

PERTH AND KINROSS COUNCIL

Community Safety Committee – 13 June 2012

COMMUNITY PAYBACK ORDERS

Report by Executive Director (Housing and Community Care)

ABSTRACT

This report updates the Committee on the impact of introduction of the Community Payback Order legislation which became available to the courts as a sentencing option as from 1 February 2011.

1 RECOMMENDATIONS

1.1 It is recommended that the Community Safety Committee:-

- i) Note the contents of this report;
- ii) Request that the Community Payback Annual Report be submitted to the Committee when available.

2 BACKGROUND

- 2.1 The Criminal Justice and Licensing (Scotland) Act 2010 introduced the presumption against prison sentences of 3 months or less and Community Payback Orders (CPOs).
- 2.2 A court must not pass a sentence of imprisonment for a term of 3 months or less unless it considers that there is no other appropriate method of dealing with the offender.
- 2.3 CPOs have been available to the courts since 1 February 2011. They replace a range of non-custodial penalties available to the courts – such as probation or Community Service Orders – with a new generic sentence of '*Community Payback*'.
- 2.4 This Order can contain one or more of the following requirements:
- (a) an offender supervision requirement,
 - (b) a compensation requirement,
 - (c) an unpaid work or other activity requirement,
 - (d) a programme requirement,
 - (e) a residence requirement,
 - (f) a mental health treatment requirement,
 - (g) a drug treatment requirement,
 - (h) an alcohol treatment requirement,
 - (i) a conduct requirement.

The supervision requirement must be imposed where there are other requirements imposed, other than a low level imposition of unpaid work.

It will usually be the case that a Report is required for the court prior to sentencing (unless only a low level work order is being contemplated).
(Further details are available at
<http://www.scotland.gov.uk/Resource/Doc/925/0110081.pdf> .)

- 2.5 Each year local authorities are required to consult with communities and “prescribed persons” about the nature of unpaid work and other activities to be undertaken by offenders residing in the local authority’s area on whom Community Payback Orders are imposed.
- 2.6 In Scotland in 2008-09 16,854 persons received custodial sentences. Of these, 6,897 (41%) received sentences of up to 3 months. Tayside, with an estimated current population of 399,550, holds approximately 7.7% of Scotland’s population. Applying this ratio to short-term sentences would mean that approximately 530 offenders within Tayside who would previously have been sent to prison would, it is assumed, (if not exceptional cases) receive a non-custodial penalty (such as a Community Payback Order).
- 2.7 The key features of the CPO are as follows:
- There is no minimum age for a CPO except where an unpaid work and other activity requirement is made. In these circumstances it may only be imposed on an offender aged 16 or above.
 - The consent of the offender to the requirements of a CPO is required before it can be imposed by a court – except where the order is to be imposed following fine default.
 - Unpaid work or other activity requirements can be imposed for between 20 and 300 hours. A requirement of 20-100 hours is referred to as a "level 1 requirement"; and a requirement of 101-300 hours as a "level 2 requirement." A Justice of the Peace (JP) court may only impose a level 1 requirement.
 - Orders will normally be made for a period of between 6 months and 3 years other than an Order consisting solely of a level 1 unpaid work or other activity requirement. An unpaid work or other activity requirement must be completed within 3 months (level 1) and 6 months (level 2) unless the court states otherwise at the point of sentence.
 - An offender supervision requirement is mandatory when an Order is imposed on an individual aged under 18 years; and when a court imposes a programme requirement, a residence requirement, a mental health requirement, a drug treatment requirement, an alcohol treatment requirement, a conduct requirement, and/or a compensation requirement.
 - Where an unpaid work or other activity requirement alone is imposed, an offender supervision requirement is discretionary, unless the offender is under the age of 18.
 - JP courts' powers are limited to imposing an offender supervision requirement, a level 1 unpaid work and other activity requirement, a residence requirement, a conduct requirement or a compensation requirement.

- A further offence committed during the Order is not in itself a breach of the Order, unless the offence also breaches one of the requirements imposed in the Order.
- The court may include provision in the CPO to conduct discretionary periodic review hearings at any time within the duration of the Order.
- The offender, or the local authority officer responsible for the offender, may apply to the court for a variation of the Order or for early discharge of an Order. For example, in circumstances where an individual has made highly positive progress a local authority officer may apply to the court for the Order to be discharged. The decision on whether or not to discharge the Order remains with the court.
- Each local authority is required to carry out an annual consultation of representative community individuals or organisations, as prescribed by Scottish Ministers, of the types of activities to be carried out locally by those subject to an unpaid work or other activity requirement.
- The CPO is an alternative to custody. Courts will also be able to impose a CPO with a restricted range of requirements where the offence is punishable by a fine, however, whether the offence is also punishable by imprisonment or not.
- A restricted movement requirement (electronic monitoring) may only be imposed in relation to a proven breach of a CPO. Following proven breach, the court may also vary or revoke the CPO and/or impose a fine. The sanction of custody will also be available to sentencers.
- Where the CPO was imposed as an alternative to a fine, or for fine default, then the maximum custodial term which can be imposed as a sanction for breach of the Order is 60 days in a JP court and 3 months in a sheriff court.
- Where the CPO was imposed for any other offence the court may revoke the Order and deal with the offender as it could have if the CPO had not been imposed.

2.8 In Perth and Kinross the number of Community Payback Orders imposed by the courts runs at the rate of about 120 per month. This is a slight increase on the number of Community Service Orders etc. that had been imposed prior to the new legislation.

3. ANNUAL REPORT

3.1 There is a statutory duty imposed on local authorities to submit annual reports to the Scottish Government on the operation of CPOs. In addition to the submission of statistics the reports must provide a detailed narrative account of the implementation and operation of CPOs in the financial year to which the statistics refer.

3.2 This report will be submitted to the Scottish Government during late 2012 and will be submitted to a meeting of the Committee as soon as possible thereafter.

4. THE PROJECT INITIATION AND PAYBACK SPORTS FACILITIES FUND

- 4.1 The Scottish Government has created two distinct funding mechanisms to support the delivery of CPOs. Community Justice Authorities (CJAs) will be responsible for working with local authorities in advance of their applications to determine the best use of these funds in their local areas. Scottish Ministers will have the final decision on whether applications meet the objectives of the funds.

In Tayside, the £500,000 allocated by the Scottish Government will be incorporated into the **Project Initiation Fund** and the **Payback Sports Facilities Fund** and divided between Angus, Dundee and Perth & Kinross Criminal Justice Services.

4.2 **Project Initiation Fund (£125k)**

This will allow local authorities to buy materials and equipment for use in Unpaid Work projects. Examples of the types of purchases include: specialist equipment - tools to broaden the range of work undertaken by those on community service; larger capital equipment - to allow new innovative work activities - such as snow clearing equipment which can be used to clear pavements; and minibuses – to collect and transport workers (which could help improve attendance rates) or to allow different types of work to be undertaken (e.g. scheme for accompanying the vulnerable and elderly on shopping trips). This scheme will support the new duty to consult which accompanies the CPO and the type of work supported should be that which communities themselves feel is important.

- 4.3 Local authorities will be able to undertake larger, more innovative and more sustainable pieces of work which might not otherwise have been possible because the cost of capital equipment required was prohibitive. The fund will allow all CJAs to receive the funding and each will receive up to £125,000 to pass on to local authorities to use in their local area. The funding must be provided by CJAs to local authorities in accordance with any conditions determined by Scottish Ministers.

- 4.4 The projects should fulfil the following criteria and objectives:

- Projects should be clearly additional to activities which the local authority or CJA would otherwise have funded, or have previously funded, through their regular Scottish Government grant.
- Projects should show community support for the work.
- Proposals should show who will have ownership of the equipment and how use of the equipment can be maximised among the CJAs' constituent local authorities.
- Projects which would promote joint working across local authority boundaries are to be encouraged.
- Projects should demonstrate an element of sustainability, both in terms of a lasting impact in the local authority area(s) and in terms of ensuring that the equipment purchased can be used over a sustained period.

- Projects should demonstrate how they will help fulfil the objective of reducing reoffending in the CJA area.
 - Projects should take into account the requirements for speed and immediacy under the new CPO legislation and guidance.
 - Projects which aid local authorities in achieving or exceeding these standards are to be encouraged.
- 4.5 In Perth and Kinross £40,000 from this funding stream has been utilised to purchase a vehicle for the Council's Unpaid Work Team to allow them to deliver the projects around the area. In addition funding has been used for the training of staff.
- 4.6 **Payback Sports Facilities Fund (£375k)**
The aim of the fund is to promote the rehabilitation of offenders and help reduce reoffending by maintaining and improving sports amenities available to communities throughout Scotland. This work will utilise the labour of offenders sentenced to unpaid work in the community to upgrade and/or maintain those facilities.
- 4.7 CJAs and local authorities can co-operate with Sportscotland or other delivery agents to ensure that the funding is used effectively and sustainably in accordance with community needs and aspirations. This work may also be suitable for promotion to local sports clubs through both Governing Bodies and Local Sports Associations. The fund, as well as making an important contribution to the rehabilitation of offenders, will also address a previously identified need for a facilities and infrastructure programme for sport.
- 4.8 The funding will be allocated to CJAs, up to £375,000 to each. This funding is intended to supplement existing work programmes in a way which provides work suitable for those on Community Payback Orders which also gives opportunities for worthwhile work of public benefit. The funding is intended to provide improved capacity in the number of available unpaid work placements. This will assist local authorities in starting offenders on unpaid work more quickly and will provide work which can help enhance the skills of offenders. Because the labour of unpaid work offenders is available to local authorities without some of the costs otherwise associated with a labour force, spending will primarily be able to focus on investment that directly contributes towards improving the facilities involved. Work on community sporting facilities could include a diverse range of projects such as: improving football pitches, reconstructing bowling greens, upgrading changing room facilities, resurfacing tennis courts, and other work that improves community sporting assets and infrastructure.
- 4.9 The following objectives would have to be met by the scheme:
- There should be demonstrable and quantifiable community benefit to the scheme (e.g. enhanced usage of the facility).
 - The work should, where possible, enhance the employability of offenders, e.g. through links made to specific training qualifications.

- The facilities should be accessible to local communities and used primarily for a sporting purpose.
- There should be evidence of community support for the project.
The work due to be undertaken by offenders should be considered by Criminal Justice social workers as suitable for those on a Community Payback Order and should contribute towards achieving the requirements for speed and immediacy under the new CPO legislation and guidance.

4.10 Within Perth and Kinross £100,000 from this fund will be utilised to deliver improvements to 11 local sports clubs across the area. These range from bowls, tennis, football, rugby, etc, and it is anticipated that these projects will be delivered by March 2013.

4.11 In return for these works local clubs agreed to reach out into their communities and offer fitness or coaching opportunities to residents that don't usually access the facility. This has meant all the clubs offering taster fitness coaching sessions during the year.

5. CONSULTATION

5.1 The Tayside Community Justice Authority was consulted in the preparation of this report.

6. RESOURCE IMPLICATIONS

6.1 It is still unclear as to the impact of the new legislation as the increase in the number of Orders has not been as significant as expected. This is presently being kept under review and will be reported on as part of the Community Payback Annual Report.

7. COUNCIL CORPORATE PLAN OBJECTIVES 2009-2012

7.1 The Council's Corporate Plan 2009-2012 lays out five Objectives which provide clear strategic direction, inform decisions at a corporate and service level and shape resources allocation. The relevant three objectives are as follows:-

- (i) A Safe, Secure and Welcoming Environment
- (ii) Healthy, Caring Communities
- (v) Confident, Active and Inclusive Communities

8. EQUALITIES IMPACT ASSESSMENT (EqIA)

8.1 An equality impact assessment needs to be carried out for functions, policies, procedures or strategies in relation to race, gender and disability and other relevant protected characteristics. This supports the Council's legal requirement to comply with the duty to assess and consult on relevant new and existing policies.

8.2 The function, policy, procedure or strategy presented in this report was considered under the Corporate Equalities Impact Assessment process (EqIA) with the following outcome:

- i) Assessed as **not relevant** for the purposes of EqIA.

9. STRATEGIC ENVIRONMENTAL ASSESSMENT

9.1 Strategic Environmental Assessment (SEA) is a legal requirement under the Environmental Assessment (Scotland) Act 2005 that applies to all qualifying plans, programmes and strategies, including policies (PPS).

9.2 However, no action is required as the Act does not apply to the matters presented in this report. This is because the Committee is requested to note the contents of the report only and the Committee is not being requested to approve, adopt or agree to an action or to set the framework for future decisions.

10. CONCLUSION

10.1 The impact of the introduction of Community Payback Orders is still being closely monitored. Further details will be made available in the annual report to be compiled later this year and submitted to this Committee.

David Burke

Executive Director (Housing and Community Care)

Note: The following background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (and not containing confidential or exempt information) were relied on to a material extent in preparing the above report.

Perth and Kinross Council Report 11/448, submitted to the Community Safety Committee meeting on 7 September 2011.

Contact Officer: John Newton 01738 444244 JNewton@pkc.gov.uk

Address of Service: Service Manager, Community Safety Service,
St Martin's House North, King Edward Street,
PERTH, PH1 5UT

Date: 25 May 2012

If you or someone you know would like a copy of this document in another language or format, (on occasion only, a summary of the document will be provided in translation), this can be arranged by contacting *John Newton*



Council Text Phone Number 01738 442573