

Community Service Orders in Ireland: Implementation, Impact and Judicial Perspectives

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Summary: Community Service Orders (CSOs) have existed in Ireland since 1983 as an alternative to short-term imprisonment. Despite legislative efforts, most notably the Criminal Justice (Community Service) Amendment Act, 2011, to encourage their wider use, CSOs remain underutilised. This article reports on a study commissioned by the Department of Justice to evaluate the impact of the 2011 Act. Drawing on a systematic literature review and semi-structured interviews with District Court judges, the research explores structural and attitudinal factors influencing sentencing decisions. While judges recognise the rehabilitative potential of CSOs, barriers such as delays in probation assessments, absence of probation staff in court, and restrictive suitability criteria often impede their use. Judges frequently consider individuals with substance misuse, mental health issues, or repeated offending as unsuitable for CSOs, narrowing their practical reach. These limitations have hindered the CSO's effectiveness as a meaningful alternative to custody. The findings underscore the need for reforms. Greater clarity around the function of CSOs, improved access to timely probation assessments, and more flexible models are necessary. The article concludes by situating these findings within Ireland's broader penal landscape, highlighting the potential of CSOs to reduce reoffending and prison overcrowding if supported by policy and practice frameworks grounded in desistance, restorative justice and social justice principles.

Keywords: Community Service Orders, short-term prison sentences, sentencing, judicial perspectives.

Introduction

Community Service Orders (CSOs) have formed part of Ireland's penal landscape for over four decades. Introduced under the Criminal Justice (Community Service) Act, 1983, CSOs emerged against a backdrop of rising

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prison numbers and a growing recognition of the need for viable alternatives to custodial sanctions. The scheme was introduced as a mechanism that could serve the twin purposes of punishment and rehabilitation, while also benefitting the community. Underpinning this legislation was a desire to provide the courts with a practical and constructive sentencing alternative, one that maintained a degree of penal weight without resorting to the damaging consequences of short-term imprisonment.

However, from the outset, the transposition of CSOs from neighbouring jurisdictions elicited criticism from some Irish legislators, who questioned the originality and appropriateness of importing penal measures wholesale from another jurisdiction. These critiques reflected broader concerns, not just about policy mimicry, but also about whether such measures were adequately tailored to the Irish context, including the structure of the criminal justice system and the social and economic realities of those who appear before the courts. In conceptual terms, the CSO has long been associated with a range of penal purposes. Commentators have observed that the sanction straddles multiple penal rationales, from deterrence and rehabilitation to reparation and reintegration. This multiplicity of aims, described as a 'smorgasbord of penal purposes', has created ambiguity regarding the CSO's primary objective, which may have contributed to inconsistent uptake and application. Nonetheless, the flexibility of CSOs is also seen as a potential strength, allowing for responses that can be tailored to both the offence and the person.

Empirical research conducted since the introduction of CSOs in Ireland has pointed to numerous factors that shape their use (Walsh and Sexton, 1999; O'Hara and Rogan, 2015; Guilfoyle, 2018). Early studies documented variability in how and when CSOs were imposed, as well as concerns about their displacement effect, where CSOs were imposed in cases that may not otherwise have warranted a custodial sentence, thus potentially widening the net of penal control. More recent studies, including those commissioned by the Probation Service, highlight operational issues, such as delays in placing individuals in suitable community projects, and limitations imposed by suitability criteria. These issues may restrict the number of people for whom CSOs are considered appropriate and, in some cases, may reinforce the use of short-term prison sentences.

Judicial perspectives have also played a central role in shaping the use of CSOs. Judges' assessments of suitability, often influenced by factors such as addiction, mental health and previous offending history, significantly affect sentencing decisions. Furthermore, systemic and practical concerns, such as

the availability of Probation Service staff in court and the perceived effectiveness of CSOs, have an impact on whether they are seen as a credible alternative to imprisonment.

This article reports on findings from a study that examines the implementation and impact of the Criminal Justice (Community Service) Amendment Act, 2011, which was intended to increase the use of CSOs in Ireland. Through a systematic literature review and interviews with District Court judges, the research explores both structural and attitudinal barriers to the imposition of CSOs. The article draws out key findings of relevance for probation practice.

Background

Community Service Orders (CSOs), were first introduced in Ireland under the Criminal Justice (Community Service) Act, 1983. This followed their earlier introduction in England and Wales in 1972 and their subsequent introduction in Northern Ireland and in Scotland (in 1976 and 1978 respectively). The impetus for this new criminal justice sanction, which was in part motivated by a desire to alleviate rising prison numbers, was outlined by Michael Noonan, the Minister for Justice who sponsored the legislation:

The purpose of the Bill is to provide the criminal courts with a further sanction which they may apply in appropriate cases. Stated very briefly, the Bill provides that when a person is convicted of an offence for which the court considers that in the ordinary way the appropriate sentence would be one of imprisonment, the court may, with the offender's consent, instead order him to perform a specified number of hours of unpaid work. The work contemplated is work of a kind that will benefit the community but that people cannot readily be got to do in the ordinary way for pay.

(Noonan, M., *Dáil Debates*, vol. 341, no. 7, 20.04.83)

In *Dáil* debates on the proposed legislation, John Kelly, a Fine Gael TD, and incidentally a member of the same party as the proposing Justice Minister, was critical of the transposition of a penal measure that had been devised in England and Wales into Irish legislation:

Now we have our own little Bill, the Criminal Justice (Community Service) Bill, 1983, the guts of which have been lifted straight out of the British

Act. I cannot count the number of times I have complained about that in this House, nor can I count the number of occasions on which I had to criticise patterns of Government and administration here, not necessarily all statutory, in which we seem to have no ideas of our own and wait until the British have taken any kind of step before we take one for ourselves.

Kelly, J., *Dáil Debates*, vol. 342, no.1, 03.05.83

He went on to elaborate:

...this is simply one more example in the ignominious parade of legislation masquerading under an Irish title 'An Bille um Cheartas Coiriúil (Seirbhís Pobail), 1983' which is a British legislative idea taken over here and given a green outfit with silver buttons to make it look native. I protest against that.

Kelly, J., *Dáil Debates*, vol. 342, no.1, 03.05.83

While Kelly's chief complaint pertained to the lack of originality on the part of Irish policymakers, the *Dáil* debates at this time also point to some more fundamental concerns regarding the purpose of this sanction. Indeed, the question of the precise penal purpose of CSOs (now badged as an 'unpaid work' condition of a community sanction in England and Wales and as a condition of a 'Community Payback Order' in Scotland) has long been the subject of debate (Carr and Neimantas, 2023; McCarthy, 2014). One of the earlier commentaries on Community Service Orders described them as serving a 'smorgasbord of penal purposes' (Pease, cited in Carr and Neimantas, 2023). These multiple purposes speak to a lack of clarity regarding their purpose, while at the same time the potential of CSOs to achieve diverse aims. This could be considered both their potential strength and weakness.

Previous Irish research

The first systematic study of CSOs in Ireland was published by Walsh and Sexton in 1999. Based on an analysis of a cohort of cases, the study found that there had been variable uptake of CSOs since the introduction of this sentence. Those most likely to receive a CSO were single, white, unemployed males. Over half the sample had criminal records, although a proportion of these were relatively minor. This study found that there was variability across urban and rural areas in relation to the number of CSO hours imposed for

equivalent offences, and that in some cases CSOs were imposed where the custodial threshold had not been reached. In other words, there was some evidence that CSOs were not displacing the use of custody but had a net-widening effect.

Maguire (2008) asked judges in the District Court to pass sentence in hypothetical vignettes on theft, burglary, assault and road traffic cases. She found that the most frequently cited reason for why people were deemed unsuitable for a CSO was their drug and/or alcohol addiction. Most judges expressed the view that persons with drug and alcohol addictions were not suitable for Community Service Orders because they posed additional health and safety risks (over those without active addictions) and they lacked reliability. Some expressed the view that if addressing their addiction were made a condition of the CSO, then it might be suitable, but only if the person was already positively motivated to address their addiction. Circuit Court judges, on the other hand, generally felt that while CSOs were a good alternative for less serious offences heard in the District Court, CSOs were not punitive enough for the types of case typically dealt with in the Circuit Court.

Research by Riordan (2009) examined the use of CSOs and suspended sentences from a judicial perspective. He found that CSOs were underutilised by judges, in part because they did not consider them an equivalent penalty to custody and therefore were reluctant to impose a CSO in lieu of a prison sentence. On the other hand, suspended sentences, which can also be imposed as an alternative to custody (both partially and fully suspended), were used more liberally by judges. Riordan (2009) suggests that this is because judges considered suspended sentences to achieve more of a deterrent effect, explaining their relative popularity.

Analysis of the case characteristics of the population sentenced to short-term prison sentences (of less than twelve months) compared to CSOs in 2011–12 found that there were not marked differences between the population who received either sanction (O'Hara, 2016). However, this research reported considerable variation in the use of CSOs and short-term prison sentences across court type and jurisdiction (O'Hara and Rogan, 2015). Subsequent research by Guilfoyle (2018) explored the background to the introduction of CSOs in Ireland, as well as the implementation and operationalisation of the legislation. He notes the high threshold for the imposition of a CSO in the originating Act (in lieu of a sentence of imprisonment), as well as the fact that no guidance is provided to judges on how community service should be compared with a prison sentence. Specifically, how many hours of community

service equate to how many days of imprisonment? This lack of clarity may hinder their use. Guilfoyle (2018) further identifies that, in practice, the guidance on considerations for suitability for CSOs, which are informed by Probation Service assessments, may further limit the uptake of CSOs, particularly given that some people, such as those with ongoing drug and alcohol misuse difficulties, may be automatically rendered unsuitable. He notes:

From the outset, therefore, this essentially placed a boundary around the CSO and severely limited the number of offenders whom CSOs would likely be imposed upon.

(Guilfoyle, 2018, p. 69)

More recently, the Probation Service has commissioned studies to explore the operation of the CSO scheme, including an 'Operational review of community service' (Crowe, 2023) and *An Evidence Review of Community Service Policy, Practice and Structure* (Kennefick and Guilfoyle, 2022). The operational review analysed existing data on community service and carried out a consultation with a range of stakeholders. It found that the Community Service Scheme run by the Probation Service is broadly operating as intended, but that there were a number of 'significant issues in how the Scheme is organised' (Crowe, 2023, p. 1). Some of the issues identified included sometimes significant delays in the time between a person being sentenced to a Community Service Order and being placed on a community service site.

Following a recommendation of the Penal Policy Review Group (2014), the Probation Service commenced an Integrated Community Service (ICS) pilot. This provided for community service to be imposed with additional conditions, such as treatment for drug addiction or restriction of movement orders. The ICS provides for some flexibility in the operation of a CSO. A Probation Officer can grant permission for a person to spend up to one-third of their CSO hours in education, training or a treatment programme (for men, and up to half of their CSO for women). The operational review outlines that in the period 2017–19, the top three offences resulting in a referral for a Community Service Order from the courts are theft, drug offences and assault.

Since 2020, drug offences have accounted for the most referrals (19–23 per cent), while in 2021, road traffic offences were the most common offence for which people received a CSO. Based on an analysis of crime data published by the Central Statistics Office, the operational review notes that

there may be scope for the Probation Service to adopt some offence-specific interventions. Analysis of demographic data provided in the review points to some gender differentials regarding referrals for CSOs, particularly for people receiving sentences for non-payment of court-ordered fines. Women feature more prominently in this category than in general figures on offending, and they also typically receive shorter prison sentences (of less than one year). Data on reoffending rates included in the operational review show that there are much lower one-year reoffending rates across all offence types for people sentenced to community sanctions when compared to imprisonment. The operational review makes a number of recommendations to promote awareness of CSOs amongst the general public and key stakeholders, including the judiciary and the Garda Síochána. Further recommendations include the development of partnerships between local and national organisations in order to expand the network of community service placement opportunities, and a more systematic examination of information on compliance with orders, to explore factors promoting compliance and whether these vary across placements.

In their evidence review of community service, Kennefick and Guilfoyle (2022) note that the CSO lacks a coherent penal purpose. It is positioned as an alternative to custody, but it does not incapacitate a person in the same way as imprisonment. Its retributive capacities, i.e. depriving a person of their time in recognition of the harm caused by offending, are somewhat limited. A CSO may serve a rehabilitative purpose, but this may not be foregrounded in its execution. It can involve an element of reparation, i.e. 'paying back' to the community through undertaking unpaid work. Drawing on wider research literature and examples from other jurisdictions, Kennefick and Guilfoyle (2022) have proposed the development of a tripartite strategy for CSOs based on principles of *desistance*, *restorative justice* and *social justice*. This, they argue, would make the functions of CSOs more discernible to a broad range of stakeholders, including people subject to such orders, sentencers and the wider community.

Taken together, existing research points to a number of problematic issues with the use of CSOs in Ireland. These include concerns regarding regional variation and differences in the weight of penalties imposed, with no consistent metric regarding the relative equivalence between community service hours and length of imprisonment; questions regarding eligibility for particular cohorts of people appearing before the courts; and concerns voiced by sentencers regarding the positioning of CSOs on the penal continuum.

Current context

As noted, the foundational legislation, the Community Service Act (1983), positioned this sanction as a direct alternative to prison, meaning that a CSO (ranging from 40 to 240 hours) could be imposed only if the judge was already considering a prison sentence. The candidate must be considered suitable to perform community service (this is determined through assessment by the Probation Service); appropriate work must be available; and the person must consent to the order.¹ Since the introduction of the CSO, uptake has been variable. At the same time, the use of short-term prison sentences (sentences of twelve months or less) has risen, despite their well-recognised damaging effects (O'Donnell, 2020).

Subsequent amending legislation has sought to promote greater use of CSOs and to reduce the use of short-term prison sentences. The Criminal Justice (Community Service) (Amendment) Act, 2011 introduced a new duty on judges to consider the imposition of a CSO as an alternative to a prison sentence of twelve months or less. However, critics noted that this legislation underscored already existing requirements to obtain assessment reports from the Probation Service where a CSO was being considered, and it merely required judges to consider a CSO as a sentencing option rather than to mandate its use (Maguire, 2014, 2016; Guilfoyle, 2017). Further legislation (Fines (Payment and Recovery) Act, 2014), introduced to curb the use of prison sentences for fine defaulters, allowed courts to implement a CSO for non-payment of fines.

Despite an expressed policy intention to reduce the use of short-term prison sentences and to promote the use of CSOs, the prison population in Ireland continues to rise (Penal Policy Review Group, 2014; Department of Justice, 2022). Daily average custody numbers have risen year on year, and the Irish Prison Service now faces an overcrowding crisis. Available data provide an insight into the contributory factors for this growth. The remand population has expanded, as have the numbers of people serving longer prison sentences. A further key factor is the continued use of short-term prison sentences, despite an avowed policy commitment that prison should be used sparingly (Department of Justice, 2022). At the same time, the uptake of community sanctions, including CSOs, remains highly variable. Data published by the Probation Service show that the rate of usage of community

¹ These specifications are contained in s. 4 of the 1983 Act (later substituted by section 4 (a) of the 2011 Act).

sentences ranges, for instance, from 60–80 CSOs per 100,000 of the population in Cork to just 1–20 per 100,000 in the neighbouring county of Kerry (Probation Service, 2024a).

Advocates of community sentences draw on a number of arguments to support their greater use and to reduce over-reliance on imprisonment. Irish data show that community sentences have a lower recidivism rate than prison sentences (O'Hara, 2016). Twenty-seven per cent of people sentenced to a community sentence in 2020 had recidivated within one year, compared to 41 per cent of people released from custody (Central Statistics Office, 2023, 2024). Reoffending rates over three years following sentencing reveal similar patterns. The economic cost differentials between community sentences and imprisonment are also substantial. Data provided by the Department of Justice show that prison is fourteen times more expensive than a community order (Department of Justice, 2022).²

Moreover, the arguments against the use of short-term prison sentences are compelling. Beyond short-term incapacitation, this sentence offers very limited opportunity for engagement with services within prison (which is even further compromised in the context of overcrowding) (O'Hara and Rogan, 2015; O'Donnell, 2020). People sentenced to short-term prison sentences may lose existing resources, such as housing or employment, that could support future desistance from offending (Killias *et al.*, 2010; Klement, 2015). Families are financially affected (Kirk and Wakefield, 2018), particularly where the person imprisoned is a primary caregiver.

About the research

This research was commissioned by the Department of Justice and sought to examine the impact of the Criminal Justice (Community Service) Amendment Act, 2011, which, as noted, was intended to encourage greater use of CSOs. The research comprised two main elements: a systematic literature review exploring the relative impacts of CSOs and short-term prison sentences on recidivism, as well as any potential insights from other jurisdictions on the use of CSOs. This included a consideration of legal frameworks, including the prerequisites for imposing such sanctions and any disqualifying criteria. The second element of the research involved research interviews with District Court judges. This court level was specified because of the volume of cases

² This report records that the average annual cost of a prison place in 2020 was €80,445, compared to an annual cost of €5,712 for probation supervision.

dealt with in District Courts and the fact that most sentences of short-term prison sentences or CSOs originate from these courts. All elements of the empirical research project were subject to a full and independent ethical review by the South East Technological University Ethics Committee.

Interviews with District Court judges were carried out using a semi-structured interview schedule and sentencing vignettes. In-depth semi-structured interviews were designed to elicit judicial perspectives on the main research questions relevant to understanding judicial views on the use of short prison sentences and Community Service Orders in the sentencing of minor criminal matters in the District Court. The interviews were designed to last no longer than one hour and were supplemented by the use of three short sentencing vignettes. Sentencing vignettes are short case summaries that provide situated contexts in which to explore judicial approaches to sentencing. In this study, we used them as an additional aid for understanding the types of scenario in which judges might impose CSOs in lieu of short prison sentences. The vignettes were completely fictitious and not based on real cases observed or related in any way to the interviewee.

To achieve the research sample, we extended invitations to participate in the research to all District Court judges in office.³ Through this approach, thirteen judges participated in the research. The research sample comprises judges with a wide range of experience and who have sat/are sitting in both metropolitan and provincial districts. The sample also includes moveable judges. Interviews, which were held in person or online and lasted one hour on average, took place between April and September 2023. Once transcribed, the interviews were coded and analysed thematically using NVivo and guided by Braun and Clarke's (2006) approach to thematic analysis. The following sections report on four key themes arising from this analysis of judicial interviews.⁴ Unique codes are used for participants to safeguard anonymity.

Deciding to impose a short-term prison sentence or a Community Service Order

The sentencing practices and rationales of judges in determining when to impose a short-term prison sentence or a Community Service Order were a key focus of this research. In interviews, we explored the circumstances in which respondents considered a short-term prison sentence would be

3 At the time of the research, there were 63 District Court judges in office. The research sample constitutes approximately one-fifth of the judicial population serving in the District Court.

4 See Maguire and Carr (2024).

appropriate, based both on the offence type and the individual characteristics of the defendant. Judges adopted different approaches based on their views of the potential for particular sentences to achieve specific sentencing aims. Deterrence and rehabilitation were the most commonly cited aims, with short-term prison sentences associated with the former and Community Service Orders more commonly associated with the latter. The quotes below are typical of perspectives in which prison sentences (even of relatively short duration) were deemed to have a deterrent or containment effect:

'It's [imprisonment] a deterrent for both them and for society at large.'
(DCJ03)

'[A] lot of the time one is sending people to prison not because it is going to have any rehabilitative function but more as a containment or a protection to society after significant failures....' (DCJ09)

While the inherent limits of imprisonment were recognised by many, some considered that there were specific types of offence and/or personal characteristics which would render imprisonment the most suitable sanction.

'Now, I never consider CSO for [no insurance offences]. Because they need the lesson. They're going to keep driving. The problem with these guys, you see, they're recidivists and they just don't ... CSO is going to do nothing for them. Won't stop them driving. The whole reason you're putting them in prison is to actually physically stop them getting behind the wheel of a car. CSO doesn't do that.' (DCJ07)

Evidence of individual sentencing practices in relation to particular offence types is also seen in the following extract, where, in contrast to their counterpart above, the respondent describes their preference for using CSOs for a range of road traffic offences, including the offence of driving without insurance:

'I suppose I'd consider [a CSO] a lot in road traffic offences. For example, no insurance, where somebody is on their second or third conviction for no insurance, or other serious road traffic offences. Where you know they've had multiple chances now. And you know it's been fines up to now and it really does need to be a stricter penalty at this stage. So, I

would usually consider Community Service Orders for that. Or again, multiple drugs convictions. But usually, road traffic would be the one that would spring to mind initially.’ (DCJ01)

These examples provide evidence of some idiosyncratic practices in relation to sentencing for specific offences. Based on their experiences and the types of offence they see on a regular basis, some judges consider particular offences as eligible or ineligible for a CSO. This shows the potential for considerable differentiation in how offences are dealt with in courts across the country.

As well as forming a judgement regarding which offences would be suitable for a CSO, judges also consider the characteristics and profiles of defendants, when making their determination. Here, sentencing patterns amongst judges in the research sample were consistent. Dependence on drugs and alcohol and mental and physical health issues were considered a barrier to imposing a CSO and made the imposition of a prison sentence more likely.

‘The reality is that a lot of people between drug and alcohol use just can’t regulate their day, so they can’t, you know, they’re not deemed suitable, because you’re setting them up to fail really with community service because they’re not going to be able to regulate themselves to get there.’ (DCJ01)

Prior histories of repeat offending were considered particularly problematic – ‘It really comes down to, I think, the amount of offending involved, as opposed to the offence’ (DJC06). Evidently, repeat offending is inherently problematic, but also because it conveys a message that previous sentences had not ‘worked’.

‘So a point arises where a person, for example, who is committing thefts has committed so many thefts, and I’m talking about hundreds, that I have to come to the conclusion that, at least notionally, they’re beyond rehabilitation, because they have been offered engagement with the Probation Service, they’ve engaged with them previously, they’ve been given community service, they’ve been given suspended sentence, they’ve been ratcheting up all of the time, and the behaviour continues, and a point arises where imprisonment is just the appropriate remedy because it’s a deterrent for them.’ (DCJ03)

In these circumstances, where a person was adjudged to be 'beyond rehabilitation', sentencers considered that they had no sentencing options available to them other than imprisonment:

'And 250 previous convictions and 90 previous convictions and they're after engaging three or four or five times with community service, they're after having five or six Community Service Orders imposed on them and it's just not stopping, and in some instances somebody can be caught stealing in a shop and brought to the Garda station and released on bail and be back there again in the afternoon, and the victims must be thinking, what in the name of God is going on in the Garda station and what's going on down in the court house and why is nothing being done about this? ... A point arises where I just think, within the mechanism that's available to me, I have to ratchet this up to an actual custodial sentence. I've tried fines, I've tried community service, I've tried suspended sentences and it's just still going on, offence number 105. I now have to just bring deterrent into it....' (DCJ03)

As the extract above illustrates – 'what in the name of God is going on in the Garda station and what's going on down in the court house...?' — public perception is also part of the underpinning rationale for resorting to prison in these types of cases. While judges were clear to articulate that public opinion or media coverage did not have a direct impact on their decisions regarding which sentence to impose, it is evident that some judges are, at the very least, mindful of how their sentencing decisions are perceived in their Districts.

'Imagine if the victim were to go to the local hotel for lunch the following week and find her assailant cutting the grass. Now I know they tend to cut the grass in public areas, but it could be a public area outside the hotel. That's just not good enough. So that would be a case in which I don't think I would, that would be the sort of case in which I wouldn't impose a Community Service Order. I wouldn't consider it appropriate as an alternative to imprisonment, you know.' (DCJ08)

'[I]n order for you to be ... seen to be doing my job properly, I'd have to impose a sanction, which is of a custodial nature.' (DCJ06)

This speaks to the wider issue regarding judicial, as well as public, confidence in community sentences, and whether such sentences are seen to achieve the desired penal effects. Judges were clear that where deterrence was at the forefront of their decision-making, CSOs were not considered to serve this purpose. On the other hand, in cases where rehabilitation is foregrounded, judges were more supportive of the idea of imposing a Community Service Order.

What would encourage greater use of CSOs and less use of short-term prison sentences?

In interviews with judges, we explored what might encourage greater use of CSOs and less use of short-term prison sentences. In this section, we detail those findings most directly relevant to probation services.

Availability of probation staff in court

It is important to emphasise that the formal determination as to whether a person is suitable for a CSO is made by the Probation Service through CSO Suitability Assessments. Such an assessment can also be more broadly incorporated into a Pre-Sentence Report. However, as indicated above, judges frequently form an initial view about suitability and then decide whether to refer a person to the Probation Service for an assessment. In other words, judges used their own filtering processes in deciding which cases to refer for suitability assessments. This practice of *a priori* filtering of cases must be placed in the context of availability of probation assessments. For instance, some judges spoke of their frustration in accessing timely probation assessments, particularly where there were no probation staff available in court:

'So, they [probation staff] used to be in court ... but that seems to have fizzled out. I don't know why. Maybe during the recession there were cutbacks. It gradually petered out, and now we're left in the position that we ... you're waiting.' (DCJ06)

Given the volume of cases dealt with in the District Courts, judges were keen to avoid further delays, and were therefore reluctant to adjourn for assessments, particularly where they had previously encountered delays. This had an impact on their inclination to refer cases to the Probation Service:

'But there's no probation officer available that day. So, no matter what you want to do, you can't do it. And then you're looking at a list and you're kind of going, OK, I'm looking at the same person that you want to try and give the chance to with CSO. You're looking at them going, they're never going to come back. I'm going to be a year chasing them with a warrant. They'll lay low ... the whole thing is resources. I'd say if we started to lash out the CSO orders ... tomorrow, they wouldn't have the capacity to deal with them. So, I don't know. It's all very aspirational. They can barely get us a report. It's taken two months to get a report.' (DCJ07)

As Morgan (2003) observes, courts are one of the key constituencies for probation services. At the most basic level, the Probation Service's caseload originates from the orders of the court. As outlined earlier, there are a several contingent factors influencing sentencers' decisions regarding whether to sentence a person to a community or prison sentence. The availability of timely assessments can inform decision-making and is a practical but significant issue. Prior studies on CSOs in Ireland, including an evaluation by the Department of Justice in 2009, have noted the persistence of this concern, pointing to wider questions regarding adequate resourcing of the Probation Service to ensure equitable access to reports across courts in Ireland. At the very least, ensuring equitable access to probation staff across court districts would address potential differentiations in access to justice. It might also promote the greater use of community sentences in some cases. Relatedly, judges interviewed for this study expressed a desire to know more about the community service projects operating in their areas and about the types of work that people engage with on projects.

Suitability criteria and adaptability of CSOs

One of the key findings from this research, as highlighted above, is the fact that certain cohorts of people are automatically deemed unsuitable for a CSO (either *a priori* by a judge, or following assessment by the Probation Service). This includes people with substance misuse issues and those with physical and mental health difficulties. This potentially excludes a significant cohort of people who appear before the court for consideration for this sanction, rendering a prison sentence a more likely outcome. Again, this finding echoes previous research on CSOs, including the earliest study by Walsh and Sexton (1999). In order to promote greater use of CSOs, it makes sense to explore the

potential to adapt these orders to the needs of individuals appearing before the courts. Integrated CSOs (which allow for up to 30 per cent of the hours of the order to be allocated towards activities addressing the underpinning reasons for offending) have been piloted, and further developments and adaptations to CSOs, drawing on the tripartite model outlined by Kennefick and Guilfoyle (2022), may have the benefit of, firstly, addressing CSOs to the profile of cases that appear before the courts and, secondly, increasing the confidence of the judiciary and the public in the use of this sanction.⁵

Recent developments

The Probation Service has recently published an *Implementation Plan* for the development of community service (Probation Service, 2025). This plan details a number of key objectives, including aims to increase the use of CSOs by the courts and to improve secondary outcomes for people who have offended, including access to education, training and skills-development work. Increasing the number of same-day community service reports nationwide is included as a target. This measure may go some way towards addressing the report availability and delay issue identified as a barrier.

The *Implementation Plan* also commits to tailoring of CSOs to nature of offences (to enhance reparation) and to individual skills, to enhance opportunities and community benefits. While this focus is welcome, the fundamental issue of cohorts of people being considered unsuitable for CSOs remains unaddressed. Recent plans to increase the maximum number of hours in a CSO from 240 to 480 hours, outlined in the General Scheme of Criminal Law and Civil Law (Miscellaneous Provisions) Bill, 2025, will increase the punitive weight of CSOs, but it also does not fundamentally address the fit of CSOs to people appearing before the courts.

This issue of suitability and adaptability of community orders is wider than CSOs. Potential modifications of the CSO will need to be considered in the context of the long-promised Criminal Justice (Community Sanctions) Bill, which proposes to extend the range of community sanctions and measures available to the courts (Probation Service, 2024b).⁶ Research from other

⁵ Integrated Community Service was introduced as a component of Community Service in 2016. A developmental activity undertaken by a person subject to a Community Service Order, which is addressing criminogenic risk may be counted as a proportion (up to 30 per cent) of the hours of the court order. The verification of the activity is done by the Probation Service. The activity may be a therapeutic, educational or individual/group work intervention. The recent *Community Service Implementation Plan* (Probation Service, 2025) commits to a review of this mode.

⁶ The *Probation Service Strategy 2024–2026* (Probation Service, 2024, p. 10) refers to supporting the advancement of the Criminal Justice (Community Sanctions) Bill, 2014.

jurisdictions suggests that adaptability and expansion of community sanction provision should be alert to the risk of net-widening (Aebi *et al.*, 2015; Burke *et al.*, 2023). This will be a fine balance to achieve.

Conclusion

Community Service Orders, though established with the intention of serving as a robust alternative to imprisonment, continue to face a host of challenges in their application and perception. While the foundational legislation presented the CSO as a meaningful sentencing option in lieu of short-term prison sentences, its practical implementation over the past four decades has been shaped by a mix of systemic limitations, judicial discretion, and evolving penal policy. This study sought to evaluate the impact of the Criminal Justice (Community Service) Amendment Act, 2011, which placed a duty on judges to consider CSOs as an alternative to custodial sentences of twelve months or less. Although the Act signalled a policy shift toward favouring community-based sanctions, evidence from judicial interviews suggests that the Act's influence has been muted by both structural and attitudinal constraints. Judges, while open to using CSOs in certain scenarios, often encounter obstacles such as delays in Probation Service assessments, a lack of Probation Officer presence in court, and a limited understanding of the scope and nature of CSO placements. These barriers reduce the practical accessibility of CSOs and contribute to their inconsistent application across different courts and regions.

Moreover, the research highlights a significant issue concerning suitability. Many individuals who appear before the courts, particularly those with substance misuse issues, mental health challenges, or complex offending histories, are often deemed unsuitable for community service, either by judicial preconception or by the Probation Service during assessment. This exclusion effectively narrows the CSO's reach. While initiatives like Integrated Community Service Orders (ICSOs) have attempted to address this issue by incorporating education, training or treatment within the CSO framework, their limited roll-out has not yet addressed the core issue of exclusion based on suitability criteria.

The broader penal context further complicates the potential for community sanctions to reduce imprisonment. Despite recurring policy commitments to reduce reliance on short-term custody, Ireland's prison population continues to grow, driven in part by the persistent use of such sentences. This is despite clear evidence that CSOs, and community sentences more generally, are

associated with lower reoffending rates, lower costs and fewer harmful side-effects for individuals and families. The economic and social rationale for shifting away from short custodial sentences toward more expansive use of CSOs is well supported, yet this shift has been hampered by both practical constraints and deep-rooted penal cultures that still prioritise custody in many cases.

Looking forward, the successful reform and revitalisation of CSOs will require not just legislative or procedural adjustments but a more fundamental reconceptualisation of their purpose and place in the penal system. The Probation Service's 2025 *Implementation Plan* includes promising initiatives to increase the use of CSOs, improve access to same-day reports, and tailor placements to individual capabilities and community needs. However, real change will depend on more than operational fixes; it will require a clear articulation of the CSO's penal purpose and a commitment to addressing barriers to access.

The proposed Criminal Justice (Community Sanctions) Bill offers an opportunity to expand and adapt community sanctions to meet contemporary penal needs. However, reforms must be approached carefully, to avoid net-widening and to ensure proportionality. A tripartite model, based on desistance, restorative justice and social justice, such as that proposed by Kennefick and Guilfoyle (2022), may provide a principled framework for embedding CSOs more firmly and fairly in Ireland's sentencing landscape. The findings of our research underscore the importance of continued evaluation, resourcing and thoughtful innovation in the pursuit of these aims.

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