

# A Summary of Community Options:

Alternatives to Prosecution,  
Alternatives to Remand and  
Alternatives to Custody

## An Information Pack



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## Contact Details

**This pack was produced by Glasgow Community Justice Authority in partnership with:**

Victim Support Scotland (Glasgow); Crown Office and Procurator Fiscal Services; and One Glasgow Reducing Offending.

A downloadable, full digital version is available at: [www.glasgowcja.org.uk](http://www.glasgowcja.org.uk) and [www.victimsupportsco.org.uk](http://www.victimsupportsco.org.uk)

# 1. Introduction and Useful Terms

## 1.1 Purpose and intended audience

The purpose of this pack is to provide information on alternatives to prosecution, remand and custody available in Scotland. This information pack aims to promote better understanding of prosecution and sentencing options and why certain offences/offenders are dealt with in certain ways. Choices of action can often be complex and have several factors contributing to any decision; this pack does not go into detail but sets these out in broad, general terms.

### This pack may be of use to you if you are:

- A **victim of a crime** and want to understand what has happened to the perpetrator of the crime against you and what this means;
- A **witness attending court** and want to understand what has happened in the case or what will happen when you attend court;
- A **person who has committed a crime** and want to know what might happen and what this means;
- A **practitioner or support worker** from a public or 3<sup>rd</sup> Sector organisation working with victims and witnesses or people involved in offending behaviour and going through the Criminal Justice System;
- A **student**; or
- A **member of the public** with an interest in the Criminal Justice System.

## 1.2 Options available

When a person commits an offence there are various options available to Police, Procurator Fiscal Service, Children's Panel and sentencers to deal with them. The options can be different depending on the age of the person when the offence is committed. Options range from formal warnings and fines to community sentences and imprisonment.

**How and when different options can be used is set out in legislation or guidance from Government. Broadly:**

- Low level minor offences are likely to result in an on the spot formal warning from the Police.
- Less serious (summary crimes), first offences and crimes unlikely to result in a court proceeding or where the Procurator Fiscal takes the view that prosecution is not in the public interest are likely to result in a formal warning or direct measures such as fines, orders to pay compensation to victim(s), order to undertake constructive unpaid community work or a Diversion from Prosecution Scheme.
- More serious crimes and persistent offences are likely to result in a community sentence or custodial sentence.



## 1. Introduction and Useful Terms

### 1.3 Why are different options used – research and evidence

The Scottish Government uses research and evidence to guide policy and legislation around the options to deal with a person who has committed an offence. The body of this evidence<sup>1</sup> recognises the emotional, practical, financial and psychological effects of offending on victims and witnesses and our communities.

Evidence suggests that these same issues are often also faced by people who commit offences. It is common for people who end up in the criminal justice system to have, from a very young age, experienced multiple disadvantages. Some of the difficulties that often underpin offending behaviour are poverty, alcohol and drug addiction, poor family relationships, mental and physical health issues, learning, housing and employment issues.

There is a strong emphasis in Scotland on reducing re-offending. The economic and social costs of crime are estimated at over £5billion per year with re-offending accounting for about £3billion of this.<sup>2</sup> In the main, the body of research and evidence suggests that reducing re-offending better protects our communities, resulting in fewer victims of crime. Robust alternatives to prosecution and community sentences, which address the underlying causes of offending, are known to significantly reduce re-offending rates, by helping people who commit offences, become more responsible and active citizens. Short custodial sentences are known to be significantly less effective in reducing re-offending.

Evidence also tells us that victims and witnesses do acknowledge the importance placed on providing services to people who commit offences to help them face challenges and issues they may have in their life and to reduce the risk of them re-offending. This may mean that the most effective action may not involve a prosecution or custodial sentence.

**Many victims and witnesses say that the most important things are:**

- Seeing the person who committed the offence caught and punished;
- Being treated with respect and recognition from criminal justice agencies;
- Seeing the person rehabilitated to stop offending; and
- To receive support<sup>3</sup>

1. What Works to Reduce Crime – A Summary of the Evidence - [www.gov.scot/Publications/2014/10/2518s](http://www.gov.scot/Publications/2014/10/2518s)

2. Scottish Government (2011) The Economic and Social Cost of Crime – [www.gov.scot/Resources/0038/00389518.ppt](http://www.gov.scot/Resources/0038/00389518.ppt)

3. Scottish Justice Matters (June 2016) – [www.scottishjusticematters.com/wp-content/uploads/Pages-from-SJM\\_4-2\\_Justice-For-Whom-and-What-Community-VSS.pdf](http://www.scottishjusticematters.com/wp-content/uploads/Pages-from-SJM_4-2_Justice-For-Whom-and-What-Community-VSS.pdf)

## 1.4 Useful terms

Some Useful Terms	As Applied in this Pack
<b>Bail</b>	A person must agree to certain conditions before being released from custody by a court.
<b>Children's Hearing (Children's Panel)</b>	A legal meeting arranged to consider and make decisions about children and young people who have committed an offence.
<b>Conviction</b>	A formal declaration by the verdict of a jury or the decision of a judge in a court of law that someone is guilty of a criminal offence.
<b>Custody/Alternatives to custody</b>	When a person is kept in prison or a Police cell. Alternatives to custody are measures that can be used instead of a prison sentence for people who have been convicted of a crime in Court. This means that the individual will serve their sentence in a community setting.
<b>Crime</b>	An action or omission, which constitutes an offence and is punishable by law.
<b>Deferred Sentence</b>	When the final decision about any punishment is put off to another date.
<b>Programmes</b>	For the purpose of this document are courses that include modules designed to challenge and address specific attitudes, behaviours or addictions that may be driving offending behaviour.
<b>Prosecution/Alternatives to prosecution</b>	Charging and trying, through the court system, a case against a person accused of a crime. Alternatives to prosecution are measures that can be imposed directly (a Direct Measure) by the Police or Crown Office and Procurator Fiscal Service, without taking the matter to court.
<b>Public Interest</b>	A number of factors taken into account by prosecutors when making decisions, including the interest of the victim, the accused and the wider community.
<b>Offence</b>	A breach of law or rule – an illegal act.
<b>Offender</b>	Someone who has committed a crime.
<b>Procurator Fiscal</b>	A Lawyer who receives reports about crimes from the Police and others and decides what action is to be taken, including whether to prosecute a person accused of committing a crime.
<b>Remand/Alternatives to Remand</b>	When a person is kept in a Police cell or prison before a court appearance. Alternatives to remand – the majority of prisoners on remand have not been convicted of a criminal offence and are awaiting trial following a not guilty plea. There are some measures that can be granted as an alternative to remand where the suspect will be supervised or allowed to remain in the community with conditions attached, until a trial or sentencing hearing takes place.

## 2. Information for Victims and Witnesses of Crime

## 2. Information for Victims and Witnesses of Crime

## 2.1 Your rights as a victim or witness

If you are a victim of crime you have a number of rights. The Victim's Code for Scotland sets out these rights and how you can exercise them. The document is available at [www.mygov.scot/victim-witness-rights](http://www.mygov.scot/victim-witness-rights)

**The Standards of Service for Victims and Witnesses** is a document that explains what you can expect to happen at each stage of the criminal justice process, the standards of service you can expect and who you can contact for help and advice.

The document is available on the websites of each of the following criminal justice agencies and by contacting any of these agencies:

**Scotland**

[www.scotland.police.uk](http://www.scotland.police.uk)

**The Crown Office & Procurator Fiscal Service**

[www.copfs.gov.uk](http://www.copfs.gov.uk)

**The Scottish Courts and Tribunals Service**

[www.scotcourts.gov.uk](http://www.scotcourts.gov.uk)

**The Scottish Prison Service**

[www.sps.gov.uk](http://www.sps.gov.uk)

**The Parole Board for Scotland**

[www.scottishparoleboard.gov.uk](http://www.scottishparoleboard.gov.uk)



## 2.2 Information on progress of cases

As a victim or witness of crime, you may be provided with information on the progress of the case by Police Scotland and the Crown Office and Procurator Fiscal Service.

For cases involving children, hate crime, domestic abuse, serious violent and sexual crimes and where it is likely that a trial will involve a jury, case information is provided to victims and witnesses by the Crown Office and Procurator Fiscal.

**Victim Information and Advice Service**

[www.crownoffice.gov.uk/contact-us](http://www.crownoffice.gov.uk/contact-us)

**Email**

[EnquiryPoint@copfs.gsi.gov.uk](mailto:EnquiryPoint@copfs.gsi.gov.uk)

**Postal Address**

Crown Office & Procurator Fiscal Service  
25 Chambers Street  
Edinburgh EH1 1LA

**Telephone**

01389 739 557, rates from mobile telephones may vary by provider.

Calls can be made through RNID Typetalk by prefixing the telephone number with **18001**.

Deaf sign language users should text on **07825 280346**, specifying if you would prefer your reply by sms, text or email. This will include, for example, decisions on bail and sentencing.

For all other cases, information may be provided by the Police if you ask for an update directly. Otherwise, you will not generally be told the outcome of a case (e.g. whether an alternative to prosecution was used, the details of decisions on bail, and the final outcome of a case if it goes to court).

To find out what has happened with your case, you can use your right to information.

## 2. Information for Victims and Witnesses of Crime

### 2.3 Right to information – victims and witnesses

You have the right to be given certain information on your case by the criminal justice agencies, and can make a formal application for this information if this has not been provided to you.

#### **Contact Police Scotland for:**

Information about a decision not to proceed with a criminal investigation and any reasons for it. Information about a decision to end a criminal investigation and any reasons for it.

#### **Contact the Crown Office and Procurator Fiscal Service for:**

The reason why a case was not prosecuted.

#### **Contact the Scottish Courts and Tribunal Service for:**

The dates of any court hearings, the final decision of a court in a trial or any appeal arising from a trial and any reasons for it.

Protocols are in place that determine what information you have a right to at what stage and who to contact. You can access these from:

[www.scotcourts.gov.uk/coming-to-court/witnesses](http://www.scotcourts.gov.uk/coming-to-court/witnesses)

### 2.4 Support for victims and witnesses

You have the right to use victim and witness support services if you are a victim of or witness to a crime. The Police must provide victims with a Victim Care Card which gives you basic information on the case and the details of support services. The Police and the Crown Office and Procurator Fiscal Service must let you know of the support available to you and refer you to a support service if you request this.

Victim Support Scotland has a network of local offices [www.victimsupportsco.org.uk](http://www.victimsupportsco.org.uk) and provides emotional support, practical help and essential information to victims, witnesses and others affected by crime. The services provided by Victim Support Scotland are free and confidential.

#### **Helpline**

0345 603 9213

There are a number of other organisations, including specialist services able to provide free and confidential emotional support, practical help and essential information to victims of crime. These will vary depending on which area of Scotland you live in.



## 3. Alternatives to Prosecution, Remand and Custody

3. Alternatives to Prosecution,  
Remand and Custody3.1 Alternatives to  
prosecution

## a) General information

Alternatives to prosecution are used for less serious offences, sometimes referred to as low tariff. Disposals are available to both Police Scotland and Procurator Fiscal as direct measures.

Victims of crime are not automatically told when a Recorded Police Warning or Direct Measure is used. However, the Police should provide updates to the victim on the progress of the case, and both the Police and the Procurator Fiscal's office can be contacted for information. Victims and witnesses have the right to obtain information on the progress of their case. For more information on how to access this right, please see the Part 2 – Information for Victims of Crime.

b) Police Direct Measure –  
Recorded Police Warning

## What is a Recorded Police Warning?

Recorded Police Warnings are on the spot formal warnings, issued by the Police.

## Main features

- Age 16+
- Minor offences
- Immediate on the spot
- Recorded for a period of 2 years by the Scottish Criminal Records Office
- Does not count as a conviction

When is a Recorded Police  
Warning used?

There are often cases where incidents could be resolved quickly, without the need to submit a formal report to the Procurator Fiscal – these are crimes that would be unlikely to result in court proceedings. The circumstances of each incident are fully assessed by Police Officers when deciding on whether to issue a Recorded Warning or take another course of action.

Why are Recorded Police  
Warnings used?

To provide a more proportionate, timely disposal for low level offences.

Recorded Police Warnings:

- Significantly shorten the length of time that it can take for the same disposal to be achieved;
- Reduce the volume of formal reports in the criminal justice system; and
- Give Police Officers the ability to exercise their professional discretion on the spot.

c) Procurator Fiscal –  
Direct Measures

## i. General information

Alternatives to prosecution are used for some less serious cases. The Fiscal may take the view that it is in the public interest to take action, however, may not consider prosecution (taking the case to court) to be the most appropriate course of action. The Fiscal has a number of direct measures available. The accused may be:

- Given a Fiscal Warning;
- Offered the option of paying a fine, compensation or a combination of both;
- Offered a Fiscal Work Order; or
- Offered a chance of referral for specialist support or treatment – Diversion from Prosecution Scheme.

In these cases, the accused will not have a criminal conviction recorded against their name, and courts are freed up to spend time dealing with more serious cases.

## ii. Fiscal Warning

## What is a Fiscal Warning?

The Procurator Fiscal may decide to give the accused either a written or personal warning.

## Main features

- Age 16+
- Minor offences
- Once issued, the accused cannot be prosecuted for that offence
- Does not count as a conviction

iii. Fiscal Fines and Compensation  
OrdersWhat is a Fiscal Fine and  
Compensation Order?

A Fiscal Fine requires the accused to pay a sum of money. The Procurator Fiscal can also issue a Compensation order requiring the accused to pay compensation to someone who was affected by the alleged offence. A combined offer can also be made, which includes a fine and compensation. Where both a fine and compensation are offered the whole offer needs to be accepted.

Action will be taken to enforce the fine if it is not paid.

Where a fixed penalty offer or compensation offer has been accepted, the Procurator Fiscal, if asked, may disclose that the case has been dealt with by an alternative to prosecution to the victim.

## Main features

- Age 16+
- Less serious offences
- Dealt with outside of the Court
- If accepted the accused cannot subsequently be prosecuted for the offence
- Does not count as a conviction

When are Fiscal Fines and  
Compensation Orders Used?

In some less serious cases, where the Procurator Fiscal may consider that it is in the public interest to take action but may not consider prosecution to be the most appropriate course of action. Each case is assessed individually with consideration given to:

- The seriousness of the offence;
- The circumstances of the offence; and
- Whether the person has the financial means to pay.



### 3. Alternatives to Prosecution, Remand and Custody

#### Why are Fiscal Fines & Compensation Orders used?

Fiscal Fines and Compensation Orders:

- Deal quickly and simply with less serious offences;
- Provide speedy and appropriate resolution of cases; and
- Provide a mechanism whereby people can make appropriate and fair reparation, deterring further offending.

#### iv. Fiscal Work Order

##### What is a Fiscal Work Order?

A Fiscal Work Order is a requirement for a person to pay back to the community in which they have caused harm through constructive community work activities.

The individual will be required to carry out between 10 and 50 hours over a maximum of a six month period, or, to attend a programme aimed at tackling the reason for their offending behaviour.

Local Criminal Justice Social Work Services are responsible for supervising Fiscal Work Orders.

##### Main features

- Age 16+
- Less serious offences
- Where harm to the community such as vandalism has occurred
- Dealt with outside of the Court
- Participation is voluntary
- If accepted the accused cannot subsequently be prosecuted for the offence providing that they complete the Order
- Does not count as a conviction

#### When are Fiscal Work Orders used?

Fiscal Work Orders are often used in cases when: a minor offence that has caused harm to a community, such as vandalism has been committed; a first offence has been committed; the person is dependent on others; or the person is unable to pay fines. These cases could technically be prosecuted, but the Procurator Fiscal may consider that there is 'no overriding public interest' in taking the case to court.

The accused must:

- Accept the details of the charge against them; and
- Opt-in (the Order must be accepted by the offender).

Each case is assessed individually with consideration given to:

- The seriousness of the offence;
- The circumstances of the offence;
- Whether the person has the financial means to pay for damage caused; and
- Whether the community would benefit from payback.

#### Why are Fiscal Work Order used?

Fiscal Work Orders:

- Deal quickly and simply with less serious offenders;
- Provide victims and communities with speedy and appropriate resolution of cases; and
- Provide community benefit through supporting local unpaid work initiatives.

#### v. Diversion from Prosecution Scheme

##### What is a Diversion from Prosecution Scheme?

Diversion from Prosecution provides an option for the Procurator Fiscal to deal with someone accused of low level offences outwith the court system. The person will be required to work with a Criminal Justice Social Worker or other agency to address the problem areas of their lives that are underlying or contributing to their offending behaviour. In such cases, the person will receive appropriate support and the opportunity to avoid a potential criminal conviction.

The accused must:

- Broadly accept the details of the charge against them;
- Agree that there are problem areas in their life; and
- Agree to work with Social Work and other agencies to address these difficulties.

If the accused does not agree with the above, the Procurator Fiscal may prosecute the case in the normal way.

##### Main features

- Age 16 and 17 year olds+
- Less serious offences
- Dealt with outside of the Court
- Participation is voluntary
- Does not count as a conviction
- Failure to co-operate may lead to the case being prosecuted

##### When is a Diversion from Prosecution Scheme used?

There are often cases when a minor offence has been committed, where it could technically be prosecuted, but where the Procurator Fiscal may consider that there is 'no overriding public interest' in taking the case to court.

Each case is assessed individually with consideration given to the:

- Seriousness of the offence;
- Circumstances of the offence; and
- The person's attitude (the person may choose to opt-out i.e. go to court)

##### Why is a Diversion from Prosecution Scheme used?

Diversion from Prosecution aims to address the underlying causes of offending behaviour through Social Work and other interventions. It also aims to prevent people entering into the formal criminal justice system too early. Evidence suggests that the earlier people enter the criminal justice system, the more likely they will be pushed towards more serious offending.

### 3. Alternatives to Prosecution, Remand and Custody

## 3.2 Alternatives to remand

### a) Bail

#### What is bail?

Bail is the temporary release of an accused person awaiting trial. The accused person may be granted bail when the judge has been persuaded by their lawyer that they can be trusted to adhere to certain conditions. This is an alternative to being kept in prison during the course of information being gathered about the case in advance of a trial – this can often be a lengthy process.

#### Main features

- Dealt with by the Court
- Is not a conviction
- Breach of bail conditions is a criminal offence

#### i. Standard Bail Conditions

There are Standard Bail Conditions that will always be imposed. These are that the accused:

- Must attend court every time their case is called;
- Must not engage in any criminal behaviour whilst on bail – if this happens, the nature of this second offence will be considered to be more serious by the court – this is described as being an 'aggravation';
- Must not interfere with, threaten or intimidate witnesses or any other party involved in the case (this includes for example, any co-accused person);
- Must not obstruct the course of justice, for example, dispose of items which may be relevant to the case; and
- Must be available to assist with the gathering of information relevant to the case.

#### ii. Additional Bail Conditions

In addition to the standard bail conditions, sentencers can impose extra bail conditions. The sentencer is given wide discretion in relation to this aspect of bail. This discretion is only limited by what individual accused, judges and prosecutors will accept; and the resources available to enforce the condition. Common additional Bail Conditions include:

- **Bail Accommodation** – the accused is required to reside at a certain supervised address or premises whilst on bail (usually a bail hostel).
- **Bail Curfew** – the accused is required to be present in his or her place of residence during certain times of the day and present themselves to police officers should they visit the address. A common time for such a curfew is from 7pm-7am.
- **Attendance at Police Stations** – the accused is required to regularly attend a particular Police Station, typically on a daily or weekly basis. The accused will usually be required to sign a register to provide evidence of attending.
- **Prohibition** – Forbids the accused from entering particular areas or approaching certain people.

**Breach of Bail conditions is highly likely to result in an accused being remanded in custody for the original offence and being prosecuted for the breach.**

### b) Bail Supervision Schemes

#### What is a Bail Supervision Scheme?

Supervised Bail Schemes are designed to reduce the risk of offending whilst on bail. These cases are supervised by Social Work or Third Sector (non-governmental and non-profit making) organisations. Supervision will include regular appointments with the Bail Supervisor (usually 2-3 times per week), until they are removed by the Sheriff – usually following trial.

#### Main features

- Age 16+
- Dealt with by the Court
- Is not a conviction
- Intensive level of supervision by Social Work or other responsible organisation appointed
- Aim to reduce the risk of offending whilst on bail
- Participation is voluntary
- Breach of bail conditions is a criminal offence

#### When is Supervised Bail used?

Bail Supervision is primarily used for borderline cases where the accused is not considered to pose a danger to members of the public and there is no real concern that the defendant will not show up for a court hearing. It is also used for certain vulnerable groups, for example, those with mental health problems, single parents, drug or alcohol addiction issues, or young people aged between 16 and 21, who may suffer extreme difficulties if remanded to custody. The Court makes the final decision as to whether Supervised Bail will be granted. Referrals can be made by Sheriffs, Procurator Fiscals, Defence Agents and Social Workers.

The accused must:

- Agree to work with Social Work and other agencies to meet the bail conditions which can include undertaking a programme to address the underlying drivers of their offending behaviour.

Each case is assessed individually with consideration given to the:

- Seriousness of the offence; and
- Circumstances of the offence

### 3. Alternatives to Prosecution, Remand and Custody

#### Why is Supervised Bail used?

A significant number of accused who are remanded to custody do not go on to receive a jail sentence. The service enables people to remain in the community, continue with their employment (where relevant) and reduces the risk of further offending through supervision, monitoring and support to address life issues. At a system level it aims to reduce the prison population. Supervised Bail:

- Prevents unnecessary custodial remands whilst people are awaiting trial;
- Reduces the risk of re-offending whilst on Bail;
- Reduces the prison population and the costs associated with custody.

### 3.3 Alternatives to custody

#### a) Structured Deferred Sentence

##### What is a Structured Deferred Sentence?

When a person has been found guilty of a crime, a Structured Deferred Sentence gives sentencers an option to delay the final decision about any punishment to another date (usually 3 or 6 months). Social Work intervention will be provided to the person prior to final sentencing. It is an opportunity for the person to prove to the Court that they can stay out of trouble and are willing to make positive changes to reduce their risk of re-offending.

A person's progress following a period of Structured Deferred Sentence will be taken into consideration by the Court in the final sentencing decision.

##### Main features

- Dealt with by the Court
- Targeted at low risk offenders
- Individual already convicted (not used for serious, violent or sex offences)
- Aimed at individuals with high social needs
- Delays final decision on sentencing (3-6 months)

##### When are Structured Deferred Sentences used?

Structured Deferred Sentences are primarily aimed at people with underlying problems such as drug or alcohol dependency, mental health or learning difficulties, or unemployment. It is not used for serious, violent or sex offenders. Each case is assessed individually with consideration given to:

- Seriousness of the offence;
- Circumstances of the offence; and
- Underlying problems which may be contributing to offending behaviour.

##### Why are Structured Deferred Sentences used?

Structured Deferred Sentences provide an opportunity to tackle underlying reasons for offending behaviour. Structured Deferred Sentences are designed to:

- Reduce or restrict the frequency or seriousness of offending behaviour;
- Avoid premature or unnecessarily intensive periods of supervision in the community; and
- Withhold people, wherever and whenever appropriate, from other, less appropriate, community disposals/custody.

#### b) Community Payback Order

##### What is a Community Payback Order?

A Community Payback Order is a sentence served in the community rather than prison by a person convicted of a crime in a court. Community Payback Orders are designed to ensure that those who commit offences pay their dues to the communities that they have harmed. Firstly by requiring the person to make amends, often in the form of unpaid work and other activity, and secondly by requiring them to address any underlying problems that may be fuelling crime through imposing one or more of nine provisions or requirements available to sentencers.

##### Main features

- There is no minimum age for a CPO except where unpaid work and other activity requirement is made. In these circumstances it can only be imposed on a person aged 16 and above.
- Low to medium level offences
- Dealt with by the Court
- Is a conviction
- Non-compliance (breach) is addressed rigorously
- Continued breach may result in a custodial sentence

### 3. Alternatives to Prosecution, Remand and Custody

#### Requirements available to sentencers

##### 1. Unpaid work & other activity

The Court will require the person to undertake a form of practical work as well as other activity that promotes desistance from offending. The duration of the work can be anywhere between 20 and 300 hours, and the work will have to be completed within a designated timeframe.

##### 2. Alcohol treatment

The Court requires the person to undertake treatment where there is an alcohol dependency identified as contributing to offending behaviour.

##### 3. Compensation

The Court requires the person to pay a sum of money to the victim(s) of their crime for damage, loss or personal injury.

##### 4. Conduct

The Court requires the person to do, or refrain from doing certain actions.

##### 5. Drug treatment

The Court requires the person to undertake treatment where drug dependency is identified as contributing to offending behaviour.

##### 6. Mental health treatment

The Court requires the person to undertake treatment (including care and support) where a diagnosed mental health condition and/or learning disability has been identified as contributing to offending behaviour.

##### 7. Supervision

The Court requires the person to attend appointments with a Criminal Justice Social Work Case Manager for a specified period of time.

##### 8. Programme

The Court requires the person to undertake a course or other planned set of activities, over a period of time.

##### 9. Residence

The Court requires the person to live at a certain address to reduce the likelihood of re-offending.

Breach (failure to comply) of a Community Payback Order, including individual requirements imposed by the sentencer, can lead to the person having a prison sentence imposed.

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.

#### When are Community Payback Orders used?

Community Payback Orders are used for low to medium level offences. Since 2011 there has been a 'presumption against' short prison sentences of 3 months or less, meaning that sentencers are still able to impose a sentence for low level offences but there is an expectation that people who commit offences will instead be sent out to do unpaid work.

#### Why are Community Payback Orders used?

Bringing together the options for judges in this manner provides scope for courts to punish individuals in a way which also addresses the areas of their lives which need to change. There is strong evidence to suggest that short prison sentences do not provide enough time to address the underlying causes of offending behaviour, known to reduce re-offending rates. Community Payback has far better results when dealing with low level offenders who commit crimes that cause havoc, disturbance, upset and fear in communities. For many, the punishment could be a short prison sentence. But if the aim is to punish and prevent repeated re-offending, the evidence shows that prison is not working for these types of offenders.

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

##### What is a Restriction of Liberty Order?

A restriction of Liberty Order restricts an individual to a specified place (normally a home address) for up to 12 hours per day and/or from a specified place for up to 24 hours (for example, a town centre where the majority of their offending is taking place). These can be imposed for periods of up to one year. People subject to a Restriction of Liberty Order will wear an electronic monitoring device or 'tag' to monitor compliance with the order and be supervised by Criminal Justice Social Work Services.

##### Main features

- Higher level offences
- Dealt with by the Court
- Is a conviction
- Supervised by Social Work
- Breach can result in a custodial sentence

##### When is a Restriction of Liberty Order used?

A Restriction of Liberty Order is a Community Sentence imposed by the court for higher level offences. It is used by the court as an option in cases where they might otherwise be thinking of a prison sentence or another community penalty that would impose substantial demands on the person.

### 3. Alternatives to Prosecution, Remand and Custody

#### Why are Restriction of Liberty Orders used?

Restriction of Liberty Orders provide an option for punishment whilst addressing the areas of a person's life that needs to change to prevent re-offending and further harm to victims of crime and communities.

Research shows that electronic monitoring works best when accompanied by a wider programme of supervision and support, rather than being used as a stand-alone measure.

#### d) Drug Treatment and Testing Orders

##### What is a Drug Treatment and Testing Order?

A Drug Treatment and Testing Orders (usually referred to as DTTO) is a direct alternative to custody for serious drug misusers who commit crime to fund further drug misuse and who might otherwise have received a custodial sentence. The Order contains features unique to this community disposal, including a requirement for regular reviews of progress by the court and a requirement that the person consent to frequent random drug tests throughout the lifetime of the Order.

##### Main features

- Dealt with by the Court
- Is a conviction
- Aimed at people with an extensive offending history linked to drug misuse
- Intensive supervision by Social Work and Addiction Services
- Regular drug testing
- Monthly Court reviews
- Breach may result in a custodial sentence

##### When is a Drug Treatment and Testing Order used ?

Drug Treatment and Testing Orders are used when an individual's offending is assessed as directly resulting from their complex and deeply entrenched drug-misuse, for example, people who steal to fund their habit.

**Serious drug dealers will continue to receive custodial sentences.**

#### Why are Drug Treatment and Testing Orders used?

People with drug problems often commit crime in order to be able to finance their addiction. Evidence from research suggests that getting drug users into the appropriate treatment and support service to promote recovery from drug addiction will better reduce drug-related crime and re-offending and result in fewer victims of crime.

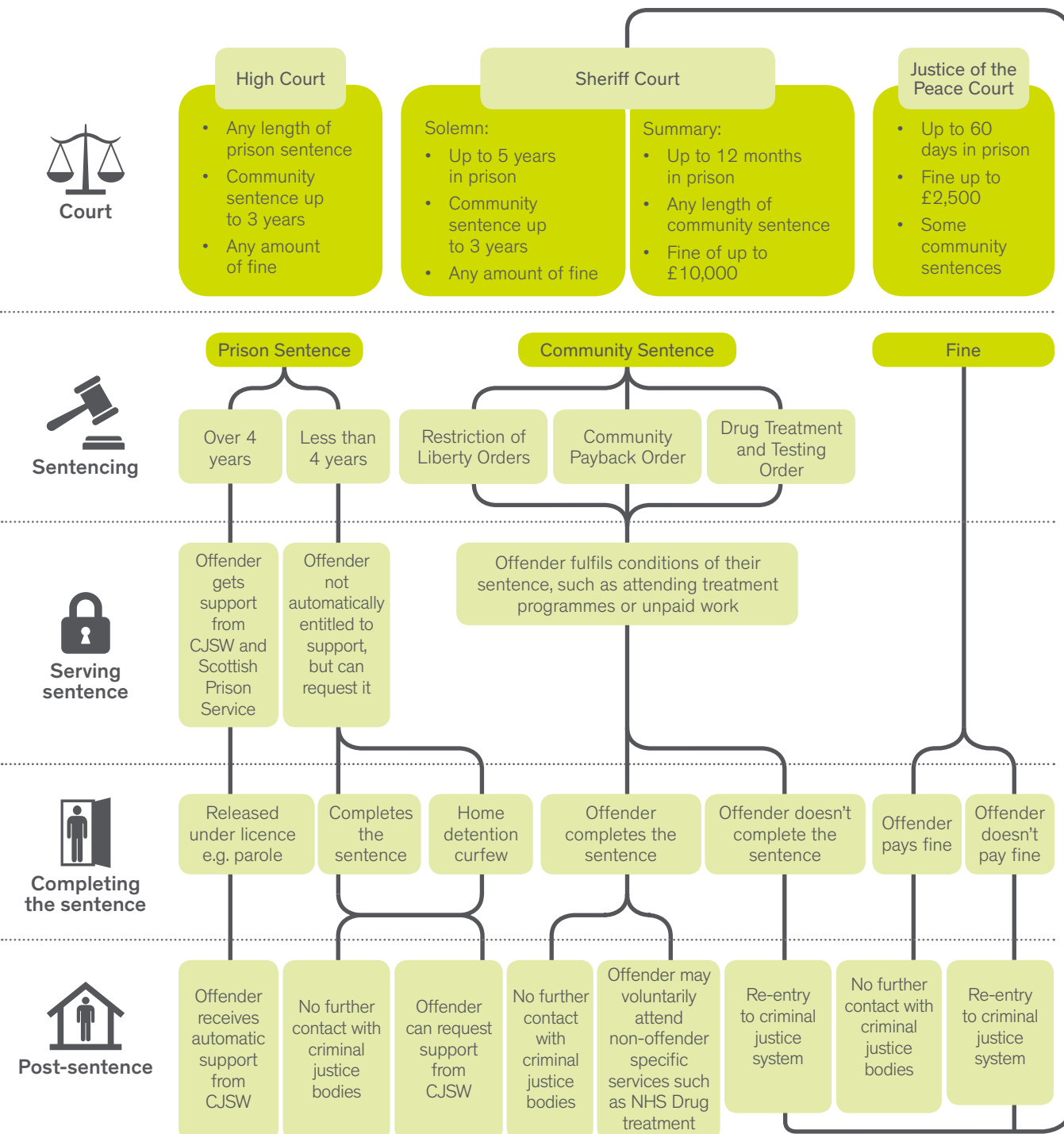


3. Alternatives to Prosecution, Remand and Custody

3.4 Sentencing Options and Offender Pathway Visual

Sentencing options and offender pathways

There is a range of options available to courts which have different consequences for the offender



## 4. Young People who Commit Offences

## 4. Young People who Commit Offences

## 4.1 Introduction

The age of criminal responsibility in Scotland is 8 and the age for criminal prosecution is 12.

In Scotland there are different criminal procedure rules for young people accused or found guilty of an offence. Those aged under 16 years are treated differently than those aged 16-17. Broadly:

- Those under 16 as well as 16 and 17 year olds subject to a Compulsory Supervision Order<sup>1</sup> will be reported to the Scottish Children's Reporter Administration and be dealt with through the Children's Hearing System. However, if an offence is sufficiently serious, the Crown Office and Procurator Fiscal Service will instigate criminal proceedings against accused aged between 12 and 15.
- 16 and 17 year olds not subject to a Compulsory Supervision Order will be dealt with through the Crown Office and Procurator Fiscal and Court Service.

A Whole System Approach<sup>2</sup> to dealing with young people involved in offending behaviour is embedded in Scotland.

The Whole System Approach focusses on three main strands:

- **Early and Effective Intervention** – aims to reduce referrals to the Children's Reporter.
- **Diversion from Prosecution** – aims to keep young people away from criminal justice processes.
- **Re-integration and Transition** – supports young people in secure care or custody in planning for their re-integration into the community.

Evidence and experience tells us that this integrated, holistic approach is required – one which tackles deeds whilst taking account of wider needs.

***“We know that, as far as possible children and young people should be kept out of the criminal justice system. Where offending does take place, effective and timely interventions are needed to address that behaviour and its causes.”<sup>3</sup>***



1. A compulsory supervision order is a legal document setting out specific measures that say where the young person must live or other conditions which must be followed.

2. Scottish Government's Whole System Approach aims, wherever possible, to prevent unnecessary use of custody and secure accommodation for young people who commit offences

3. Preventing Offending – Getting it Right for Children & Young People 2015 [www.gov.scot/Resource/0047/00479251.pdf](http://www.gov.scot/Resource/0047/00479251.pdf)



## 4. Young People who Commit Offences

### 4.2 Alternatives to prosecution

#### a) General information – Under 16s as well as 16 and 17 year olds subject to a Compulsory Supervision Order

Offences committed by those aged 17 and under can be reported to the Scottish Children's Reporter Administration (SCRA) by the Police on offence related grounds. The Children's Reporter is the person who will decide if a child or young person needs to be referred to a Children's Hearing. Children's Reporters are trained professionals whose job it is to decide whether there are legal grounds (legal reasons) and whether a Compulsory Supervision Order is necessary. If so, the Children's Reporter will arrange a Hearing. More information on the Children's Hearing System can be found at:

[www.chscotland.gov.uk/about-chs/](http://www.chscotland.gov.uk/about-chs/)

Children's Hearings Scotland  
Area 2/1/1 Ladywell House  
Ladywell Road  
Edinburgh  
EH12 7TB

**Telephone**  
0131 244 3696

#### What is a Children's Hearing?

A Children's Hearing or Children's Panel is a legal meeting arranged to consider and make decisions about children and young people who are having problems in their lives including those who have committed offences. The Panel listens to the young person's circumstances and then decides whether compulsory measures are needed and, if so, what they should be.

The hearing can make a number of different decisions including:

- Imposing a Compulsory Supervision Order.
- Sending the young person to Secure Care/Secure Accommodation (where specific criteria are met).

#### b) Compulsory Supervision Order

##### What is a Compulsory Supervision Order?

A Compulsory Supervision Order is a legal document which sets out measures agreed by a Children's Panel. The Order makes the Local Authority (referred to as the implementation authority) responsible for implementing the order and ensuring that the young person is getting the help that they need.

##### When is a Compulsory Supervision Order used?

There are often cases where a Children's Panel may feel that certain compulsory measures of supervision and interventions are required to address certain behaviours, including offending.

##### Why are Compulsory Supervision Orders used?

To ensure that the young person gets the help that they need to address their behaviour and its underlying causes.



## 4. Young People who Commit Offences

### c) Secure Care/Secure Accommodation

#### What is Secure Care/Secure Accommodation?

Secure Care/Accommodation is a form of residential care that restricts the liberty (i.e. they cannot leave) of young people under the age of 18 placed in their care.

#### When is Secure Care/Secure Accommodation used?

For a very small number of children whose needs and risks, for a particular period in their lives, can only be managed in the controlled settings of secure care. This may be because:

- The young person has a history of running away from home and it seems likely that they will do it again; or
- The young person could hurt themselves or someone else.

#### Why is Secure Care/Secure Accommodation used?

Some young people are deemed to be a significant risk to themselves or others in the community.

### d) Early and Effective Intervention

#### What is Early and Effective Intervention?

Early and Effective Intervention (EEI) is a way of working with young people of 8-17 years who have committed minor offences. It is an intervention response to offence charges that may otherwise have resulted in a referral to the Children's Reporter. The action then taken might include referring the young person to an agency for support, providing direct interventions to address their behaviour, or co-ordinating a multi-agency discussion to make sure the best outcome is delivered.

#### When is Early and Effective Intervention used?

Early and Effective Intervention is a voluntary process used for less serious offences. It is used when the young person agrees to participate in whichever form of intervention is identified to meet their needs and address their offending behaviour. **Participation is not an admission of guilt.** It will be used when the Police have gathered sufficient evidence to proceed with a case. It is the responsibility of Police Scotland to identify potentially suitable cases, generally based on the seriousness of the offence.

#### Why is Early and Effective Intervention used?

Early and Effective Intervention's purpose is to divert young people, who have committed relatively minor offences away from statutory measures and respond to the charge in a timely manner. Evidence suggests that unnecessary involvement in formal systems such as the Children's Hearings System and Social Work can result in continued anti-social and offending behaviour through labelling and stigmatisation<sup>4</sup>.





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