whether and how it has made a difference for them.

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