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The Community Service Order: A Better Alternative?

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Abstract

At a time when the Minister for Justice, Equality and Law Reform is forming a strategic review group for penal reform, it is imperative that all areas of penal policy are thoroughly examined to ensure that any reform proposed is not only progressive and socially responsible but realistic and viable within the economic constraints faced by all sectors of the State. This article focuses on the Community Service Order in Ireland as an alternative to custodial sanctions. The function and use of the Community Service order is explored and investigated through literature and policy reviews, whilst public opinion pertaining to such is then examined through an analysis of primary research. Based on the findings of both primary and secondary research, a number of recommendations are made in relation to the development and use of the Community Service Order in the Irish context.

Keywords: Community service order; penal policy; non-custodial sanctions; Whitaker Report.

Introduction

Discourse in Ireland around how we should deal with crime varies greatly. Many argue that harsher, more punitive measures are necessary (DiIulio 1997; Beckett 1997; Hough and Roberts 1999), while others suggest that these measures only attempt to appease the general public as a response to the fear of escalating crime as opposed to the actual occurrence of crime (Kilcommins, O' Donnell, O' Sullivan, and Vaughn, 2004). Independent of the view taken, the reality is that, in Ireland, custodial sentences are much more commonly imposed than community alternatives. In 2011, 2,738 offenders were sanctioned to fulfil a community service order (Irish Probation Service, 2011 p.40), while 17,318 committals to prison were made in the same period (Irish Prison Service, 2012). Whilst a direct comparison cannot be made due to variance in crimes, a much heavier reliance on incarceration can clearly be seen. This article focuses on research in relation to the Community Service Order. It argues that, if the ultimate goal is to rehabilitate offenders and deter them from committing further crimes, there needs to be an examination of how our current system functions. Investigations are necessary into alternative measures which enhance a person's ability and self-worth, rather than chastise them consistently for their failings whilst still retaining the five purposes for placing a sanction upon offenders: punishment; incapacitation; deterrence; rehabilitation and reparation.

Literature Review

The Origins of the Prison

Foucault (1977) places the prison and punishment of crime in the locus of wider society. Foucault describes prison as a form of power and control, not only over those within its walls but wider society. He argues that the prison cannot simply be abolished, as its structure is pervasive through all of society and we have no alternative discourse. Foucault (1977) claims that society exists in a virtual panopticon, whereby we all conform to the norm since we are always under the gaze and critical view of others. If this is so, then it could be argued that there is indeed an alternative discourse that does not necessarily need prison as the locus of punishment, but can be placed within wider communities and society. It could even be argued that punishment in the community would better serve Foucault's view that society has a need and an appetite to actually see punishment being bestowed on the delinquent,

albeit in a very different manner to the torture and hangings of the late 17th/ early 18th century.

Community Sanctions – A Better Alternative?

Beccaria (1764), basing his ideas on the notion of a social contract similar to that of Hobbes, suggested that sanctioning must exist in order to ensure everyone adheres to the contract of societal harmony. He noted that a punishment must be proportional to the crime which has been committed. Whilst this idea can be viewed as being in line with the ‘Just Deserts’ philosophy, it could possibly be turned around and viewed through the lens of the ‘parsimony of punishment’ principle (Von Hirsh, 2011 p283), which holds that a punishment should be the least necessary to affect future change. By looking at the adage of the punishment fitting the crime from both angles, we can see the necessity for serious crimes to be punished appropriately whilst also seeing that incarceration should be treated as the last resort that it is purported to be, for less serious non-violent offences. Non-custodial sentences in this regard should be seen not as the ‘soft’ option but rather the appropriate option.

Blomberg (2011) argues that through the introduction of alternative non-custodial sentences, we have unintentionally created supplemental sanctions rather than alternative stand -alone sanctions, resulting in net widening, increasing prison populations and a ‘piling up of sanctions’, whereby those who were convicted of an offence were not only incarcerated but upon release were subject to further non-custodial sanctions. In order to implement a policy of alternatives which are beneficial to the offender and society at large, Blomberg suggests that it is crucial to undertake both empirical and theoretical studies in order to ascertain what actually works for whom, rather than continuing with implementing programmes in a Fordist manner. He sums up his argument by essentially saying that while the intentions may be good, the consequences most certainly are not.

The dilemma of net widening as raised by Blomberg (2011) is somewhat quelled, at least in the Irish case, in relation to community service orders by article 2 of the Criminal Justice (Community Service) Act 1983. This Act ensures that a community service order can only be imposed in lieu of a prison sentence, not in addition to, although it is questionable whether or not this has been adhered to.

Focus on Community Service Orders/ Alternatives:

Community Service	2009	2010	2011
Referral for Community Service Reports	1,712	1,960	2,577
Pre-Sanction Reports to consider Community Service	524	377	515
Total Reports considering Community Service	2,236	2,337	3,092
Referral for Community Service Reports (Same Day)	-	-	795
Community Service Orders made	1,667	1,972	2,738
Total number of Community Service Hours ordered in lieu of custodial sentence	252,399	303,210	420,836
Total alternative sentence in years that would otherwise have been served	645	882	1,035

Chart 1: Probation Service Annual Report (2011)

Released the same year as the very first community service order was made in Ireland, the Whitaker Report – commissioned by Taoiseach Garret Fitzgerald in 1985 – could be considered a vision ahead of its time. The Committee of Inquiry into the Penal System saw prison as more of a service for the public, to allay their fears rather than an institution that would be beneficial in reforming and deterring offenders and should only be used ‘if the offense is such that no other form of penalty is appropriate’ (The Katherine Howard Foundation and the Irish Penal Reform Trust, 2007; Whitaker Report, 1985 p.11). They felt that more community based measures would be favourable and that prison numbers should be capped (at 1,500 places) to prevent an over reliance on incarceration, a sentiment that is still very much echoed almost thirty years later. It would seem, from the statistics contained in recent reports from the Irish Penal Reform Trust and The Probation Service, that almost 30 years later, there has been, at least tentatively, a move towards implementing some of the recommendations contained in the Whitaker Report. From the table above it can be seen there has been a slow but increasing rate of sanctioning offenders with Community Service Orders as opposed to custodial sentences.

As noted by Whitaker (1985 p.26) there is a ‘substantial net gain in using non-custodial methods of disposal of offenders as distinct from sending them to prison.’ The economic advantages highlighted by Whitaker (1985) can be easily discerned; at a cost of €2,200 per community service order, the total cost of placing 2,738 offenders on this order stands at €6,023,600 compared with the cost of alternatively serving a cumulative figure of 1,035 years in prison at €65,910 per year, totalling €68,216,850 the savings to be made by imposing a community service order rather than a custodial sentence stands at €62,193,250 which is more than the budget allocated to the Probation Service for the entire year (Irish Penal Reform Trust & The Probation Service, 2011). O’ Mahony (2000) argues that we need to look further than simply the economic cost but to place a greater emphasis on understanding the social cost, not just to an offender but to Irish society as a whole. Kilcommins, O’Donnell, O’ Sullivan and Vaughn (2004) show that, two thirds of the public felt that the community service order and other alternative sanctions should be utilised more, with prison as a last resort, in a survey for the Gardaí in 2002. A study by Walsh and Sexton (1999) found that community service orders were mainly imposed on young male, uneducated offenders- typically the cohort who is overrepresented in the offending population and that sanctioning offenders with the community service order was a varied and inconsistent practice, with no clear guidelines as to what category of crimes or offenders it was to target. Walsh and Sexton (1999) recommended that in order to ascertain the effectiveness of the community service order in reducing recidivism, a study should be carried out on their sample group after a period of three years to assess whether or not the order was beneficial and served as a real alternative to incarceration. A follow up of this nature would have certainly been immensely beneficial, however it was not conducted.

Cohen (1979) highlights the issue of ‘net widening’ whereby a larger proportion of society come under control due to alternatives functioning as supplements and being applied to a broader sector of society, those who would not have received any formal punishment in the past. Not only can this lead to more people targeted but also contains the danger of providing an accelerated route to custodial sentences. Cohen (1979) calls for awareness and caution, warning that it is possible that rather than creating new alternatives to punishment, we are in danger of creating whole new categories of offenders through the expansion of social control within the community.

The literature presented in this review is only a very small fraction of what has actually been written about social control and community alternatives. In summary, it is clear throughout that while the community service order and community sanctions in general are seen as a positive step forward in the development of more humanitarian penal policy as well as being cost effective, they must be researched more thoroughly in order to assess whether they are fit for purpose in their current format and how a framework for proper implementation can be developed.

Policy review

Criminal Justice (Community Service) Act 1983

Inaugurated by a 1983 statute (Whitaker, 1985) and implemented in 1984, the Criminal Justice (Community Service) Act makes provision for the Community Service Order as an alternative sanction to incarceration, a measure intended to decrease the prisoner population. Under this Act, the supervision of offenders sanctioned with Community Service Orders is under the rebate of the Irish Probation Service, who is also tasked with the organisation of suitable placements for offenders (Department of Justice and Equality, 2012). The 1983 Act made provision for offenders who would otherwise serve a prison sentence of up to six months, by providing the option of 40- 240 community service hours instead. This Act also lays down the condition that Community Service Orders are only imposed in lieu of a custodial sentence, the length of which must be stated at the time of sentencing.

The Criminal Justice (Community Service) Amendment Act 2011 extends the availability of the Community Service Order to offenders who would otherwise receive up to six months incarceration to those who would receive up to twelve months, if they meet the requirements of section 4 which outlines the conditions under which an offender is deemed appropriate for community service, as recommended by the UN Committee Against Torture (2011). This amendment of the previous Act aims to further decrease the prisoner population and lower tax expenditure on prison places (Department of Justice and Equality, 2011). This change in legislation could account for the rise in the use of the Community Service Order as an alternative sanction in 2011, whereby the use of this sanction almost doubled (Probation Service Annual Report, 2011). This amendment however does not increase the hours which an offender can be ordered to serve in line with the increased

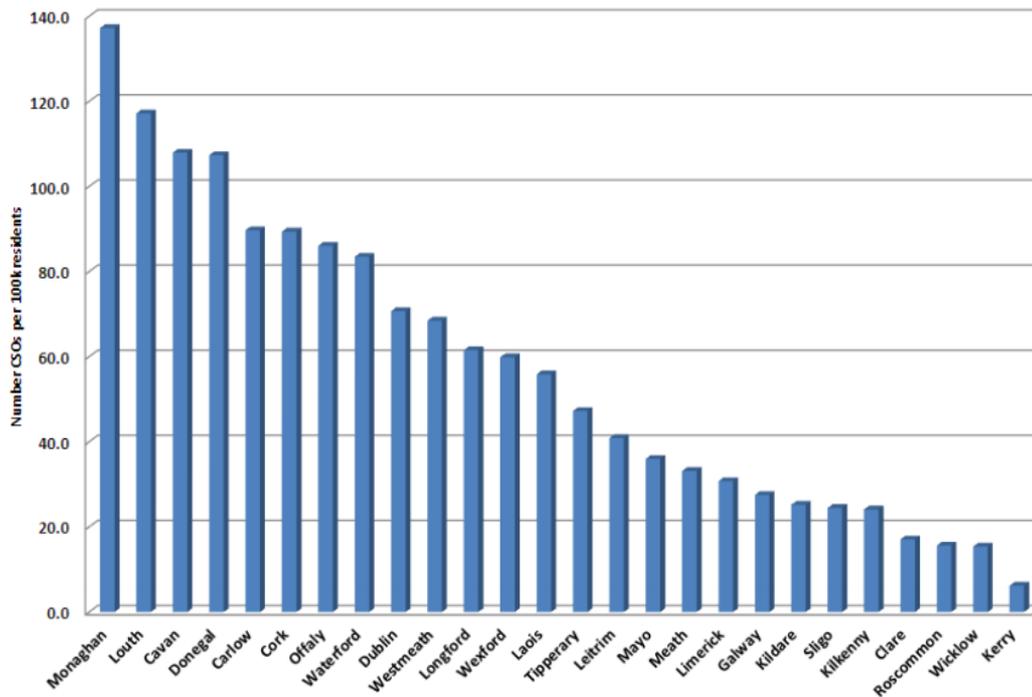
sentence it provides an alternative sanction for. This issue was raised almost 30 years ago in the Whitaker Report (1985 p.50) which at the time urged the government to monitor the progress of the Community Service order to 'ensure that...the number of hours of community service is a realistic alternative sanction'. This suggestion has clearly been ignored and for this reason, the expansion of the Community Service Order could be interpreted as a softening in punitiveness towards offenders.

As calculated in the literature review, the Community Service Order can result in exponential savings in comparison to prison sentences. It is not only economically more efficient than incarceration, it also allows for the offender to make reparations for the crime within the community setting, significantly more so than can be achieved through incarceration. The Probation Service Annual Report (2011 p.40) states that 420,836 hours of community service were completed the previous year. These hours are substantial when one considers the benefit to the community in work that may otherwise require significant finance to complete. The benefits to the offender are also considerable in that they may possibly maintain a semblance of normality that would not be possible if incarcerated. If relevant, they may possibly be able to continue employment or training which provides further benefit to the community in that the offender remains a productive member of society rather than becoming 'a drain' on resources and welfare services, as well as maintain family and social relationships. The ability to maintain these facets of normal life while still being reprimanded for offending behaviour may serve as a deterrent for committing further offences which would inevitably lead to the removal of these benefits through incarceration. Placement in a community setting may also allow the offender to develop new skills and create social links within their community. By valuing the people and work in their community they may be less inclined to harm within it and the skills learned may be applicable to employment which may perhaps reduce the financial necessity to commit crime for some offenders. Whilst the benefits of imposing a Community Service Order are numerous both to the offender and in relation to reducing the prisoner population, the practice of imposing such varies greatly.

Research by Seymour (2006) has found that guidelines pertaining to the length of community service orders in Ireland to be extraordinarily inconsistent. The variation

can be as drastic as sixty-three hours in one area to eleven hours in others as equated to one month's imprisonment. The incidence of imposing community service orders, where appropriate, is also considerably variable between counties in Ireland as can be seen in the bar chart below.

Graph 1: Community Service Orders – Rate per 100,000 residents



(Source: Probation Service Annual Report, 2011 p.47)

In order to achieve maximum effectiveness for both the penal system and the offender, guidelines pertaining to the community service order need to be drafted and implemented on a national basis. The Whitaker Report (1985 p.46) highlights the difficulty in establishing ‘how and when such sentences may be operated’ and suggests this be addressed by ‘compilation of an authoritative statement [in regards to] this law and practice.’ Whilst mandatory lengths for specific types of offences may be impracticable due to mitigating circumstances, there should at the very least be more uniformity than is practiced currently. Placements should also be revised and community links developed further, so that a wider range of placements are available as under current guidelines, a suitable placement must be in place for the offender before the community service order is granted. As many of the placements currently

on offer centre around physical labour and trade skills such as building and painting, offenders may be incarcerated rather than being placed on a community service order, as they may not have the skills, or capability to learn the skills, necessary to undertake the placements available.

During the commissioning of the Report of the Thornton Hall Review Group (2011), the group recommended that a strategy to reduce overcrowding could be considered, through the early release of prisoners with a record of good behaviour, under the condition of compliance with a Community Service Order. The implementation of such could be based on the existing Community Return Scheme operating in Cork prison through which the offender can make reparations for their offending behaviour to society (Coughlan, 2012). The offender is given temporary release from prison three days a week, during which they carry out community work such as graffiti removal, painting and greenwork. Supervising an offender on a scheme such as this could allow for assessment of suitability for full early release under the condition of a Community Service Order.

In light of the recommendations of the Whitaker Report (1985) and the UN Committee Against Torture (2011) amongst others, to more fully utilise Community Service Orders in the Irish penal system, the recommendation of Walsh and Sexton (1999) to undertake research on whether they are beneficial in reducing recidivism must be reiterated. Currently, no concrete data exists which emphatically demonstrates that recidivism is lessened through the use of non-custodial sentences, however research by Maguire and Priestly (1995) shows that rehabilitative measures reduce recidivism, while punitive measures in community sanctions can increase rates of recidivism by up to 25%. Based on this research and considering the economic constraints in the penal system, which force the service to rely on temporary release as a means of relieving overcrowding, alternative sanctions must be investigated and researched more thoroughly in order for policy, consistent with the socio-economic needs of both the State and society, to be drafted.

Primary Research

For the purpose of this study, the primary research consisted of an online social survey (created using Survey Monkey), distributed through social media, discussion

forums and email. This could be considered a cluster sample as respondents must, by means of distribution, be internet users (Sarantakos, 1998, p.146). This allowed access to a wide sample and it was hoped that it would allow for a large number of respondents. The purpose of the survey was to identify whether public opinion is more punitive or rehabilitative in nature based on the answers provided by a representative sample. According to Sarantakos (2005, p.48) ‘a survey, or more precisely, a sample survey, attempts to obtain accurate information about a population by obtaining a representative sample of that population and using that information from the sample to make generalisations about the whole population’. The survey consisted of mixed method questions using ranking scales, multiple choice, single choice and case studies which allowed for both ordinal- and interval-level measurement of responses (Sarantakos, 1998, p.74). Where possible, open-ended questions using an option of ‘other’ with space provided for an alternative answer was given in order to allow respondents more flexibility with their answers, as well as to provide material with which to conduct an interpretive analysis.

The questions posed were based on issues which had arisen throughout the literature and policy reviews in relation to the concept of penal populism. Focused on issues such as the distribution of finance within the justice system, prison conditions, issues of care vs. control and rehabilitation versus punitive measures, it was intended to ascertain whether current public opinion is reflected in policy measures and penal discourse. For the purposes of this article, only questions directly related to community service orders/ non-custodial sentencing are discussed.

Findings and analysis

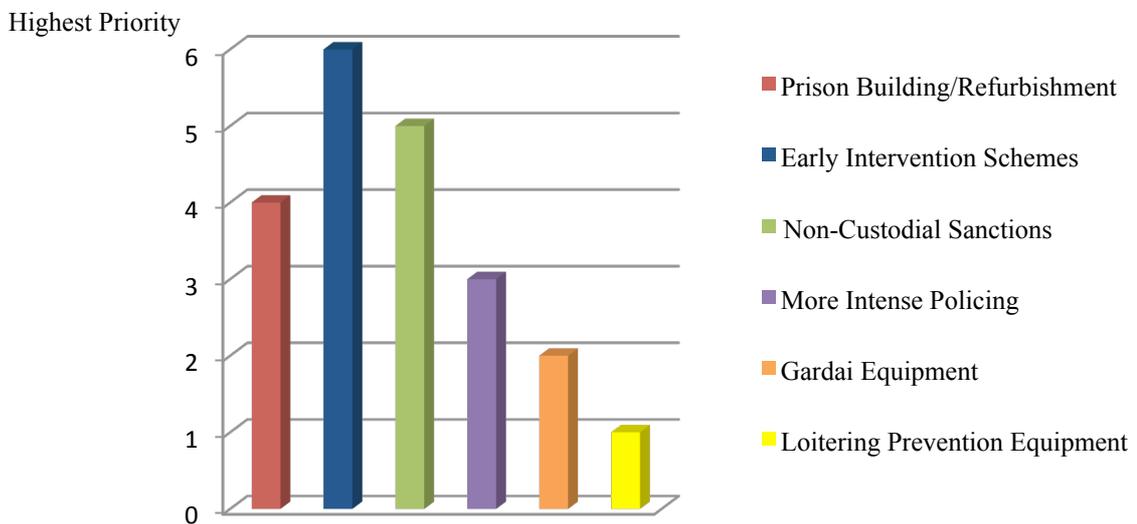
Budget Allocation

Respondents were asked: *‘Under the 2013 budget, the Department of Justice and Equality has been allocated €2.26 billion, Please rank in order of importance, the areas in which you believe this budget should be allocated’*. The aim of this question was to ascertain where the public believe funds need to be invested in order to improve the current penal/prison system and whether a more punitive or rehabilitative attitude was adopted in relation to the options chosen by the respondents. The answers provided were also used to measure how public opinion reflected the notion of ‘prison as punishment, not for punishment’ and the general theme of the Whitaker

recommendations of more utilisation of non-custodial sanctions and prison as a punishment of last resort.

As can be seen in the statistical overview of the responses provided, the respondents overwhelmingly point to early intervention schemes as a high priority area in which funds should be invested, rather than alternative options which could be described as more punitive/conservative such as more intense policing. This is closely followed by non-custodial sanctions as the second highest priority. The responses provided to this question reflected the trend towards rehabilitative rather than punitive measures similar to that of the Irish Penal Reform Trust in their ‘Shifting Focus’ campaign which promotes preventative and rehabilitative strategies rather than reactionary punitive measures, in stark contrast to the ‘Zero Tolerance’ policy brought to bear by Fianna Fail in their 1997 (Author, YEAR, p.12) election manifesto. Respondents in fact showed a high preference for funding to be directed at developing non-custodial sanctions, showing a return to the ideals as highlighted by the 1985 Whitaker Report (p.11).

Graph 2: Priority of Penal Expenditure

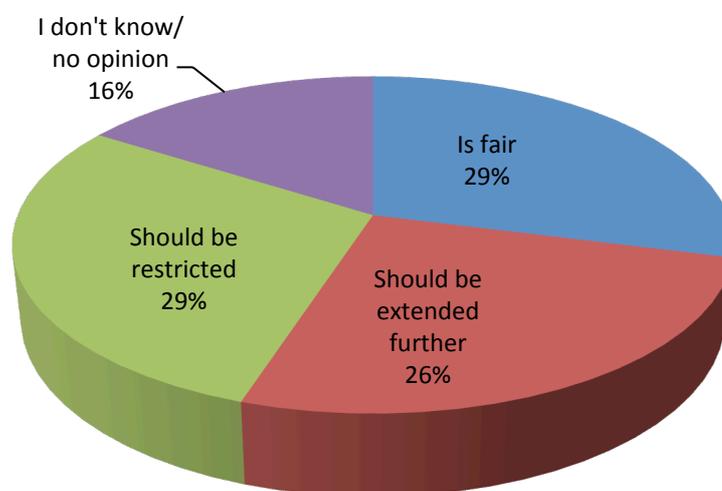


Community Service Orders

In relation to Community Service Orders, respondents were posed with the question: *'Current legislation extends the use of Community Service Orders for offenders who would otherwise serve a sentence of up to 12 months. (Previously applied to sentence of up to 6 months) Do you think this: (is fair, should be restricted or should be extended further?)'*

The Community Service Order as valid sanction would appear to be condoned by respondents with over half believing it is either fair or should be extended further. However a rather large proportion felt that it should be restricted and that its current application to sentences of up to 12 months is too much. It is interesting to note that the development of non-custodial sanctions was seen as a relatively high priority for investment, coming in second in graph 2. This would seem to indicate that more utilisation of non-custodial sanctions such as the Community Service Order is desirable but those to whom it should be extended is less clear. This concurs with Kilcommins et al's (2004) findings discussed in the literature review who found that two thirds of the public felt these alternatives should be utilised more. It would have been beneficial to include a question related to the actual utilisation of community based sanctions, in order to provide a valid comparison to the result of Kilcommins et.al. From the data provided above, one could tentatively suggest a favouring of rehabilitative strategies.

Graph 3: Current Community Service Order Legislation



Recommendations

Legislative Recommendation

As discussed in the policy review, the Criminal Justice (Community Service Order) Amendment Act 2011 does not extend the maximum limit of 240 hours to be served under a Community Service Order. This needs to be reviewed and possibly amended in order to ensure it is a viable, realistic alternative to prison sentences of 6 months upwards. The work that is considered viable as Community Service also needs to be reviewed in order to ensure it is extended to offenders, where appropriate, who do not have the skills or capability of engaging in the type of work which is currently available.

Recommendation for Research

As discussed in the literature review, a follow up on the study by Walsh and Sexton (1999) regarding the effectiveness of the Community Service Order needs to be conducted.

Policy Recommendations at National Level

As recommended by the Whitaker Report (1985) and mentioned previously, the possibility of capping prison places needs to be considered. This would not only prevent the severely overcrowded system that currently exists, it would allow for better service provision in regards to rehabilitation and education within the prison. This measure may also reduce the over reliance of incarceration as a sanction and allow for more innovative non-custodial sanctions to be utilised further. If the system is to be reformed in such a way that the reliance on imprisonment as a sanction is reduced, the resultant savings need to be kept within the penal and justice systems and redirected to ensure better provision in services such as rehabilitation, post release care, early intervention and the development of non-custodial sanctions. If the use of non-custodial sanctions becomes more prevalent, caution must be employed to ensure that a 'piling up of sanctions' as discussed in the literature review, does not occur, resulting in increased punitiveness rather than progressive rehabilitation.

Conclusion

Whilst both prison and penal policy have seen some progressive changes since the publication Whitaker report (1985), there are still substantial obstacles to overcome. The State and the system have at their disposal a number of alternative sanctions to incarceration and it is imperative that they are utilised further in order to start addressing the flaws in the system. As a sanction, the Community Service Order is demonstrably more cost effective and is in theory more beneficial to offenders as well as having considerable public support. By addressing the recommendations as listed above, the Community Service Order could be extended further providing a truly viable alternative to incarceration for a large proportion of less serious offenders. However, at this time, it cannot be substantively declared that non-custodial sanctions are more beneficial until further research has been undertaken and it is critical that this occurs forthwith.

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