

An Empirical Study of Community Service Orders in Ireland

by

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for

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CHAPTER 1

Introduction

Background to Research Project

The Criminal Justice (Community Service) Act, 1983 enables a court to make a community service order (CSO) as an alternative to a sentence of imprisonment or detention in respect of an individual who has been convicted of a criminal offence. A CSO is a court order which requires the offender to do a specified number of hours of unpaid work in the community. This form of non-custodial sanction had been introduced in the 1970s in a number of other jurisdictions including: USA, Canada, New Zealand, France, Sweden and the United Kingdom largely in response to the rapid escalation in the numbers of offenders being sentenced to imprisonment for relatively short terms. It was generally considered that imprisonment was a very costly and unnecessary form of punishment for these offenders and that it was contributing to recidivism among the offenders concerned. The courts, however, were often constrained by the limited range of penal sanctions available to them. As Ireland began to wrestle with these problems in the early 1980s it looked to the experience of CSOs in England and Wales and further afield when framing its own legislation on the subject.

Although the CSO legislation has been in force in Ireland since 1984 its operation has never been critically assessed on a national basis. Accordingly, in April 1998 the Department of Justice, Equality and Law Reform published an invitation to tender for an evaluation of the operation of the Criminal Justice (Community Service) Act, 1983. The terms of the invitation to tender stipulated that the evaluation should critically assess the operation of the CSO scheme in Ireland today and embrace the following objectives:

- to provide comprehensive data on CSOs including: incidence, duration, nature of work, associated offence, sentencing court, offender profile, factors influencing decision on imposition of CSO, completion rate, recidivism rate, supervision, public response, benefits and costs;

- to assess the factors and procedure applicable to the court's decision on the CSO issue;

- to assess the manner in which a CSO sanction is implemented and supervised;

- to ascertain the extent to which the CSOs are imposed and implemented uniformly in rural and urban areas;

- to assess how, and to what extent, CSOs are diverting offenders away from prison;

- to assess the costs/benefits of CSOs (including factors such as recidivism, comparison with prison, and the community response);

- to make a critical comparison of the operation of the CSO legislation with its operation in other countries (particularly in other member states of the European Union). This will include an assessment of the extent to which Ireland complies with its obligations in this area under Council of Europe recommendations;

to assess the scope for an enhanced role for CSOs within the Irish criminal justice system.

The invitation to tender was quite specific about the scope of the evaluation. A sample of about 250 completed CSO files for individual offenders would be examined in order to produce empirical data on factors such as: offender profile, offence, nature of the CSO, completion, recidivism and supervising employer/community satisfaction. The evaluation would also involve a survey of current criminal cases over a period of one month in the District and Circuit Courts to gather information on the type of cases which attract a CSO and those which do not. Interviews would also be held with officers engaged in the supervision of the CSOs as well as with Department officials to get their perspectives on the operation of the CSO legislation and proposals for improvement. Finally, there would also be a literature review on CSOs and community sanctions generally in Ireland and other EU member states.

Dr Dermot Walsh, chair of law and director of the Centre for Criminal Justice at the University of Limerick,¹ tendered successfully for the research project. The contract was awarded in June 1998 and the project got under way in September 1998. The research was carried out in the Centre for Criminal Justice by Dr Walsh with the assistance of Paul Sexton, research assistant in the Centre for Criminal Justice, and under the supervision of an advisory committee consisting of: Martin Tansey, principal probation and welfare officer; Vivian Geiran, senior probation and welfare officer; Mary O'Halloran, judge of the District Court; John O'Dwyer, Department of Justice, Equality and Law Reform; and Kieran O'Dwyer, director of the Garda Research Unit.

Methodology

Introduction

The methodology used for the purpose of the research breaks down broadly into four parts: 1. a survey of probation and welfare files on offenders in respect of whom a CSO had been made (the files survey); 2. a court survey; 3. interviews with probation officers; and 4. a comparative review of CSOs in other jurisdictions. The project benefited from the advice and assistance of the advisory committee which met on seven occasions at the University of Limerick. The bibliography was provided substantially by Dr Shane Kilcommins, lecturer in law at Waterford Institute of Technology.

The research also benefited immensely from the cooperation of many probation and welfare officers around the country. In particular, we would like to record our appreciation of those individual officers who, in addition to their normal duties, extracted the relevant data from the probation files on each individual within the scope of the research survey. In effect this amounted to the construction of 269 secondary files, a task which was both time-consuming and tedious. The availability of these secondary files was of immense benefit to the speed and efficiency of the whole research project.

The Files Survey

The files survey covers a national sample of offenders in respect of whom a CSO had been made between 1 July 1996 and 30 June 1997. This period was chosen as it was most likely to provide the most recent CSOs which had actually been completed. The national total of

¹See Appendix IV for further details.

offenders in respect of whom a CSO had been made during this period is 1093. The breakdown across the probation and welfare areas is shown in Table 1 and Figure 1.

Table 1

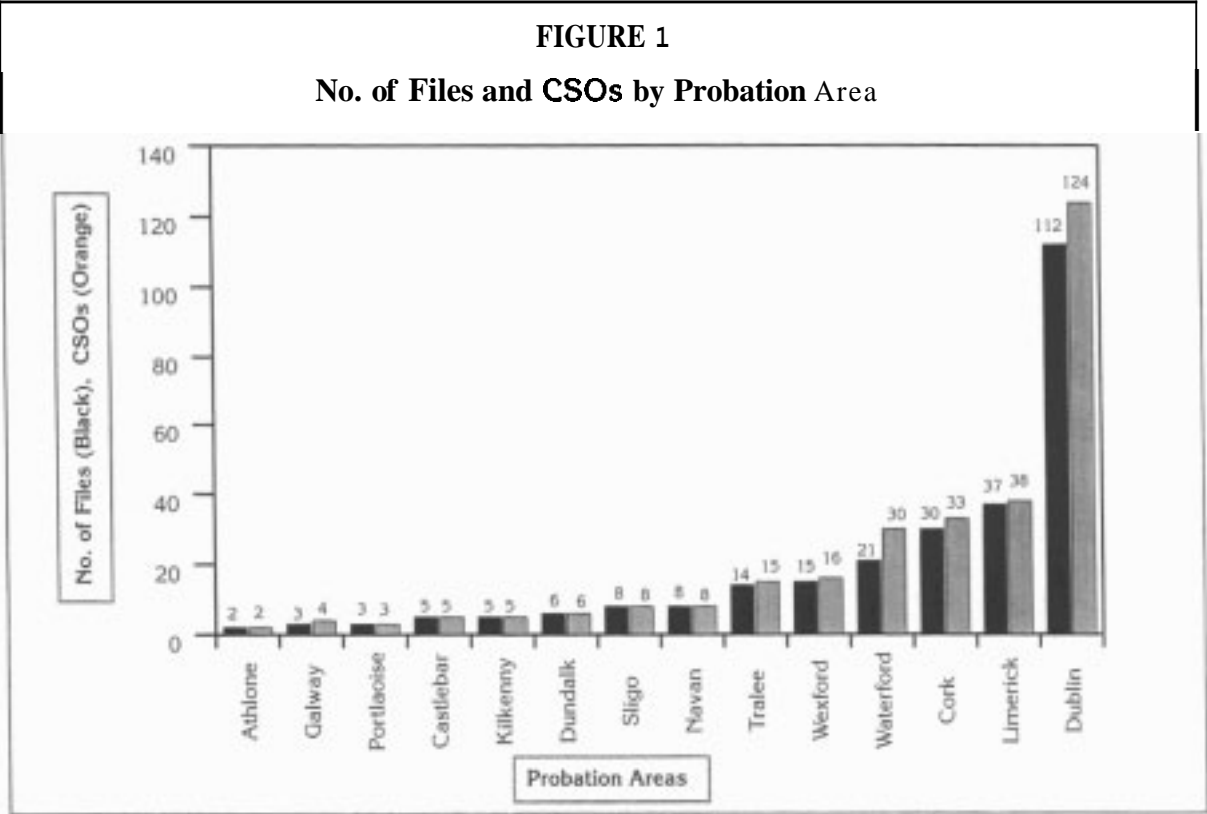
Probation Area	Number of CSO Offenders
Dublin	450
Limerick	150
Cork	124
Waterford	85
Wexford	63
Tralee	57
Navan	34
Sligo	32
Dundalk	27
Castlebar	20
Kilkenny	20
Galway	15
Portlaoise	10
Athlone	6

The probation and welfare service maintains a file on each offender in respect of whom a CSO has been made. It does not open a new file for each occasion on which an offender is served with a CSO. The same file is used and simply updated. This file will also contain a record of all probation orders and supervision by the probation and welfare service in respect of the offender. The research sample was taken from the files of all offenders in respect of whom one or more CSOs had been made during the survey period. The sample was obtained by taking every fourth file from the relevant files in each probation and welfare area. This provided a total sample of 269 files.² In a few of these files the offender in question was served with more than one CSO.³ Accordingly, for some purposes the sample of CSOs (as distinct from offenders) is greater than 269.

Although the files were selected by reference to probation and welfare areas they include details of the court which convicted and sentenced the offenders. This meant that it was also possible to classify each case by court area. This is significant because the court areas are not synonymous with the probation and welfare areas. Accordingly, it was possible to analyse the data from the files sample at three levels: nationally, by probation and welfare area (see Table 1) and by court area (see Figure 1). The fact that the data could be analysed by probation and welfare area and by court area meant that comparisons could be drawn between one part of the country and another, subject to the inevitable limitations posed by the samples in some areas

²See Appendix I for further details on how this sample was obtained.
³Tbid.

being too small for meaningful comparisons. Similarly, it was possible to conduct comparative analysis on a rural/urban basis. To this end the following District Court areas were classified as urban: Dublin Metropolitan Area, Tipperary/Limerick (District Court area 14),⁴ Cork (District Court area 19),⁵ Kilkenny/Waterford (District Court area 22)⁶ and Galway (District Court area 7).⁷ The others were classified as rural. It must be said, of course, that this rural/urban comparison is not perfect as some of the urban areas (Tipperary/Limerick, Kilkenny/Waterford and Galway) incorporate substantial rural components. It was considered, however, that the size of the urban centres within these areas was sufficient to justify their classification as urban for the purposes of the research.

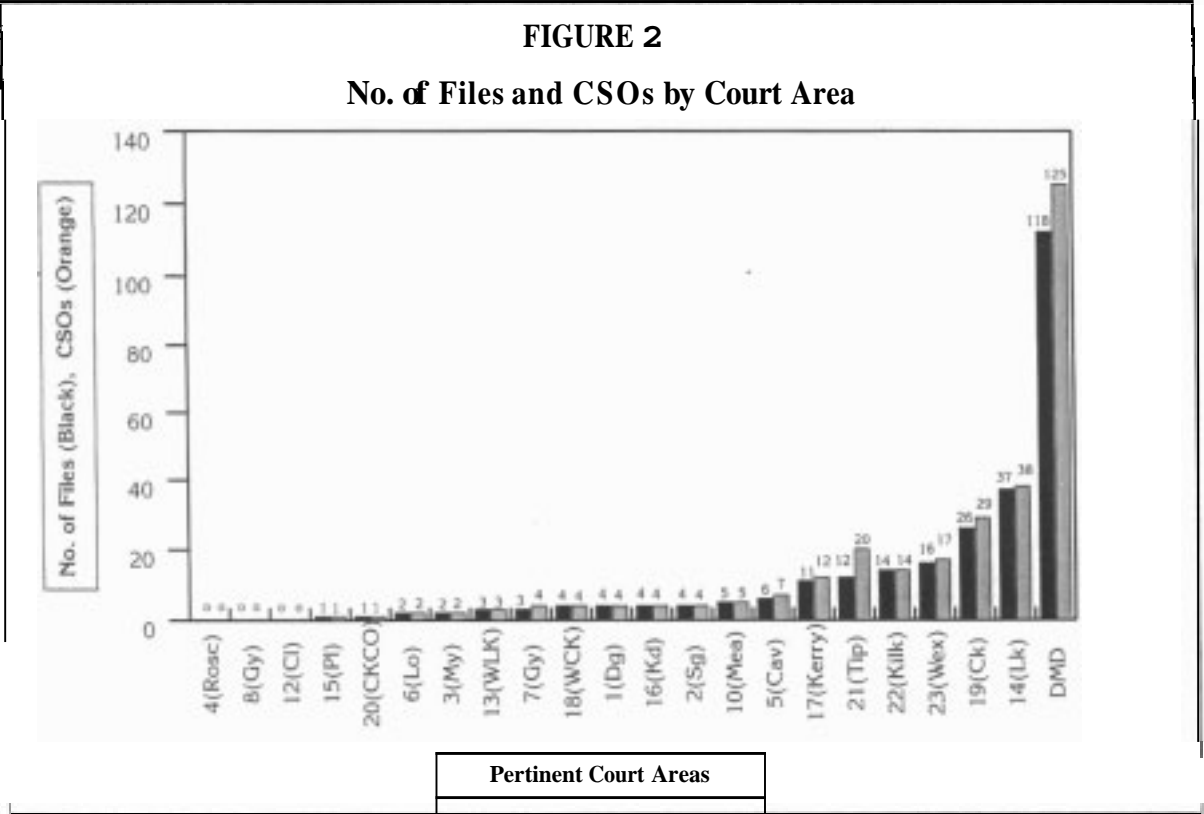


⁴Referred to in the remainder of the report as Limerick. It should be distinguished from District Court area 13 which covers West Limerick and parts of North Kerry and North Cork (referred to in the remainder of the report as County Limerick).

⁵Referred to in the remainder of the report as Cork City. It should be distinguished from District Court area 20 which covers most of the central, eastern and Northern parts of Cork County (referred to in the remainder of the report as Cork County), and District Court area 18 which consists essentially of West Cork (referred to in the remainder of the report as West Cork).

⁶This consists of most of County Kilkenny and all of east County Waterford, including Waterford city.

⁷This includes all of west County Galway and much of central County Galway, including Galway City. It is referred to in the remainder of the report as Galway.



Court Survey

Given the fact that CSO cases arose quite rarely in some court sittings, particularly in rural areas, and only occasionally even in busy court sittings, it was not practicably feasible to conduct a court survey which would produce comparable data to that which could be gained from the files. Nevertheless, it was considered important to survey a few court sittings in rural and urban areas over set periods in order to get a feeling for how CSO cases were actually handled in court. With the assistance of members of the supervisory committee the research team identified District Court sittings to be visited. These were: Limerick City District Court (19 April – 23 April); Tallaght District Court (26 April), Dublin Metropolitan District Court No.45 (27 April), Dublin Metropolitan District Court No.46 (28 April), Dublin Metropolitan District Court at Kilmainham (29 April), Dublin Metropolitan District Court at Dun Laoghaire (7 May), Shanagolden District Court (7 July) and Loughrea District Court (14 July). These court sittings were selected to ensure a mix of rural and urban sittings as well as a mix of court sittings in the Dublin area. Arrangements for visiting the courts and meeting with the probation officers concerned were organised through the research and statistics unit of the probation and welfare service.

Interviews with Probation Officers

Interviews with a selection of probation and welfare officers around the country were conducted primarily in order to access information about the operation of CSOs which would not be available from the files or the court survey.'

'See Appendices I and II for further details of this survey

Comparative Review

One of the objectives of the research was to make a critical comparison of the operation of CSOs in other jurisdictions. Resources did not permit research trips to other jurisdictions for this purpose. Accordingly, the practice in other jurisdictions was surveyed from the available literature.

The Legislation

Policy

The Criminal Justice (Community Service) Act, 1983 makes statutory provision for the use of community service orders. It is supplemented by the Criminal Justice (Community Service) Regulations 1984 and the District Court [Criminal Justice (Community Service) Act, 1983] Rules 1984. The Act was brought into force in December 1984 by the Criminal Justice (Community Service) Act, 1983 (Commencement) Order 1984, and the first CSO was made in February 1985.

The basic policy behind the Act was set out in 1981 in a government white paper entitled Community **Service Orders**. This explains that a CSO is intended essentially as an alternative sanction to a custodial sentence. Instead of sentencing a convicted offender to a term of imprisonment or detention the court can order him or her to do a specified number of hours of unpaid work in the community. Although the order is a sentence in its own right the offender must consent before it can be imposed and the court has to be satisfied that he or she is a suitable person to perform such work. The actual work to be performed is determined by a probation and welfare officer and it is completed under supervision. A failure to comply fully with the terms of the order results in its being revoked and the imposition of the custodial sentence which would otherwise have been imposed.

There are obvious advantages to a punishment which requires the offender to do something positive on behalf of the community as an alternative to being incarcerated in prison for a period of time. The community benefits not just from the positive work done by the offender but also from being spared the expense of keeping him or her in prison. The offender benefits not just because he or she retains his or her freedom but also from the satisfaction of making amends for his or her wrongdoing. In some cases it can result in the offender keeping his or her employment which otherwise would have been lost consequent on his or her imprisonment. The offender's family also benefits from being spared the adverse consequences that typically follow when one of its members, perhaps the primary income source, is imprisoned. The beneficial effects of the order are neatly summed up in the following paragraph from the White Paper:

"Community service orders can be seen from several viewpoints: either as a more positive and less expensive alternative to custodial sentences; as introducing into the penal system an additional dimension which stresses atonement to the community for the offence committed; or as having psychological value in bringing offenders into close contact with those members of the community who are most in need of help and support. To some, it might appear to have a symbolically retributive value. Thus although the court order, which would deprive the offender of his leisure time and require him to do work for the community, would necessarily involve a punitive element. It would also provide an opportunity to the offender to engage in personal service to the community and this might in turn lead to a changed attitude and outlook on his part. A central feature of community service work is

that it would be work which would otherwise be left undone and that it would be of benefit to the community."⁹

The parliamentary debates on the Criminal Justice (Community Service) Bill 1983 shed further light on the policy objectives underlying the CSO. According to the Minister for Justice when introducing the Bill in the Dail the primary objective was to provide courts with a broader range of appropriate sanctions in the criminal process. At that time the primary options available to the courts were imprisonment, fines, suspended sentences or the Probation Act. There were many cases, however, in which the courts felt that the offender should repay society for his or her wrongdoing, even though a sentence of imprisonment or a fine would not have been appropriate.¹⁰ By introducing the option of the offender repaying or repairing his or her debt to society by doing a specified number of hours unpaid work in the community, the courts are given greater scope to hand down a sentence which fits the crime.

Community **service** was intended as a primary punishment which would be available only as a substitute for a sentence of imprisonment or detention. Accordingly, there was no reason in principle why a CSO could not be made in respect of a serious offence, with the exception of offences such as murder which carry a mandatory sentence. It would not, however, be appropriate for offences which did not warrant a sentence of imprisonment or detention. The Minister rejected suggestions that the availability of the CSO should be extended to cases in which a judge would not have imposed a sentence of imprisonment. To acquiesce to this suggestion would permit CSOs to be applied in some cases as a substitute for other punishments such as a fine or a suspended sentence. Equally, the Minister rejected the argument that a probation order or a suspended sentence should be available in conjunction with a CSO. To permit this would, in the Minister's view, be tantamount to double punishment.

The Minister identified a number of benefits which could be expected to flow from the introduction of CSOs." In particular it should promote the rehabilitation of the offender. Instead of being stigmatised with a prison record and corrupted through extended contact with hardened prisoners, the offender would be given an opportunity to pay for his crime by doing something positive for the community. He or she would also be able to continue his or her education or employment and minimise the disruption to his or her family life. The community would benefit from having useful work done. There are also financial savings as the direct and indirect costs of imprisonment would be much higher than community service. It should help to ease the pressure on prison places which was resulting in the unsatisfactory situation of prisoners being released early from prison in order to make room for other prisoners, and new prisoners being turned away at the prison gates because there was no room for them.¹²

Several contributions to the Dail debate on the Bill anticipated that the CSO would be particularly valuable for dealing with young persons and female offenders. The legislation, however, does not seek to restrict it to such offenders. The Minister also rejected suggestions that the minimum age for CSOs should be reduced from sixteen years of age to fifteen years of age. He was reluctant to consider any piecemeal changes to the normal arrangements whereby offenders below the age of sixteen years would be committed to institutions run by the Department of Education instead of being detained in St Patrick's Institution. In addition he felt that it would be

⁹Community Service Orders (Dublin: Stationery Office, 1981) para.5

¹⁰Dail Debates Vol. 341, cols. 13289.

¹¹Ibid. cols. 1331-2.

¹²Ibid. Vol. 342, col. 321.

contrary to the spirit of the legislation which attempted to protect young persons from being required to work at too tender an age.

The Minister also rejected suggestions that the offender's consent should not be a precondition for a CSO. He considered that the inclusion of the consent requirement was necessary to satisfy Ireland's obligations under international law. Equally, he argued that it would be most difficult to operate CSOs successfully if the offender was uncooperative.

The Bill emerged from the Dail largely unchanged from the version originally tabled by the Minister. It also passed through the Seanad unamended.

Jurisdiction of the Courts

The Criminal Justice (Community Service) Act, 1983 provides courts with the power to make a CSO in respect of a convicted offender in certain circumstances. All courts exercising criminal jurisdiction enjoy this power, with the exception of the Special Criminal Court.¹³ It follows that CSOs are not the exclusive preserve of the District Court. They can also be imposed in appropriate cases by the Circuit Court and the Central Criminal Court. It is submitted, however, that neither the Court of Criminal Appeal nor the Supreme Court can impose a CSO even on appeal against severity of sentence from a lower court. These two courts hear appeals on points of law only. They do not conduct a hearing *de novo*. The 1983 Act specifically states that "the court by or before which an offender is convicted" may make a CSO in respect of the offence for which he was convicted instead of dealing with him in any other way. This suggests that the power is available only to a court which has convicted the offender in question. That, of course, raises a doubt about the capacity of the Circuit Court to make a CSO on appeal from the District Court. Presumably, there is no difficulty if the appeal is against conviction as the Circuit Court can deal with such appeals by way of a rehearing of the case. If, however, the appeal is against severity of sentence only, it would appear that the Circuit Court has no jurisdiction to make a CSO.

For those courts which do have jurisdiction to make CSOs there are certain restrictions on the circumstances in which the power may be exercised. First, it is available only in respect of an offender who is over the age of sixteen years and has been convicted of a criminal offence.¹⁴ Secondly, the court can only impose an order in a case if, in its opinion, the appropriate sentence would, but for the Act, have been one of imprisonment or detention. Technically, therefore, the court should not consider a CSO in any case where it would otherwise have imposed a fine or a probation order or any other punishment short of imprisonment or detention. Thirdly, a CSO is not available for an offence for which the sentence is fixed by law. There are, however, very few such offences. The most well-known is murder which carries a mandatory life sentence. Apart from these restrictions the court before which an offender has been convicted has the power to sentence him or her to a CSO as an alternative to a sentence of imprisonment or detention, but only if it is satisfied that the offender is a suitable person to perform work under an order and that suitable arrangement can be made for him or her to perform the work (see later).

¹³The Minister explained the exclusion of the Special Criminal Court rather lamely on the basis that he did not consider it appropriate that a civilian service such as the probation and welfare service should be involved in the supervision of offenders who had been convicted of offences involving illegal organisations, no matter how tenuous the association between the offender and the organisation in any individual case. *Dáil Debates*. Vol. 342, col. 324.

¹⁴Criminal Justice (Community Service) Act. 1983, s. 2.

The Act permits the court, in an appropriate case, to make a CSO in respect of the offender "instead of dealing with him in any other way".¹⁵ The clear implication is that the order cannot be combined with some other mode of punishment such as a term of imprisonment or detention (whether suspended or not), a fine or a probation order. However, the Act does specifically permit the court to make (in addition to the CSO) an order under any other enactment for: (a) the revocation of any licence; (b) the imposition of any disqualification or endorsement; (c) the forfeiture, confiscation, seizure, restitution or disposal of any property, or (d) the payment of compensation, costs or expenses.¹⁶ The fact that these options are specifically retained lends strong support to the argument that the court cannot combine a CSO with other primary punishments such as imprisonment, detention, suspended sentences or fines.

The Length

The Act stipulates that a CSO shall be for not less than 40 hours and not more than 240 hours. Where the offender is convicted of two or more offences the court may apply CSOs in respect of each and direct that they shall run concurrently or consecutively.¹⁷ Similarly, if there is already an order in force in respect of the offender at the time the court imposes a further order, it may direct that the latter shall run either concurrently with or consecutively to the former." In any case where orders run consecutively the aggregate must not exceed 240 hours." Although a CSO is available in any individual case only as a substitute for a prison sentence which the court would have been minded to impose, the Act does not offer any criteria for relating the length of a CSO to the duration of a prison term. For example, the legislation gives no indication of the prison sentence which might be considered as the equivalent of the maximum 240 hour CSO. Similarly, there is no indication of the prison sentence which might be considered to be the equivalent of the minimum 40 hour CSO.

The Work

A CSO is defined by the 1983 Act as an order which requires the offender to perform, in accordance with the terms of the Act, unpaid work for such number of hours as are specified in the order, not being less than 40 nor more than 240 hours." The Act does not specify the nature of the work which would be appropriate under a CSO, apart from the fact that it must be unpaid. Nor does it empower or oblige the court to identify a suitable work project. However, it was acknowledged during the Dail debates on the Bill that the courts would expect their orders to be given full and proper effect. While this does not necessarily require a close connection between the nature of the crime and the work imposed it is understood that it does require that the work project should be sufficiently meaningful to give the courts confidence in the new sanction.*' The Ministerial regulations made pursuant to the Act stipulate that the relevant probation officer must ensure that as far as practicable the work to be performed by the offender is of benefit to the community or to an individual or group of individuals in need.²² While this undoubtedly encompasses a wide range of projects for the benefit of charitable and community groups it is by no means confined to such projects. Indeed, it would appear that the Irish

¹⁵*Ibid.* s. 3(1). A community service order made by the court shall be in Form J in the Schedule of Forms set out in the District Court [Criminal Justice (Community Service) Act, 1983] Rules. 1984.

¹⁶Criminal Justice (Community Service) Act. 1983. s.3(3).

"*Ibid.* s. 5(2).

"*Ibid.* s. 5(3).

"*Ibid.* s. 5(1).

"*Ibid.* s. 3(2).

²¹Dail Debates Vol. 342. col.323. When introducing the Bill in the Seanad the Minister indicated that he would consider it appropriate that an individual convicted of acts of vandalism and given a CSO should be required to repair the damage: *Seanad Debates* Vol. 101, col. 780.

²²Criminal Justice (Community Service) Regulations. 1984, reg. 4(b).

legislation and regulations are much more generous than many of their European counterparts in defining the range of eligible work projects.

Presumably, projects for the benefit of any public or private body or individual are eligible provided that they satisfy the requirement of being for the benefit of the community or of an individual or individuals. There is no specific prohibition on projects organised or run by an individual or individuals with whom the offender is connected. Equally, there is no specific requirement that the work must be of such a nature that it would not otherwise be done. The stipulation that the work must be "unpaid" is ambiguous in this context. It could be interpreted literally to mean that the offender carrying out the work pursuant to a CSO must not be paid for his or her labour. In other words the fact that a free agent could or would be paid for the same work would not necessarily preclude it from being used for community service purposes. A broader interpretation, and one which is probably more in line with the spirit and intendment of the legislation, is that only projects which would not otherwise be done by free agents (because there would not ordinarily be remuneration available for them) are eligible.²³ In other words the offender should be required to perform tasks which would be of benefit to the offender's local community and which would otherwise go undone.²⁴ This might take the form of helping out at an old people's home or recreational centre, working with people with disabilities or helping out in a youth club. It could also involve labouring work in the form of renovating community buildings or improving the environment. Examples given by the Minister in the course of the Dail Debates on the Bill included helping the elderly and people with disabilities with some of the problems which they have to face in dealing with their incapacities, and helping voluntary and statutory organisations which provide assistance for these people.²⁵

The Act does not impose a specific obligation on a probation and welfare officer, or any other person or body, to find or provide a suitable work project for an offender sentenced to community service. However, it does stipulate that a court cannot make a CSO in respect of an individual offender unless it is satisfied, *inter alia*, by a report from a probation and welfare officer that the offender is a suitable person to perform appropriate work and that arrangements can be made for him or her to perform that work. It is implicit in this that the probation and welfare officer must be satisfied at the time of sentencing that there is a suitable work project and that appropriate arrangements can be made for the offender to perform that work.

The court does not determine the exact nature and location of the work, nor does it need to know such matters. The implication is that these are for the probation and welfare officer to determine, within the limits of the legislation. Indeed, the 1983 Act specifically obliges an offender in respect of whom a CSO has been made to report to the relevant probation and welfare officer from time to time as directed by that officer.²⁶ The offender must perform the community service work at such times as he or she may be directed by the officer and he or she must notify the officer of any change of address. It can be expected, therefore, that once a CSO has been imposed on an offender, the probation and welfare officer concerned will select a suitable project and make the necessary arrangements for the offender to perform the work. It is worth noting, however, that there is nothing in the legislation which precludes the probation officer from adopting a suitable project which has been suggested by the offender. However, the

²³See *Seanad Debates* Vol. 101, col. 780.

²⁴In the course of the Dail Debates on the 1983 Bill the Minister described it as work of a kind that will benefit the community but that people cannot be readily got to do in the ordinary way for pay; *Dail Debates* Vol. 341, col. 1332.

²⁵*Dail Debates* Vol. 341, col. 1332

²⁶*Criminal Justice (Community Service) Act. 1983, s. 7(1)*. The offender must obey all instructions given to him under the Act by or on behalf of the relevant probation officer; *Criminal Justice (Community Service) Regulations. 1984, reg. 6*.

regulations made pursuant to the Act require the relevant probation officer to be satisfied prior to the commencement of the work under a CSO for any body of persons, that the body is adequately insured against liability in respect of injury, loss or damage caused to or by the offender in performing the work.²⁷ This requirement is not specifically extended to work performed under a CSO for the benefit of an individual.

The Offender's Suitability

Before a court can impose a CSO on an offender it must be satisfied, *inter alia*, that he or she is a suitable person to perform work under an order.²⁸ In making this determination the court must consider the offender's circumstances and a report about him or her by a probation and welfare officer. If necessary, it may hear evidence from the officer. The legislation does not define what is meant by the "offender's circumstances". It must follow that the court can take into account any information which it may consider relevant to the suitability of the offender to do work under a CSO. Depending on the facts of any individual case, therefore, this may include matters such as the offender's: age, mental and physical health, level of education, life skills, employment situation and family circumstances. Also relevant presumably is the whole issue of whether the offender poses a potential threat to the person or property of those with whom he or she may come into contact in the course of his or her work project. Indeed, in the course of the Dail Debates on the Bill the Minister specifically cited the requirement that the judge must satisfy himself or herself about the offender's suitability as a safeguard which should provide reassurance to those who were apprehensive about offenders working with the elderly or people with disabilities.²⁹

The court may find the relevant information in the report submitted by the probation and welfare officer. Equally, however, it would appear that it may be gathered from hearing oral evidence from the officer or, indeed, from any other source including evidence which has come to light during the trial and sentencing proceedings.

The Community Service Report

While the submission of a written report from a probation and welfare officer would appear to be a mandatory precondition to the imposition of a CSO, the legislation does not prescribe what form the report should take. It is implied, however, that it should address the suitability of the offender to do work under a CSO and whether arrangements can be made for such work to be carried out. This leaves considerable discretion to the probation officer with respect to the level of detail which he or she ought to include in the report. If necessary, a very sparse report could be supplemented by oral evidence from the officer. By the same token there is nothing to preclude the submission of a probation report on the offender supplemented, where necessary, by oral evidence on the suitability of the offender and the availability of a suitable work project.

Consent

There is a risk that community service could be perceived as a form of punishment by compulsory labour which could be in breach of a number of international human rights instruments to which Ireland is a party including, in particular, the European Convention on the Protection of Human Rights and Fundamental Freedoms. Accordingly, the court's power to

²⁷Criminal Justice (Community Service) Regulations. 1984, reg. 4(a).

²⁸Criminal Justice (Community Service) Act, 1983, s. 4(1)(a).

²⁹Dáil Debates Vol. 341, col. 1333.

apply a CSO is exercisable only where the offender in question gives his or her consent.” The legislation does not prescribe exactly how or when the offender's consent should be given. It merely stipulates that the court shall not make a CSO unless the offender has consented. It can be assumed, however, that only an informed consent will satisfy this legislative requirement. It can be argued, therefore, that the offender would have to know at least the general nature of his or her obligations under a CSO, including the number of hours which he or she will have to work, the general nature and location of that work, the fact that the work will be unpaid, the fact that the work will have to be done on a regular basis and under the direction of a supervisor and the consequences of failing to comply with the order. Indeed, the legislation specifically states that before making a CSO the court must explain to the offender: the effect of the order (including his obligations to report to and follow the instructions of the relevant probation officer),” the requirement to complete the community service hours within one year,³² the consequences of failing to comply with the requirements of the CSO³³ and the power of the District Court to review the order on the application of the offender or the probation officer.” It is also arguable that an informed consent requires that the offender should know in advance how many hours community service he or she will have to serve and how many weeks/months of a prison sentence he or she would have to serve as an alternative. The Act, however, does not impose a specific obligation on the judge to inform the offender of these matters in advance of the offender's decision on consent.³⁴

The legislation is silent about when the court should seek the consent of the offender (apart from the fact that it must be obtained before an order is imposed) and the form that that consent should take. In practice, of course, the issue of consent only becomes relevant when the offender has been convicted and the judge is considering the imposition of a custodial sentence. Where the judge is prepared to contemplate a CSO he or she will normally specify the term of imprisonment to be imposed in the absence of a CSO. The judge will then adjourn the case for the preparation of a community service report by the probation officer unless the offender positively objects at that point. When the case comes back before the court and the judge is minded to make a CSO he or she will normally ask the offender if he or she consents. There is no requirement that the offender should give his or her consent in writing.

District of Residence and the Court Order

A CSO must specify the District Court district (district of residence) in which the offender resides or will reside while performing work under the order.³⁵ The court making the order is required to cause certified copies of the order to be sent to the judge of the District Court assigned to the district of residence and to a specified probation and welfare officer in that district.” It is the latter's responsibility to give a copy to the offender who must give the officer written acknowledgement of receipt.’ There is provision for the order to be amended in response to a

”Criminal Justice (Community Service) Act, 1983, s. 4(1)(vi).

”*Ibid.* s. 4(2)(a).

”*Ibid.*

³³*Ibid.* s. 4(2)(b).

³⁴*Ibid.* s. 4(2)(c).

³⁵In the committee stage of the Bill in the Seanad the Minister specifically rejected suggestions that the Act should impose an obligation on the judge to stipulate the number of CSO hours and the length of the alternative prison sentence which would be imposed before asking the offender if he or she consented to the CSO: *Seanad Debates* Vol. 101, cols. 879-887.

”Criminal Justice (Community Service) Act, 1983, s.6(1). Where the judge making a CSO is not the judge assigned to the district of residence the District Court clerk shall immediately send a certified copy of the order by ordinary post to the latter judge: District Court [Criminal Justice (Community Service) Act, 1983] Rules, 1984, r. 10(i).

”Criminal Justice (Community Service) Act, 1983, s.6(2). For this purpose the principal probation and welfare officers shall designate one or more probation and welfare officers in each District Court district; Criminal Justice (Community Service) Regulations 1984, reg. 3.

³⁶Criminal Justice (Community Service) Regulations 1984, reg. 5.

change of residence.)' Where, on an application by the offender or the relevant probation officer' the District Court is satisfied that the offender proposes to change, or has changed, his or her residence from the district of residence to another District Court district, and it appears to the Court that arrangements can be made in that other district for the offender to perform work under the order, the Court may amend the order by substituting the other district for the district of residence.⁴¹ The substituted district shall then be deemed to be the district of residence for the purposes of the Act.⁴² The Court shall cause certified copies of the amended order to be sent to a specified probation and welfare officer in the new district of residence.⁴³ This officer must give a copy to the offender who must give the officer a written acknowledgement of receipt.⁴⁴ Before exercising this power to change the district of residence the Court must summon the offender to appear before it.⁴⁵ If the offender does not appear the Court may issue a warrant for his or her arrest.

Periods of Work

The Act stipulates that the work to be performed under a CSO must normally be performed in the period of one year beginning on the date of the order.⁴⁶ The District Court can, on application by the offender or a probation officer' extend the period of one year if it appears to the Court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made.⁴⁷

The Act does not regulate the frequency with which the hours should be worked daily, weekly or monthly. Instead, it obliges the offender to work the hours at such times as may be directed by or on behalf of the probation and welfare officer to whom he or she reports. When issuing such directions the officer must, as far as practicable, avoid any interference with the times the offender normally works or attends a school or other educational establishment. In practice this means that an offender in full-time employment or education should only be required to work under a CSO at the weekends and/or in the evenings. The regulations issued pursuant to the Act stipulate that an offender cannot be required to perform work under a CSO for more than eight hours in any day without the approval of the probation and welfare officer. While this does not amount to a maximum daily limit of eight hours work, the implication is that more than

⁴⁰Criminal Justice (Community Service) Act, 1983, s. 10(1).

⁴¹Where the application is made by the probation officer it must be in the Form 2 in the Schedule of Forms set out in the District Court [Criminal Justice (Community Service) Act, 1983] Rules, 1984. The summons set out in Form 2 is served on the offender by a member of the Garda Síochána. Where the application is by the offender it must be by notice in the Form 3 in the Schedule of Forms set out in the Rules. A copy of the notice must be given or sent by ordinary post to the relevant probation officer at least seven days before the date fixed for the hearing. The original of the summons or notice, as the case may be, must be lodged with the District Court clerk at least 4 days before the hearing.

⁴²This jurisdiction is exercised by the judge for the time being assigned to the district of residence; Criminal Justice (Community Service) Act, 1983, s. 12(2)(a).

⁴³The order in question shall be in the Form 4 in the Schedule of Forms set out in the District Court [Criminal Justice (Community Service) Act, 1983] Rules, 1984.

⁴⁴Criminal Justice (Community Service) Act, 1983, s. 10(2). For this purpose the principal probation and welfare officer shall designate one or more probation and welfare officers in each District Court district; Criminal Justice (Community Service) Regulations 1984, reg. 3. The District Court Clerk shall immediately send two copies of the amended order to the officer by ordinary post; District Court [Criminal Justice (Community Service) Act, 1983] Rules, 1984, r. 10(ii).

⁴⁵Criminal Justice (Community Service) Regulations 1984, reg. 5.

⁴⁶Criminal Justice (Community Service) Act, 1983, s. 13.

⁴⁷Ibid. s. 7(2).

⁴⁸Where the application is made by the probation officer it must be in the Form 2 in the Schedule of Forms set out in the District Court [Criminal Justice (Community Service) Act, 1983] Rules, 1984. The summons set out in Form 2 is served on the offender by a member of the Garda Síochána. Where the application is by the offender it must be by notice in the Form 3 in the Schedule of Forms set out in the Rules. A copy of the notice must be given or sent by ordinary post to the relevant probation officer at least seven days before the date fixed for the hearing. The original of the summons or notice, as the case may be, must be lodged with the District Court clerk at least 4 days before the date fixed for the hearing.

⁴⁹Criminal Justice (Community Service) Act, 1983, s. 9. This jurisdiction is exercised by the judge for the time being assigned to the district of residence: s. 12(2)(a). Before exercising this power the Court must summon the offender to appear before it: s.13. If the offender fails to appear the Court may issue a warrant for his or her arrest.

eight hours work should not normally be permitted or required. In reckoning the time worked on any day account may be taken of a period in respect of time spent by the offender in travelling to the place of work and any time during which work is interrupted by weather or by any other unavoidable cause.⁴⁹ However, any such period shall not exceed one hour without the approval of the relevant probation and welfare officer.

Apart from these provisions the legislation does not impose minimum or maximum hours which can or must be worked daily, weekly or monthly under a CSO. Moreover, there is no specific provision extending labour legislation to offenders working under a CSO. Nor does the legislation specifically address the implications for an offender's social welfare entitlements while working under such an order.⁵⁰ An unemployed offender who is working under a CSO is not considered exempt from the requirement of being available for work in order to qualify for unemployment benefit. If paid employment becomes available he or she can always seek a revision of the work arrangements under the CSO should that prove necessary.⁵¹ Nevertheless, it is obvious that an unemployed offender has a potential advantage over an employed offender in that he or she is more likely to be in a position to work off the CSO more quickly and less painfully. It is unlikely that the employed offender would be able to manage more than sixteen to twenty hours work per week on a CSO. In the interests of equity, therefore, the probation and welfare service generally restrict the CSO hours which an unemployed offender works to about twenty hours per week. It must be said, however, that there is nothing in the legislation which specifically requires this restriction. Exceptional cases do arise where an individual is permitted to work for anything up to forty hours per week, largely as a result of the nature of the work being done and the personal circumstances of the offender.

Reviewing a Community Service Order

There is provision in the legislation for a review of a CSO in any individual case. Indeed, before a court can make a CSO it must explain to the offender that the District Court may review the order on the application of either the offender or the probation officer.⁵² It would appear, however, that the Court's powers on such an application are limited to revoking the order, dealing with the offender in some other manner, extending the period in which the order may be worked beyond the period of one year and permitting a change to the district of residence specified in the order. The Court has no power to extend or reduce the number of hours for which the order was originally imposed.

The Act confers a very broad discretion on the District Court to revoke a CSO on an application for review. The power of revocation is exercisable if, on an application to the District Court by the offender or the probation officer, it appears to the Court that having regard to circumstances which have arisen since the order was made it would be in the interests of justice to revoke the order or to deal with the offender in some other manner for the offence in respect of which the

⁴⁹Criminal Justice (Community Service) Regulations 1984, reg. 9.

⁵⁰During the second reading of the Bill in the Seanad *the* Minister intimated that the social welfare entitlements of an offender would not be affected by his or her working under a CSO; *Seanad Debates* Vol. 101, cols. 8789.

⁵¹There is provision in the Act for the court to review the order either on the application of the offender or the probation officer. In practice the most appropriate course for the offender to take in the first instance would be to request the probation officer to secure a variation in the work arrangements.

⁵²Criminal Justice (Community Service) Act, 1983, s. 4(2). When the application is made by the probation officer it must be by summons in the Form 2 in the Schedule of Forms set out in the District Court (Criminal Justice (Community Service) Act, 1983) Rules, 1984. The summons set out in Form 2 is served on the offender by a member of the Garda Síochána. When the application is by the offender it must be by notice in the Form 3 in the Schedule of Forms set out in the Rules. A copy of the notice shall be given or sent by ordinary post to the relevant probation officer at least seven days before the date fixed for the hearing. The original of the summons or the application, as the case may be, must be lodged with the District Court clerk at least four days before the date fixed for the hearing.

order was made.⁵³ There is no indication in the Act as to what circumstances may or may not justify revocation or as to what is meant by the "interests of justice" in this context. It seems that these are matters for the Court. While the Court's decision in any individual case will always be open to review by the High Court it is apparent from the wording of the statutory provision that the legislative intent was to confer an exceptionally broad discretion on the District Court in such matters.⁵⁴

If the CSO was made by the District Court in the district of residence, it may exercise its power to revoke the order absolutely with no further penalty or restriction on the offender. Alternatively, it may revoke the order and deal with the offender in any manner in which he or she could have been dealt with for the offence if the order had not been made.⁵⁵ Before exercising the power the Court must summon the offender to appear before it.⁵⁶ If the order was made by the District Court in a District Court district other than the district of residence, or by another court, then the District Court before which the application has been brought should remand the offender to the District Court in the district of residence or to the other court, as the case may be.⁵⁷ When the offender appears on remand before this other court it has exactly the same powers to dispose of the matter as the District Court in the district of residence.⁵⁸ What this means in practice is that the court, in appropriate circumstances, can either revoke a CSO before it has been fully served, or it can revoke the order and impose some other punishment which would have been available in the individual case had a CSO not been imposed.

Breach of a Community Service Order

If an offender fails, without reasonable excuse, to comply with his or her obligations under a CSO he or she is guilty of a summary offence which is punishable on conviction by a fine.⁵⁹ For this purpose the obligations are: to report to the relevant probation and welfare officer as directed from time to time by that officer; perform satisfactorily for the number of hours specified in the order such work at such times as may be directed by the relevant probation and welfare officer; and to notify the relevant probation and welfare officer of any change of address. An offence under this provision may be prosecuted by the relevant probation and welfare officer.⁶⁰ Where the offender is convicted the court may consider revoking the order instead of imposing a fine. If the CSO was made in the District Court in the district of residence the Court may either revoke the order or revoke it and deal with the offender for the offence in respect of which the order was made in any manner in which he could have been dealt with had the order not been made.⁶¹ If the order was made by the District Court in a District Court district other than the district of residence, or by another court, the Court may remand him to that other court.⁶² When the

⁵³Criminal Justice (Community Service) Act, 1983, s. 11(1).

⁵⁴When introducing the Bill in the Seanad the Minister cited an offender not being able to continue with the work because of a deterioration in his health or for family reasons as examples of situations in which a CSO may be reviewed in the interests of justice; *Seanad Debates* Vol. 101, col. 783.

⁵⁵Criminal Justice (Community Service) Act, 1983, s. 11(1)(a). This jurisdiction is exercised by the judge for the time being assigned to the district of residence; s. 12(2)(a).

⁵⁶*Ibid.* s. 13. If the offender fails to appear the Court may issue a warrant for his or her arrest.

⁵⁷*Ibid.* s. 11(1)(b).

⁵⁸*Ibid.* s. 11(2). The jurisdiction of the Circuit Court in this matter shall be exercised by the judge of the circuit where the CSO was made, while the jurisdiction of the District Court shall be exercised by the judge for the time being assigned to the District Court district where the order was made; s. 12.

⁵⁹*Ibid.* s. 7(4). Jurisdiction in this matter is exercised by the judge for the time being assigned to the district of residence in which the order was made; s. 12(2)(a).

⁶⁰*Ibid.* s. 7(5). The complaint must be made by summons in the form provided by the District Court Rules 1997; District Court [Criminal Justice (Community Service) Act, 1983] Rules, 1984, r. 5. The summons is served on the offender by a member of the Garda Síochána. The original must be lodged with the District Court clerk at least four days before the date fixed for the hearing.

⁶¹*Ibid.* s. 8(1)(a). This jurisdiction is exercised by the judge for the time being assigned to the district of residence; s. 12(2)(a).

⁶²*Ibid.* s. 8(1)(b).

offender appears on remand before this other court it has exactly the same powers to dispose of the matter as the District Court in the district of residence!

Non-attendance at work due to illness or any other unavoidable cause may be excused by the relevant probation officer.⁶⁴ However, the period of absence from work shall not be reckoned as time spent in performing the community service work.

Expenses

There is provision to meet expenses associated with performing community service work in certain circumstances. The regulations issued pursuant to the 1983 Act stipulate that where the Minister is satisfied that an offender is unable by reason of lack of means to perform the work assigned to him under a CSO or to travel to his or her place of work, the Minister may pay in accordance with such rates as he shall determine from time to time such travelling and other expenses as may be necessary to enable the offender to perform the work.⁶⁵

Completion of Community Service Order

Where the offender has performed his or her work satisfactorily for the number of hours specified in the CSO, the relevant probation and welfare officer shall certify such compliance to the court which made the order.⁶⁶

⁶³*Ibid.* s. 8(2). The jurisdiction of the Circuit Court in this matter is exercised by the judge of the circuit where the CSO was made, while the jurisdiction of the District Court is exercised by the judge for the time being assigned to the District Court district where the order was made: s. 12.

⁶⁴Criminal Justice (Community Service) Regulations 1984, reg. 8.

⁶⁵*Ibid.* reg. 10.

⁶⁶*Ibid.* reg. 11

CHAPTER 3

The Offender

Introduction

This chapter and the following three chapters are based on an analysis of the data derived from the files survey, the court survey and the interviews with probation officers. The primary objective of the analysis is to provide comprehensive data on CSOs and to critically assess the operation of the CSO scheme in Ireland today in accordance with the requirements of the invitation to tender issued by the Department of Justice, Equality and Law Reform. The results of the analysis are presented under the headings of the offender, the offences, the community service order and procedure. A separate chapter is devoted to each. The current chapter focuses on the profile of offenders in respect of whom CSOs were made during the time span of the files survey.

Where appropriate, comparisons are drawn with data on prisoners in Mountjoy Prison. Ideally, comparisons should be drawn with the national prison population. Unfortunately, the published statistics on prisoners are not sufficiently detailed to make meaningful comparisons with the data on CSO offenders gathered in the course of this research. Moreover, the Department of Justice, Equality and Law Reform does not compile statistics on prisoners at the level of detail necessary. The only comparable data available is that published by O'Mahony in 1995 and 1997 as a result of his research on a sample of prisoners in Mountjoy Prison.⁶⁸ This data is not ideal for comparative purposes as the prisoners in Mountjoy Prison will not necessarily be representative of prisoners in the country as a whole for all purposes. Also the categories and classifications used by O'Mahony are not always equivalent to those used for the purpose of this research. Nevertheless, in the absence of other data it is considered that some meaningful comparisons can be made between the profile of CSO offenders as compiled from this research and the profile of prisoners in Mountjoy as compiled by O'Mahony.

Gender

The files survey produced a total of 269 offenders in respect of whom CSOs had been made. Over 95% of these are male and less than 5% are female. This would appear to be broadly in line with the breakdown of the prison population on the basis of gender.⁶⁹

Age

It was possible to identify the age of each of the 269 offenders in 98% of cases.⁶⁹ Of these over half were less than 24 years of age, with an even split between the age groups 17 – 20 (incl.) and 21 – 24 (incl.). Superficially, it would appear from these statistics that the use of CSOs is not age sensitive. The courts generally do not seem to be singling out any particular age category as being more suitable than others for a CSO. However, when the figures are set against those for

⁶⁸See P O'Mahony *Crime and Punishment in Ireland* (Dublin: Round Hall Sweet G Maxwell, 1995) and *Mountjoy Prisoners: A Sociological and Criminological Profile* (Dublin: Department of Justice, 1997).

⁶⁹See O'Mahony (1995) at p. 101.

⁷⁰For the purpose of the research the age of the offender was taken to be his or her age at the time of conviction.

the prison population it would appear, as might be expected, that the age group 17-20 features more than twice as often among the CSOs than in the prison population."⁷⁰ The pattern changes markedly, however, for offenders in the 21-24 age group. The percentage of CSOs in this age group is significantly below the percentage of prisoners in the comparable age group. The age groups beyond 25 years, as percentages of CSOs and prisoners, are broadly in line with each other. The logical conclusion is that the courts are more willing to use CSOs as an alternative to prison for the youngest offenders. Indeed, this is very much in line with one of the fundamental objectives of CSOs, namely to divert young offenders, in particular, away from prison. It must also be said, however, that the courts are not displaying any preference for CSOs over imprisonment, or vice versa, for offenders in the older age groups from 25 plus.

The general pattern with respect to age must be qualified by the acknowledgement that there is considerable variation between rural and urban areas. Courts in the rural areas appear to use CSOs much more frequently for younger offenders than their urban counterparts. Sixty seven percent of CSOs imposed in rural areas are accounted for by offenders below 25 years of age. compared to only 43% in urban areas. Moreover, the age group 17-20 features three times as often among the CSOs in rural areas as in the prison population generally. This suggests that courts in the rural areas are very keen to deal with offenders in the community rather than send them off to prison.

Family Status

It was possible to identify the marital status of the offender in 97% of cases. Of these 77% were described as single; 11% as married; 6% as cohabiters; and 6% as married but separated. The proportion of single offenders in the sample might be considered to be unexpectedly high, especially since just less than half of the offenders are 25 years or older. Indeed, it is significantly higher than the 56% in O'Mahony's sample of Mountjoy prisoners who are single and not in a current cohabiting relationship."⁷¹ One might have anticipated that courts would make greater use of CSOs for offenders who have family responsibilities. Yet it is only in the 25-29 years age group that there is any evidence of this. For CSO offenders in the 25-29 years age group the proportion who are married or in a cohabiting relationship jumps to almost one third compared to 5% for those below 25 years of age. Nevertheless, this still falls short of the 42% for the equivalent age group in O'Mahony's sample. In the 30 plus age group only 38% of CSO offenders are either married or in a cohabiting relationship, compared to 71% of Mountjoy prisoners in the 30-34 year old age group in O'Mahony's sample.

These statistics must be interpreted in the light of the fact that at least some of the offenders described as single have one or more children. Eleven percent of offenders described as single had at least one child. Moreover, all of those described as separated had at least one child. When these figures are taken into account it is at least arguable that the courts are more influenced by the family responsibilities of the offender when deciding whether to impose a CSO than the statistics on marital status alone would suggest. Once again, however, it would appear that the Mountjoy prisoners in O'Mahony's sample have heavier family responsibilities. Fifty eight percent of those described as single and not in a current cohabiting relationship had at least one child, while all of those described as separated and 89% of those in a current relationship had at least one child.⁷²

⁷⁰For prison statistics, see O'Mahony (1995) at p. 127.

⁷¹See O'Mahony (1997) at p. 36.

⁷²*Ibid.* at p. 38.

It was possible to identify whether the offender was living in a family environment in 92% of cases.⁷³ Of these, 65% of offenders were living at home with their parents. A further 14% were living at home with their own families, while the remaining 21% were living on their own. There are no significant differences between rural and urban court areas on these statistics. The comparable figures for Mountjoy prisoners in O'Mahony's study are: 41%, 33% and 19%. It is surprising, perhaps, that the percentage of prisoners living in a family environment of a spouse and children should be significantly greater than the percentage of CSO offenders living in this environment. One might have anticipated that the figures would have been reversed.

Previous Criminal Record

It was possible to determine whether an offender has a previous criminal record in 93% of cases. Of these 43% have no previous criminal record. The breakdown of the 57% who have a criminal record is set out in Table 2.

Table 2

Number of Convictions	Percentage	Percentage of total sample
1	32%	18%
2 ≤ N ≤ 4	29%	16%
5 ≤ N ≤ 9	13%	8%
N ≥ 10	8%	5%
Not Known	18%	10%

The figures have been compiled on the basis of the information contained in the probation and welfare files on the offenders concerned. As a general rule if the offender has a previous criminal record there will be a print out of that record on the file. For the purposes of the research an offender was treated as having no criminal record if there was no evidence of previous convictions on his or her file. It is possible, of course, that the relevant information was missing from some files. The onus to provide details of the previous criminal record is actually on the prosecution as opposed to the probation and welfare service. While the latter are very diligent at seeking it out, it would appear that there have been cases where the relevant information has not been readily available. It may be, therefore, that the files actually understate the proportion of offenders with previous criminal records. Interestingly, in the court survey it appeared that 90% of the offenders had previous criminal records.

The figures throw up some interesting variations across the court areas. Dublin, for example, has a much higher proportion of offenders with a criminal record than the national average, 79% as against 57%. In Kilkenny and Tipperary/Waterford by contrast, the proportion of offenders with a previous criminal record is only 18% and 25% respectively.

For the purposes of the research an attempt was made to classify a criminal record in terms of seriousness. Inevitably this was a highly subjective exercise given that previous criminal records are recorded only by the type of offence and sentence imposed. No details about the circumstances in which the offences were committed were available. Broadly speaking, if an offender has a previous record consisting exclusively of offences which were punished by non-custodial sentences it was classified as minor or medium depending on the number and

⁷³For this purpose a "family environment" is considered to be living with one or more parents (and siblings) or living with a partner (and children).

frequency of convictions. If the offender had more than five such previous convictions, his or her record was classified as medium unless they were spread out over a period in excess of eight years. Offences punished by a term of imprisonment placed the offender in the medium to serious category depending on factors such as the length of the sentence, number and frequency of such sentences and the number and frequency of convictions for other offences which were punished by non-custodial sentences. There were no cases in which an offender was classified as having a serious criminal record on the basis of a single conviction, although a single prison sentence of more than two years coupled with a long string of non-custodial sentences was considered sufficient to classify a previous record as serious. If an offender had been sentenced to two or more terms of imprisonment in circumstances which suggested that he was spending more of his adult life to date in prison than out of it, his record was classified as serious. Also classified as serious were offenders who had been sentenced to two or more terms of imprisonment and who had more than five other convictions which were punished by non-custodial terms.

It is freely admitted therefore that the figures based on these classifications can be interpreted as no more than a very rough assessment of the relative seriousness of the offenders' criminal records. The results are set out in Table 3.

Table 3

Category of record	Percentage	Percentage of total sample
Minor	40%	25%
Medium	22%	13%
Serious	17%	10%
Not known	21%	12%

Across individual court areas Wexford stands out as all but one of its cases are in the minor category. Cork City is also worth noting in that none of its cases are in the serious category, although it has an exceptionally high number of cases (50%) where no details are available. Limerick is unusual in that it is significantly over-represented in both the serious and minor categories and under-represented in the medium category.

The previous criminal records of offenders lends support to the view that some courts may be inclined to resort to a CSO in cases where a custodial sentence may not have been passed had CSOs not been available as an option. Some probation officers interviewed were concerned that they got too many referrals from the courts concerning first time offenders. This concern would seem to be supported by the figures from the files which suggest that 43% of the offenders who were given a CSO were first time offenders, plus the fact that a further 25% have a previous criminal record which can be classified as minor. By comparison less than 3% of the Mountjoy prisoners in O'Mahony's sample had no previous convictions.⁷⁴ Moreover, the Mountjoy prisoners also have much longer criminal records than those served with a CSO. About 54% of the former have more than 10 previous convictions compared to only 8% of the latter.

⁷⁴O'Mahony (1997) *op.cit.* at p.83.

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This high percentage of first time offenders served with a CSO cannot be fully explained by the seriousness of the offence(s) of which the offenders were convicted. It is difficult to avoid the conclusion that there is a tendency to resort to CSOs in cases where a term of imprisonment would not have been imposed had CSOs not been available. In other words, some courts may be more flexible than others in their interpretation and application of the statutory requirements applicable to the making of a CSO. It would appear that this flexibility is more prevalent in rural areas than in urban areas. Sixty percent of CSO offenders in the former have no previous criminal record compared with 39% in the latter. When this is combined with the fact that courts in rural areas also resort to CSOs for the youngest offenders much more frequently than courts in urban areas, it would seem reasonable to question whether some of the former may be using CSOs prematurely.

Although there may be evidence of a tendency to resort to CSOs prematurely, there is also evidence of a judicial willingness to use them with a view to steering the offender away from a lifestyle of offending and imprisonment. Thirty nine percent of those with previous criminal records had been sentenced in the past to a term of imprisonment. These account for just over one fifth of the total sample. A majority of these offenders have more than five previous convictions.

It was evident from the files that at least some offenders had outstanding charges against them at the time they were referred for a CSO. In 97% of the files it was possible to determine whether or not there were outstanding charges. Of these 16% had outstanding charges. This is a surprisingly high figure in itself. It may well be that the actual figure is even higher as some of the cases in the "no outstanding charges category" may be cases in which the file did not record the existence of outstanding charges. There was no way of knowing whether the information contained in the files on this matter was complete and up to date. It is also worth noting that there were some surprising variations across the court areas. The files for Kerry and Wexford show outstanding charges in 33% and 25% of cases respectively. Kilkenny, Cork City and Limerick, by contrast show only 7%, 8% and 10% respectively.

Educational Qualifications

Information on the educational qualifications achieved by the offender was available in 73% of cases. Of these 62%, by far the largest category, can be described as poor in the sense that they have left school without any formal qualifications. Seven percent have the Group Cert; 17% have the Inter/Junior Cert; 10% have the Leaving Cert; 1% have a post leaving qualification; and 3% have a technical qualification or apprenticeship. Although a high percentage of offenders left school without any formal qualifications, it would appear that the qualifications of the CSO offenders generally are significantly higher than those obtained by the Mountjoy prisoners in O'Mahony's sample. Only 23% of the latter obtained any form of educational certificates at public examinations generally.⁷⁹

It may be that the disparity between the educational qualifications of CSO offenders and prisoners is simply a reflection of the apparent tendency of the courts to impose CSOs in cases which would not otherwise have attracted a custodial sentence. Equally, however, it could be argued that the courts are more disposed to making a CSO in respect of offenders with formal educational qualifications. Presumably such offenders are better equipped for the discipline and routine of community service work. They are also more likely to be in regular employment.

⁷⁹*Ibid.* at p.55.

Perhaps the most notable feature about the statistics on educational qualifications is the large percentage of cases in Limerick, Kerry and, to a lesser extent, Tipperary/Waterford where there is no information on the files. In Limerick 81% of the files contain no information on the educational background of the offender. The equivalent figures for Kerry and Tipperary/Waterford are 73% and 33% respectively. A similar pattern emerges when the analysis is done on probation areas. Files from the Limerick probation area lack this information in 79% of cases while in Tralee the equivalent figure is 64%. It will be seen later (chapter 6) that this is probably the result of probation officers responding to what information individual judges do and do not want in the community service report. According to some of the probation officers interviewed one or two courts prefer reports which are confined to the most essential information. This is interpreted as precluding information on educational qualifications.

Vocational Skills

Information on the vocational skills possessed by offenders was available in 75% of cases.⁷⁶ Forty-two percent of offenders, the largest single category, had no vocational skills at all. The next largest category, at 27%, was manual/general labouring skills, followed closely by technical skills at 23%. Professional qualifications accounted for a mere 3% while the remaining 5% had experience in service industries. Examples of offenders deemed to have technical skills are: auto-mechanic, wood machinist, kitchen fitter, electrician, fitter, steel-erector, welder, baker, horticulturist and nurse's assistant. Offenders deemed to have service industry experience include: confectionery worker, kitchen porter and hotel worker. Of course, assigning an offender to one or other of these categories does not mean that they are actually employed as such.

These figures closely mirror those for educational qualifications. Once again the comparison with O'Mahony's sample of Mountjoy prisoners is significant.⁷⁷ The percentage of the latter who have no vocational skills or training (53%) is higher than the equivalent percentage of CSO offenders (42%). The comments made above with respect to a greater propensity to use CSOs (as opposed to imprisonment) for offenders with better educational qualifications would appear to be equally applicable to offenders with vocational skills. Wexford is one area which is particularly worth noting in this context as in only one of its sixteen cases does the offender have no vocational qualifications or skills.

As is the case for educational qualifications, information on vocational skills is notably lacking in some areas. Eighty two percent of the files for the Limerick probation area contain no information about vocational skills, while the figure for Tralee is 57%. By way of contrast the equivalent figures for Cork, Dublin and Wexford are: 13%, 13% and 14% respectively. Once again it would appear that the reason for the relative lack of the information is the perception among some probation officers about the information which certain courts do and do not want in a community service report.

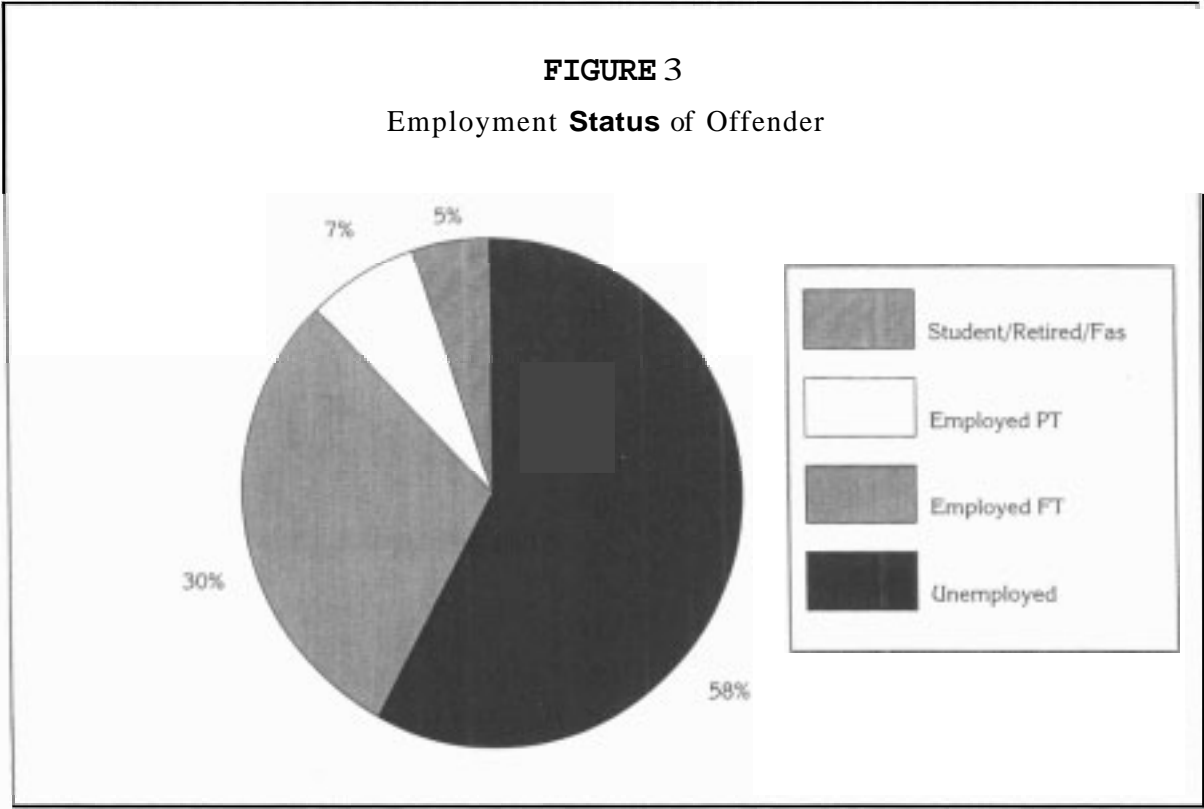
Employment

Information on the offender's employment status was available in 91% of cases. By far the largest category of these, at 58%, is unemployed (see Figure 3). Full-time employment accounts for 30%, while part-time or casual work accounts for 7%. The remaining 5% consists of: students, retired persons, homemakers, apprentices and persons on FAS schemes. The number of

⁷⁶"Vocational skills" in this context consists of trade and craft qualifications or experience, as well as any other related skills or experience which would enhance employment prospects.

⁷⁷O'Mahony (1997) *op.cit.* at p.55.

offenders classified as unemployed is quite high in the Limerick, Kerry and Wexford court areas at 80%, 80% and 73% respectively. In Kilkenny, by way of contrast, it is comparatively low at 25%.



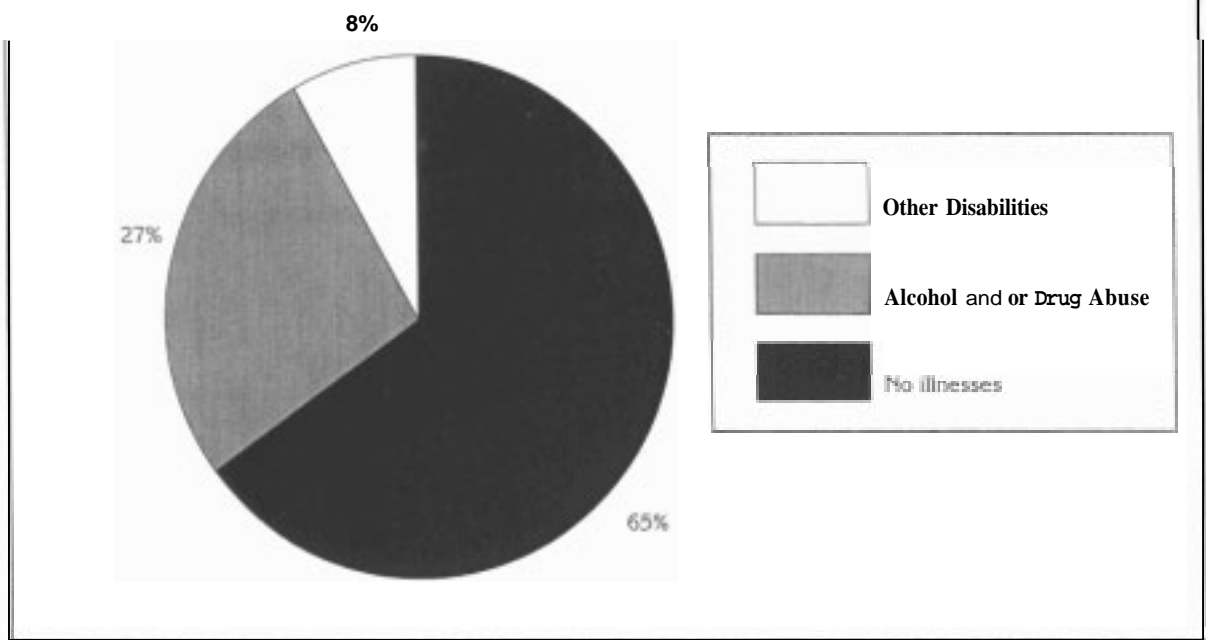
Once again there is a significant difference between the profile of the CSO offenders and the Mountjoy prisoners in O'Mahony's study. Almost 90% of the latter were unemployed immediately prior to their incarceration. This suggests that courts are more favourably disposed to CSOs as a genuine alternative to imprisonment where the offender is in employment. The CSO permits the offender to carry on with his or her employment while serving out the sentence. A sentence of imprisonment on the other hand will almost inevitably result in the loss of employment for an offender in employment at the time, and render it more difficult for the offender to find employment on his or her release from prison. A CSO avoids this result.

Offender's Mental and Physical Health

It was possible to make an assessment of the offender's mental and physical health in 93% of cases. Not surprisingly, a substantial majority of offenders, 65%, displayed no significant illnesses or characteristics which would impair their capacity to work in the community (see Figure 4). However, it would appear from information in the community service reports that a significant minority, 27%, have suffered from alcohol and/or drug abuse. In some of these cases the community service reports include copies of drug screening and assessment reports requested by the court. Information on alcohol abuse was also taken from the community service reports. In some cases this information was implicit from other information in the files.

FIGURE 4

Offender's Mental and Physical Health



Four percent have suffered from depression and/or other mental health difficulties. This information was deduced both from the community service reports and other information in the files. In one case, for example, there was a pre sentence adjournment to monitor the depressed mental health of the offender. In another there was a reference in the community service report to the offender having been grief stricken and depressed since his wife died of cancer a few years earlier. Another offender was assessed as being suicidal and suffering from psychiatric problems.

Two percent of offenders suffered from learning difficulties. This was deduced from references in the community service reports.

Of the remaining 2%,two individuals can be classified as persistent offenders, two have suffered from physical and/or sexual abuse and one was in poor physical health. The persistent offenders are males of 28 years and 19 years of age respectively. Both have long records of petty offending. One was described in the community service report as being "out of control" and being conditioned to "spending the better part of his life in prison." The other was "unable to stay out of trouble for any considerable length of time."

The Dublin metropolitan court area shows a relatively high rate of persons who have suffered from alcohol and/or drug dependency at 40% and a correspondingly lower figure of persons who suffer from no physical or mental ill-health, at 52%. It also has double the national average of offenders suffering from depression or other mental illness. In Wexford, Kilkenny and Tipperary/Waterford, on the other hand, the percentages of offenders with no history of factors which could impair their capacity to work under a CSO are above the national average at 75%, 77% and 75% respectively.

The physical and mental health of an offender has a direct bearing on his or her eligibility for a CSO as an alternative to a custodial sentence. Before imposing a CSO the court must be satisfied that the offender "is a suitable person to perform work under such an order." It might seem surprising, therefore, that a relatively high number of offenders, particularly in the Dublin area, have suffered from alcohol or drug dependency. It may be, of course, that they had recovered from their dependency by the time they were sentenced to a CSO. Indeed, the policy applied by the probation and welfare service is that a past history of alcohol or drug abuse or illness will not render an offender unsuitable if there is stability in his or her current life. Indeed, it would appear that the successful completion of CSOs in Dublin has not been affected by its relatively high rate of offenders with a past history of alcohol or drug dependency. Eighty four percent of CSOs in Dublin were completed successfully. This is in line with the national average. Having said that, there is evidence to suggest that those who have suffered from alcohol or drug abuse are more likely to fail to complete their CSOs successfully than their proportion of the overall sample would suggest. Although these offenders constitute just over one quarter of the sample they account for almost two fifths of those whose CSOs were revoked.

CHAPTER 4

The Offences

Methodology

The sample of 269 files produced a total of 297 CSOs (including the multiple CSOs imposed in the Dublin, Waterford and Wexford probation areas).'' For the most part the correlation between the CSO and the offence in any individual case was automatic. Problems arose in those cases where the offender was convicted and sentenced for more than one offence. In some such cases in the Dublin, Waterford and Wexford probation areas, as explained in Appendix I, the court allocated separate CSOs to each offence. In all of the others, however, a single CSO was imposed despite the fact that the offender was convicted of more than one offence. With respect to these cases it was necessary to make a judgment about which offence should be specified as having attracted the CSO. Where, as was often the case, the Court Return Form and/or the CSO Form in the file specified a single offence this was adopted as the offence for the purpose of the survey. In the few cases where more than one offence was specified on one or more of these forms, a subjective judgment was made from all of the material in the file as to which offence best characterised the incident or event which gave rise to the multiple convictions.

Types of Offence

Range

The initial survey revealed approximately 46 different types of primary offence (the offence for which an individual CSO was imposed). It is not possible to offer a precise figure as the primary offence in each file was not always specified by its technical legal definition. In several cases, therefore, a judgment had to be made from all the material in the file as to which particular offence or offences should be ascribed to the CSO or CSOs in question. The types of primary offence identified include: assault,⁷⁹ rape, robbery, burglary, larceny,⁸⁰ receiving or handling stolen goods, road traffic offences,⁸¹ offences involving the unlawful taking of a vehicle,⁸² arson, criminal/malicious damage, drugs offences: possession of an offensive weapon, public order offences,⁸⁴ breach of barring/protection order, trespassing,⁸⁵ possession of house-breaking implements, the use of nets contrary to section 96 of the Fisheries (Consolidation) Act, 1959, fraudulently attempting to cash cheques,⁸⁶ conspiracy to defraud, issuing false receipts, non-payment of a taxi fare, evasion of duty on cigarettes, receiving a multi-channel signal and the false report of a crime.

⁷⁹See Appendix I.

⁸⁰This includes: common assault, assault on a garda, assault occasioning actual bodily harm, grievous bodily harm and wounding.

⁸¹This includes shoplifting.

⁸²These include: driving with no insurance and drunk driving.

⁸³These include: interfering with a mechanically propelled vehicle, being carried in a stolen vehicle and theft of a vehicle.

⁸⁴These include: possession and possession with intent to supply.

⁸⁵These include: breach of the peace, failure to comply with a garda's request, drunk and disorderly, s.57(6) Criminal Justice (Public Order) Act, 1994 (CJPO), entering building with intent contrary to CJPO, s.8 CJPO, s.4 CJPO and urinating in a public place.

⁸⁶Although trespassing is not an offence per se it did feature in a number of cases which cannot be described readily as burglary. These include: trespass on property, entering as a trespasser, trespassing in a retail premises and trespassing on private property.

⁸⁷This includes uttering forged cheques.

For the purpose of analysis it was necessary to group these offences into a smaller number of categories. The categories were chosen on the basis of the spread of offences thrown up by the survey and the extent to which it was possible to group them together on the basis of similar characteristics in their definitions. In all, twelve categories were identified. These are set out in Table 4.

Table 4

Offence	Frequency
Larceny	22%
Less serious assault	15%
Driving offences	15%
Malicious damage	10%
Public order offences	9%
MPV offences ⁸	9%
Burglary	8%
Possession of offensive weapon	3%
Serious assault	3%
Drugs offences	2%
Robbery	1%
Miscellaneous	3%

It is worth describing each category more fully before proceeding to make a few generalisations about them.

Larceny

The larceny category embraces: simple larceny, receiving or handling stolen goods, obtaining by false pretences, uttering forged cheques, fraudulently attempting to cash cheques, issuing false receipts and conspiracy to defraud. For the purposes of the research theft of a vehicle and related offences are categorised separately under the heading of mechanically propelled vehicle (MPV) offences, while larceny from a vehicle is treated as larceny. As might be expected most of the larceny offences consist of simple larcenies such as shoplifting of retail goods and thefts from the person. Some of these offences, such as the theft of £700 worth of construction tools or eight jumpers worth £672 from a retail store are indicative of a criminal enterprise. Other more serious examples are allowing £3,985 to be stolen from the offender's employer, the organised theft of computers and computer parts from a factory and the theft of 29,220 from an educational institution. Handling stolen goods also featured prominently. In most cases where details were available it appeared that the value of the items in question did not exceed a two or three figure sum. Examples include being caught carrying a stolen TV, being caught with a stolen keg of beer, handling a stolen car stereo, handling a stolen bicycle, handling seven stolen

⁸These include: taking an mechanically propelled vehicle (MW) without the owner's consent, interfering with an MPV, entering an MW without the owner's consent, driving a stolen vehicle, being carried in a stolen vehicle and theft of a vehicle.

T-shirts and handling a stolen video-surveillance camera. More serious examples include handling stolen goods with a value of £1,200 and handling sixty stolen CDs. In some cases, particularly involving larceny from a vehicle, a secondary offence of criminal damage was included.

Less common offences under the general larceny category are: fraudulently attempting to cash two cheques, uttering forged cheques, altering a pay cheque before cashing it, conspiracy to defraud an insurance company in respect of a false car accident claim and one case involving 26 counts of issuing false receipts. Some individual examples under the general larceny category might be considered as very minor. These include taking £20 from a student while posing as a milkman and the larceny of goods to the value of £10. In one case the offender had the temerity to steal a bicycle from outside the courthouse.

For the most part, each of the larceny cases concerned one count of larceny arising out of a single incident. In those cases where the offender was either convicted of several counts of larceny or of several offences including larceny, the circumstances usually involved a larceny from and malicious damage to a car. Two of the five cases concerned were classified under the heading of larceny as it appeared from the files that the larceny was the primary offence. The other three were classified under malicious damage as that appeared to be the primary offence in those cases.

Burglary

From the limited details available it appears that most of the burglaries are typical cases of an offender entering premises as a trespasser either to steal or to inflict malicious damage or both. The premises include dwellings, a school, a factory, retail premises and a vehicle. Most of the cases in which details are available appear to be relatively minor either in terms of the value of the goods or property involved or in terms of trauma to the victim. These include a trespass on the premises of a retail outlet, a trespass on private property and trespassing in a pub to steal beer. More serious examples include burglaries involving the theft of £500 worth of cigarettes and goods worth £1,300. One ambitious offender was convicted of entering a store and attempting to take a cash dispensing machine off the wall. In a few cases the burglary count was accompanied by one or more counts of malicious damage arising out of the same incident. In only one case was the offender convicted of several burglary counts arising from different offences. He was also convicted of counts of criminal damage, unlawful taking of a motor vehicle, assault and larceny.

It must be said that the file details on the burglary cases were often quite scant. In some cases the details did not disclose an actual offence. Trespassing on private property, for example, does not in itself constitute the offence of burglary or any other offence under the criminal law.

Serious Assaults

Given the substantive difference between minor assaults and serious assaults, coupled with the fact that there were ten of the latter, it was decided to subdivide assaults into serious and less serious. The former covers all of the assaults in which significant injury was inflicted on the victim. For this purpose significant injury consists of wounding or severe bruising. In one case, for example, the offender got drunk at a stag party and head-butted the female bar licensee causing her nose to bleed. Subsequently he head-butted a garda and bit another garda's arm causing the skin to break. Many of the cases concerned incidents on licensed premises or

elsewhere while the offender was under the influence of alcohol or drugs. In one case, for example, the offender reacted to an alleged provocation or insult by jumping over the bar counter and inflicting "horrible" injuries on the female bar attendant. Several of the cases also involved the use of some sort of weapon such as a crowbar, a knife, a flick-knife and a wooden staff.

Although there were several assault cases in the sample which appear to have occurred in the context of a mugging or attempted mugging, none of them appeared to involve the infliction of sufficient injury or trauma to the victim to warrant their inclusion in the serious assault category.

There was one rape case in the sample. While there is an argument for including rape in the serious assault category, it was felt that this would hardly do justice to the seriousness and distinctiveness of the offence. Accordingly, it is included in the miscellaneous category.

Less Serious Assaults

The less serious assaults category consists of all assaults involving physical violence which did not result in significant injury to the victim. For the most part they concerned scuffles or tussles in which one or two punches might have been thrown.

All of the assaults on gardai (nine cases) fall within the less serious assault category. Almost invariably these concern the offender resisting attempts by gardai to restrain him or take him into custody. More often than not the incident occurred after the offender had become unruly or aggressive either in a pub or after he had come out of a pub. In these cases the assault usually occurred when gardai who had been called to the scene attempted to restrain him. In none of the cases do the files record any significant injury being inflicted on the gardai.

Driving Offences

The category of driving offences consists primarily of driving without insurance and drunk driving. Of the 44 driving offences in the sample 67% are for a single count of driving without insurance. Twelve percent are for drunk driving alone, while the remaining 21% consist almost exclusively of driving without insurance and/or drunk driving coupled with one or more counts of driving without a licence, driving without tax and driving without due care and attention.

Offences broadly associated with the unlawful taking of, or interference with, a vehicle are not included under the category of driving offences. It was considered that these are sufficiently distinct to merit a category of their own.

Malicious Damage

Malicious damage features as the primary offence in 31 cases and as a secondary offence in six other cases. Of the 31 cases almost half involve malicious damage to a mechanically propelled vehicle. All but three of these consist solely of malicious damage to a mechanically propelled vehicle. The remaining three include one or more counts of larceny from the vehicle. It is quite possible, of course, that larceny from a vehicle was the motive in many of the other cases of malicious damage to a vehicle. Nevertheless, they have been classified in the malicious damage category as the files in question record a conviction for that offence alone. Some patently have no connection with larceny and are quite serious. In one such case, for example, a concrete block was dropped onto a Garda car from the top of a block of derelict flats resulting in severe damage to the car. In another case a vehicle was set on fire causing £1,975 worth of damage.

The other half of the malicious damage category consists primarily of damage to windows, doors and/or fittings in dwellings and pubs. Domestic violence and drunkenness appear to be operative factors in most of them.

Public Order

The public order category covers a range of offences such as: threatening and abusive behaviour, breach of the peace, drunk and disorderly, failure to comply with the direction of a garda, shadow boxing in front of a garda, urinating in a public place as well as offences under the Criminal Justice (Public Order) Act, 1994. Of the 27 cases in this category the most common is threatening and abusive behaviour, accounting for one third of the total. Most of these cases seem to involve the offender creating a disturbance in a public place while under the influence of alcohol or drugs.

In one third of the cases there is insufficient detail to determine the nature of the offence apart from the fact that it was a public order violation. The remaining ~~one-third~~ is made up of three cases of failing to comply with the directions of a garda, three violations under the Public Order Act, two cases of **drunk** and disorderly, one case of shadow boxing in front of a garda and one case of urinating in a public place.

The nature of the public order offences is such that the circumstances of each individual case can be expected to vary widely. Care must be exercised, therefore, before concluding from the broad description of an offence that it is relatively trivial. Nevertheless, some of the offences which feature under the public order category in the sample are so obviously trivial in nature that one might not expect them to attract a CSO. The case of urinating in a public place, for example, concerned a 20 year old male with no previous convictions. There were no aggravating circumstances apart from the act itself.

MPV Offences

This category consists of offences which are described as: section 112 RTA (taking a vehicle without the consent of the owner), the unlawful taking of a mechanically propelled vehicle, interfering with a mechanically propelled vehicle, entering a mechanically propelled vehicle without the owner's consent, driving a stolen vehicle, being a passenger in a stolen vehicle and the theft of a vehicle. They are all concerned in one way or another with the unlawful taking of a vehicle, as opposed to offences associated purely with damage to a vehicle or standard road traffic offences associated with the keeping or driving of a vehicle on the public roads. Indeed, by far the largest group of offences within this category is the unlawful taking of a vehicle (for this purpose s.112 RTA and the unlawful taking of a mechanically propelled vehicle can be treated as the same). It accounts for 68% of the 26 offences in the category. In only a few of these cases was the offender convicted of additional counts such as driving with no insurance. The next largest group, consisting of four cases, is interfering with a mechanically propelled vehicle, while the remaining offences each feature once. In only one of these cases was the offender convicted of additional offences, namely drunk driving and driving with no insurance.

Most, but by no means all, of the offences in this category seem to have been committed in the context of what is commonly known as "joyriding". Almost invariably these involve teenagers and range from an individual allowing himself or herself to be carried in a stolen vehicle in circumstances where no injury or damage was caused, to an individual who allowed himself to

be carried in a stolen vehicle which was crashed while being chased by gardai. Surprisingly, perhaps, many of these offenders have no previous criminal record.

Possession of Offensive Weapon

There are nine cases in the sample where the offender has been convicted of a single count of possession of what can be described as an offensive weapon. The nature of the weapon and the circumstances of possession seem to differ considerably from case to case. A few cases such as possession of a catapult with ball bearings, possession of a butcher's knife in a public street and possession of a knife at a disco consist of possession *per se*. In other cases the possession is combined with other offensive behaviour such as breach of a barring order, possession of a hammer with intent and possession of a knife to intimidate others. In a number of cases the files do not reveal any information beyond the fact that the offender was convicted of possession of an offensive weapon. It does not appear that any of the cases concerned convictions for possession of firearms, ammunition or explosive devices.

There are a small number of other cases in the sample where possession of an offensive weapon has featured in the commission of other offences. These are classified under other headings as the actual possession did not appear to have been the primary offence in these cases. In one such case, for example, the offender's home was searched by gardai who found drugs and blank ammunition. While he was convicted of both offences it was clear that the drugs offence was considered to be the primary infraction.

Drugs Offences

Surprisingly, perhaps, drugs offences hardly feature in the sample. Of the six cases in total, three are convictions for possession *per se* (one of which is combined with a count for possession of blank ammunition), and three are for possession with intent to supply. The simple possession cases concern small amounts of cannabis for personal use. Nevertheless, they attracted relatively severe sentences: 120 hours or 4 months imprisonment; 120 hours or 11 months imprisonment and 159 hours or 10 months imprisonment.

From the information available on the three possession with intent cases it would appear that the offenders are very minor players. All three are teenagers who were caught in possession of small amounts of cannabis or ecstasy.

Robbery

Robbery is included as a separate category simply because it is such a distinctive and serious offence. It is committed where a person steals and, immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.⁸⁸ From the information available for three of the four cases in the sample, it would appear that they consist of robberies at the lower end of the scale involving small amounts of cash stolen by individuals acting on their own. No one was injured in any of the incidents. Three of the four offender* have previous convictions.

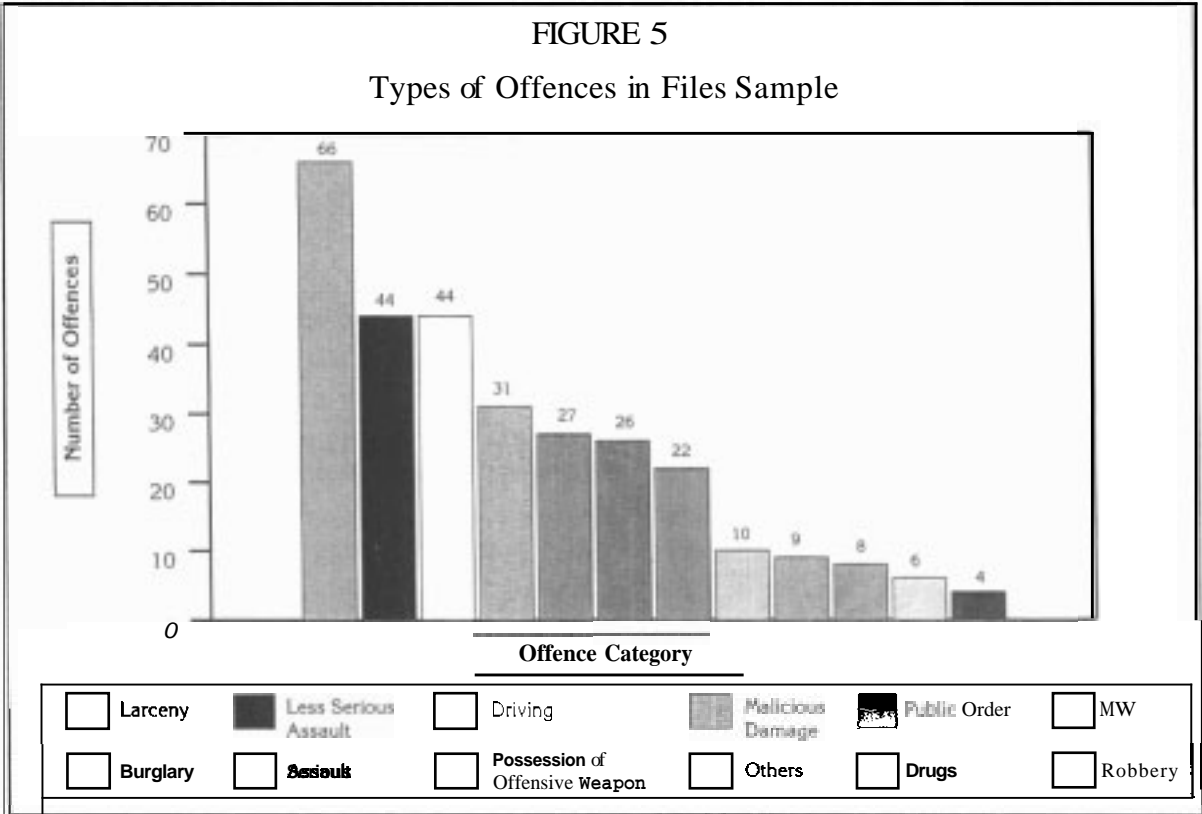
Miscellaneous

The miscellaneous category consists of those primary offences which cannot sensibly be classified under any of the other categories and which do not feature in sufficient numbers to

⁸⁸Larceny Act, 1916, s.23, as substituted by Criminal Law (Jurisdiction) Act, 1976, s.5.

merit separate categories of their own. There are eight in total: rape, breach of a protection order, unlawfully receiving a multi-channel signal, tax evasion on cigarettes, a violation of s.96 of the Fisheries (Consolidation) Act, 1959 (possessing a fixed net for the capture of salmon) and three cases of possession of a house-breaking implement. All of these offences, with one exception, appear relatively minor. The exception clearly is the rape. In that case the offender pleaded guilty and was sentenced to seven years imprisonment with a review after having served one year.

The offender convicted of the multi-channel offence had a previous conviction for the same offence. The case of evasion of duty on the cigarettes concerned an individual who was caught trying to smuggle 54 cartons of cigarettes across the border with Northern Ireland. The three cases of possession of house breaking implements consist of: an individual caught in possession of a screwdriver in a residential area; an individual caught in possession of a screwdriver, barrel-popper, pliers and a scanner in a field near a residential area; and an individual caught in possession of a hammer to be used in a burglary.



Offence Frequency

Of the twelve categories of offence identified in the files sample, larceny emerges as the most frequently occurring (see Figure 5). This is hardly surprising as larceny also achieves this status in most other countries which employ CSOs. More surprising, perhaps, is the fact that less serious assault and driving offences should feature in joint second place. When the offences are grouped into broader categories, road traffic and vehicle offences actually move into second place ahead of offences against the person (see Table 5).

Offence	Frequency
Property offences	41%
Road traffic and vehicle offences	24%
Offences against the person	23%
Public order offences	9%
Miscellaneous	3%

For the purpose of this broader categorisation possession of offensive weapons and drug offences were treated as offences against the person. It follows that the relative importance of road traffic and vehicle offences is probably understated.

While it is accepted that certain less serious assaults and driving offences will occasionally be serious enough to warrant a prison sentence either on their own or in conjunction with the previous criminal record of the offender, it is nevertheless surprising that this occurs with such frequency relative to other offences such as malicious damage and burglary. In any event it would appear that the high proportion of these offences in the sample cannot be explained by the criminal records of the offenders. Of those convicted of less serious assault 70% had no previous criminal record. A further 11% had only one previous conviction. Of those convicted of driving offences 45% had no previous criminal record and a further 31% had only one previous conviction. By comparison, of the offenders convicted of larceny 41% had no previous criminal record and a further 17% had only one previous conviction. These figures lend support to the proposition that some courts may be inclined to impose CSOs in situations where a custodial sentence might not have been imposed had the CSO option not been available.

The frequency with which public order offences occur is noteworthy. Although they make up only 9% of the sample, it might be considered that this is an unexpectedly high proportion given that they tend to be relatively minor offences. Once again this situation cannot be explained by the previous criminal records of the offenders in question. The criminal records of these offenders are exactly in line with the records of offenders in the sample as a whole.

Also noteworthy is the relative infrequency of more serious offences such as possession of proscribed substances with intent to supply and sex offences, as well as the complete absence of some serious offences such as manslaughter and firearms offences. Some of these offences, of course, cannot be tried summarily while the others are most likely to be tried only on indictment in the Circuit Court, the Central Criminal Court and the Special Criminal Court. As has been seen, CSOs are not available as a sentencing option in the Special Criminal Court while the Circuit Court and the Central Criminal Court would appear to be very sparing in their use of CSOs. .

Variations across Court Areas

There are some interesting statistical variations across the court areas. In Limerick, for example, larceny is by far the most frequent offence accounting for 42%. In Cork City it accounts for only 17%. The national average is 22%. Limerick and Dublin account for 69% of all the larcenies in

the sample. Limerick is also distinctive in that it registers more CSOs for public order violations than any other court area. Equally, apart from Dublin, it has more CSOs for burglary than any other area.

Less serious assaults feature strongly in Cork City. They account for 34% of CSOs in this area, compared to 12% in Dublin and only 5% in Limerick. The national average is 15%. It is also worth noting that no CSOs were imposed in the Cork City area for burglary.

Driving offences feature across 10 court areas and are clearly dominant in Wexford where they account for a massive 82% of the total compared to a national average of 15%.

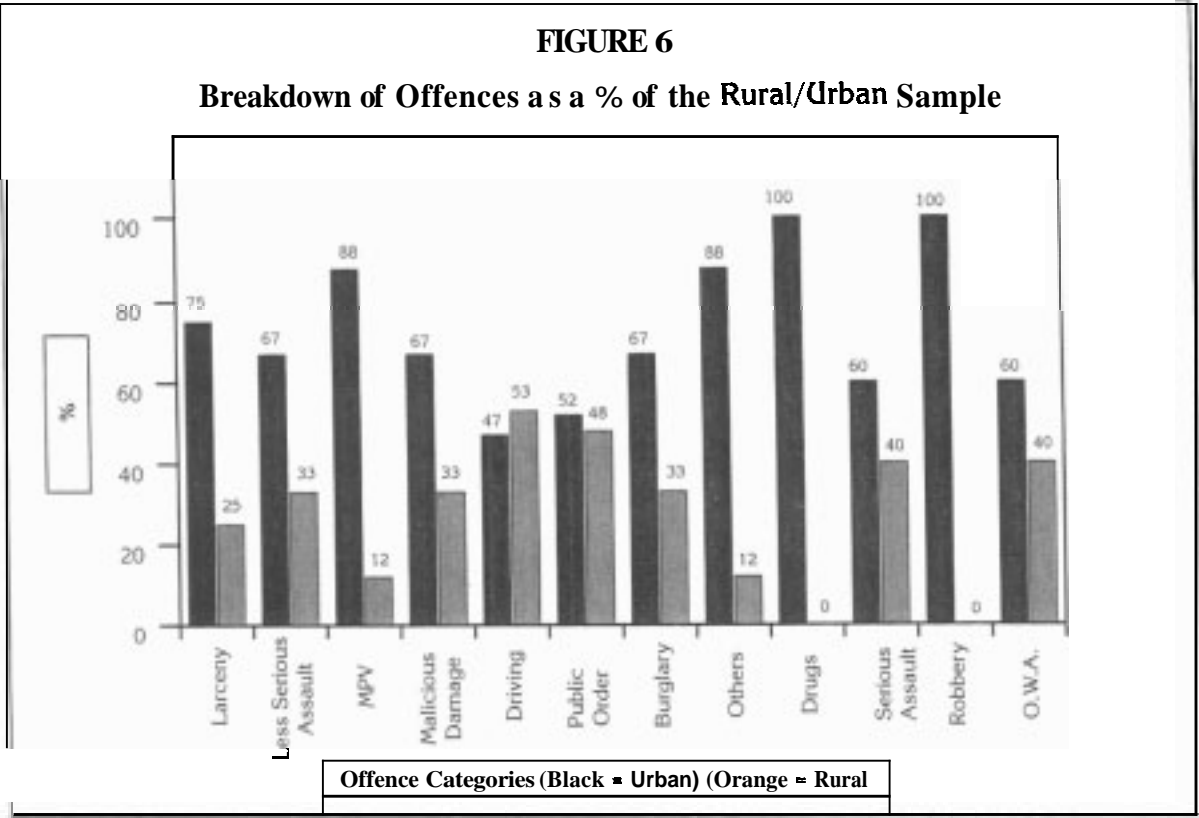
Public order violations scarcely feature in Dublin where they account for only 3% of the total. By comparison they account for 14% of the total for Cork City and 16% for Limerick. The national average is 9%. Interestingly, public order violations also feature across 6 rural court areas where they account for substantially higher percentages of the total. Given the small numbers involved it is dangerous to conclude that there is an excessive use of CSOs for public order violations in these areas. Nevertheless, it is worth noting the specific example of West Kerry where public order violations account for four out of the twelve CSOs imposed, the remainder being made up of five less serious assaults, one burglary, one larceny and one possession of an offensive weapon.

Malicious damage is also worth mentioning because of its frequency in some of the rural court areas (Cavan, Longford, Meath, Kildare and West Cork). Once again, however, caution is needed in interpreting the statistics owing to the exceptionally small samples from these areas. While Dublin, at 13% is close to the national average of 10%, Cork City and Limerick are significantly lower at 0% and 3% respectively.

Urban-Rural Comparisons

The general breakdown of cases between urban and rural areas is roughly 70% and 30% respectively. For some of the offences the breakdown between urban and rural areas broadly reflects that proportion. These are: less serious assault, burglary and malicious damage. Larceny is not too far away at 75% and 25%, although one might have expected a closer correlation with the norm given that it constitutes by far the largest category. Possession of offensive weapons and serious assault, both of which split 60% and 40% **might** be considered reasonably close to the norm given the relatively small numbers involved (10 in each category). Some which depart markedly from the norm can be discounted on the basis of the small numbers involved. These are the four robberies and the six drugs offences all of which feature in the urban areas.

There are three sizeable offence categories which depart significantly from the norm in terms of the rural urban breakdown. Public order violations and driving offences split almost 50:50 while the **MPV** category splits 88% and 12% **urban/rural**. The MPV aberration is to be expected. Most of the offences in this category concern offences related to "joyriding" which, of course, is largely an urban phenomenon. The aberrations with respect to public order violations and driving offences is less easy to explain. There is no objective reason why they should differ from the rest in terms of **urban/rural** breakdown. It would appear that judges sitting in rural areas are more inclined than their urban counterparts to impose CSOs for such offences.



The Court Survey

It is dangerous, of course, to draw any substantive conclusions from the court survey given the small sample. Nevertheless, it is worth recounting the nature of some offences which attracted CSOs. In a city sitting of the District Court three offenders with previous criminal records were convicted of larceny, larceny and breach of the peace respectively and were referred for CSO consideration. In two similar larceny cases before the court that day the offenders, both of whom had previous convictions, received a fine. In the breach of the peace case a co-accused received a fine. This, however, might be explained on the basis that he had no previous criminal record. The three CSOs which were made at the sitting of the Court that day were for possession of drugs, allowing oneself to be carried in a stolen vehicle and criminal damage. A similar criminal damage case concerning an accused with a previous conviction was disposed of by a fine and being bound over to keep the peace at the same sitting.

Four CSOs imposed in another city court sitting involved larceny, forgery of a cheque, assault and driving with no insurance and road tax respectively. At the same sitting a case of driving with no insurance resulted in the accused being sentenced to six months imprisonment. In this case, however, the no insurance offence was simply one of a number of offences for which the accused was before the court that day.

In a rural court sitting an offender sentenced to a CSO was convicted of driving with no insurance, no licence and drunk driving. In two similar cases before the court that day the offenders were sentenced to fines and endorsements.

It does not follow, of course, that just because one offender is sentenced to a CSO for an offence and another offender is given a different sentence for a similar offence that the sentencing lacks rationale or principle. More often than not there will be pertinent differences between the cases. One such difference is the presence or nature of a previous criminal record. In one of the city court sittings, for example, an offender with a previous criminal record was referred for CSO consideration after having been convicted for a public order offence. In two other similar cases before the court that day the offenders were dealt with under the Probation Act coupled, in one case, with a £50 donation to the poor box. These two offenders had no previous criminal records. It is also possible that some of the differences observed during the court survey can be explained by pertinent factors which were not immediately apparent or available to the observer.

CHAPTER 5

The Community Service Order

Length

The 1983 Act stipulates that a CSO cannot be imposed for less than 40 hours nor more than 240 hours. While CSOs can be imposed so as to run consecutively, their cumulative total in any individual case cannot exceed 240 hours. It follows that the maximum permissible range is from 40 to 240 hours.

From the information in the files it was possible to determine the length of 296 CSOs out of the total sample of 297. Surprisingly, perhaps, Dublin and Limerick were the only court areas to avail of the full range of between 40 and 240 hours. To some extent this might be explained by the fact that very few CSOs were imposed in some areas. The sample in each of thirteen court areas consists of no more than five CSOs, in four areas it is no more than two. In Cork City, however, with a sample of 29, the range is 60 to 240 hours.

It is also worth noting at the outset that there is one case in the files survey in which it appears that CSOs were made for periods less than the statutory minimum of forty hours. In the case in question the offender was convicted and sentenced in respect of eight separate offences. The court made a separate CSO in respect of each offence and ordered that they should run consecutively. The court was fully entitled to take this action as the cumulative total of the hours was 230. However, one of the orders was for ten hours, three were for twenty hours each and one was for thirty hours, all of which are below the statutory minimum.

The national average length of a CSO is 141 hours. Given the number of factors which can influence the length of a CSO in an individual case any attempt to make comparisons across areas on the basis of length is fraught with danger (see Figure 7 for average lengths across court areas). The smaller the sample in any particular area the more difficult it is to attach any significance to average length of CSOs imposed in that area. The three largest court areas, in terms of sample size (where CSO length is known) are Dublin (125), Limerick (38) and Cork City (29). These areas reveal relatively little difference in the average length of CSOs imposed. The averages for Dublin, Limerick and Cork City are: 147 hours, 150 hours and 142 hours respectively. Tipperary/Waterford, the next largest court area in terms of sample size (20) has an exceptionally low average at 76 hours. Presumably this figure is skewed by the case which includes three CSOs for twenty hours, one CSO for thirty hours and one CSO for ten hours. The averages for the next two largest court areas, Wexford (17) and Kilkenny (15), are 111 hours and 160 hours respectively. Clearly, both are well outside the national average. The next largest, West Kerry (12), by contrast is close to the national average at 138 hours. The samples in the remaining court areas are probably too small to produce meaningful comparisons, although it is worth drawing attention to Meath which has the highest average CSO length in the country, 216 hours from a sample of 5.

The variations in the average lengths of CSOs across certain court areas must not be interpreted as evidence of significant disparities in sentencing practices between court areas. The actual length of CSO imposed in any individual case will reflect the particular circumstances of that case and, inevitably, the circumstances of any one case will differ from the next. While these differences will average out as the sample increases it must be remembered that the samples in most of the court areas are too small to base any meaningful conclusions on the differences between the average lengths of the CSOs in their respective samples. The real significance of the average lengths in most individual areas will become apparent below when an attempt is made to work out an equivalence between hours of community service and months of imprisonment. Nevertheless, it would appear that the CSOs imposed by courts in rural areas tend, on average, to be significantly shorter than those imposed by their urban counterparts; 127 hours compared to 147 hours. Even when the exceptional case containing the CSOs below the statutory minimum is **excluded,**⁸⁹ there is still a significant difference between the rural and urban averages.



Term of Imprisonment

Under the 1983 Act CSOs are available only as a substitute for a term of imprisonment. The Act does not specifically require the court to state the term of imprisonment or detention which will be imposed on the offender if a CSO is not made or accepted. In practice, however, the judge who convicts the offender and refers the case for CSO consideration will normally specify the term of imprisonment or detention which he or she considers appropriate.

From the information on the files it was possible to identify the length of the substituted term of imprisonment in respect of 285 CSOs. There is considerable variation in the range of prison

⁸⁹The exceptional case is in a rural court area.

terms across the court areas. Dublin has the largest span by far, with a low of 14 days and a high of 24 months. The low of 14 days (or 40 hours CSO) was imposed on a father of five who was convicted of the larceny of a track suit from a city centre store. These figures do not take account of two exceptional cases where (i) a CSO of 150 hours was imposed in one case in Dublin in lieu of being bound over for 3 years; and (ii) the last six years of a seven year prison term was suspended on a number of conditions, including a CSO. It would appear that these two cases do not conform with the terms of the 1983 Act which enable a court to impose a CSO only as a substitute for a term of imprisonment or detention.

Both Cork City and Cavan have lows of 14 days and highs of 12 months. In Cork the 14 days imprisonment (150 hours community service in lieu) featured in respect of a 23 old male with no previous convictions who was convicted of an unspecified public order offence. The CSO was later revoked for non-attendance and the offender was ordered to serve the 14 days imprisonment. At the higher end of the scale in Cork a 48 year old single male (not known if he had previous convictions) was sentenced to 240 hours community service with 12 months imprisonment in lieu for driving with no insurance. In Cavan the 14 days imprisonment (75 hours in lieu) featured in respect of a 23 year old with no previous convictions who was convicted of an unspecified non-serious assault.

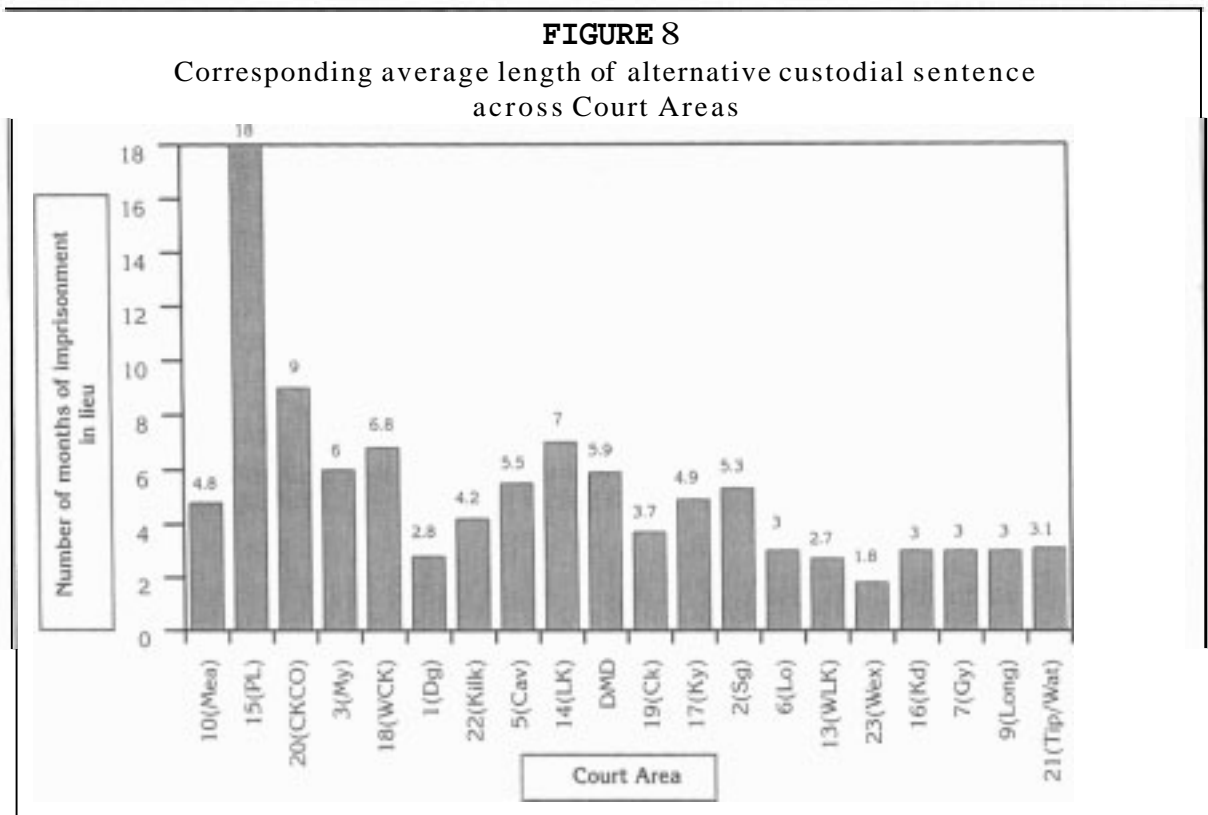
Wexford and Kilkenny are worthy of note for their relatively small spans, one to three months and two to six months respectively, despite the fact that they have sizeable samples, seventeen and fourteen CSOs respectively.

The national average for length of substitute prison term is 5.1 months. The caution which must be applied when interpreting the average length of CSOs across areas applies equally to any comparative assessment of the average length of imprisonment for which the CSOs are substituted. Nevertheless, the variation among the larger court areas is notable (see Figure 8). Of these, Limerick is the highest at 7 months. Dublin is not too far behind at 5.8 months. Cork City, however, comes in below the national average at 3.7 months. The next four court areas in terms of sample size are all below the national average: Tipperary/Waterford at 3.1 months, Wexford at 1.8 months, Kilkenny at 4.2 months and Kerry at 4.9 months.

It might be thought that the low for Tipperary/Waterford can be explained by the case in which the court imposed separate CSOs and associated prison terms for each count on which the offender was convicted. Since 5 of these counts attracted CSOs below the statutory minimum it might reasonably be supposed that the associated prison terms would be quite short. In actual fact they are not exceptionally short: 2 months (or 20 community service hours) for larceny to the value of £35; 2 months (or 20 community service hours) for larceny to the value of £20; 3 months (or 30 community service hours) for criminal damage to a window; 2 months (or 10 community service hours) for criminal damage to a window and door; and 2 months (or 20 community service hours) for criminal damage to a vehicle. Cumulatively, of course, this amounts to 11 months or 100 community service hours. As will be seen below, 11 months might be considered to be an exceptionally long substitute prison term for 100 hours community service.

Wexford has the lowest average substitute prison term in the country. The explanation would appear to lie in the fact that many of the CSOs imposed in Wexford are for driving offences committed by first time offenders. Of the 17 CSOs in the sample from Wexford 14 are for driving

offences, and in six of these the recipient was a first time offender. While the seriousness of driving offences undoubtedly varies from one case to another they do not generally attract prison sentences. Where custodial sentences are imposed for such offences they tend to be at the lower end of the scale. A case by case examination of the driving cases in the Wexford sample reveals that most of them are what might be described as "run-of-the-mill" cases of driving with no insurance and/or drunkdriving. It is hardly surprising, therefore that the prison terms specified as substitutes for the CSOs were all at the lower end of the scale.



Equivalence between CSO hours and Months of Imprisonment

In 285 cases it was possible to identify both the length of CSO and the substituted term of imprisonment. In the other cases one or other or both figures were missing. The national total of CSO hours from the 285 cases amounts to 39,985, while the national total of months of imprisonment from the same cases amounts to 1.460. Dividing the former by the latter gives a national value for 1 month of imprisonment in terms of CSO hours, namely 27 hours. In other words an offender would have to work for 27 hours community service in order to serve the equivalent of 1 month imprisonment.

When a similar exercise is carried out on the data for each court area, it becomes apparent that the equivalence between the length of a CSO and a term of imprisonment differs markedly across some areas. In theory the significance of the comparisons should not be affected by the size of the sample in any individual area. It is reasonable to suppose that one month of imprisonment will generally carry a similar weight in terms of CSO hours irrespective of the offence, the circumstances of the crime and the characteristics of the offender. The hours which have to be worked in order to satisfy the equivalent of one month of imprisonment in each of the court areas is set out in Table 6.

Table 6

Court Area	Hours Equivalent to 1 month
Donegal	63
Wexford	60
Meath	45
Louth	42
Cork City	38
Kilkenny	38
Galway	33
Kildare/Wicklow	33
Mayo	32
Kerry	28
West Cork	28
Cavan	28
Longford/Westmeath	27
Dublin	25
Tipperary/Waterford	24
Sligo	24
Cork County	22
Limerick	21
County Limerick	15
Portlaoise	11

The striking feature about these statistics is the extent to which they vary across some areas. The difference between the highest and lowest equivalences is 52 hours. In other words it takes on average 52 more CSO hours to satisfy one month of imprisonment in the one court area than it does in the other. It must be said that the high and low are provided by two court areas each of which has only one sample CSO. Nevertheless, this differential does not appear to be a freak. The remaining differentials between the next highest and next lowest in order of size are: 45 hours, 24 hours, 20 hours, 14 hours, 14 hours, 8 hours, 6 hours, 4 hours and 0 hours. No more than three areas have the same equivalence (28 hours).⁹⁰

It is also notable that almost twice as many court areas return average equivalences above the national average than below the national average. Those above the national average exceed it by as much as 36 hours while those below it fall short by a maximum of only 16 hours. Interestingly, those areas which impose a much higher number of CSO hours in substitution for

⁹⁰Kerry, West Cork and Cavan at 28 hours. It is also worth noting that Tipperary/Waterford and Sligo have the same equivalence (24 hours), as do Galway and Kildare/Wicklow (33 hours) and Cork City and Kilkenny (38 hours).

one month of imprisonment, compared to the national average, also tend to have little experience in dealing with CSOs. The one exception is Wexford which imposes the second highest number of CSO hours per one month of imprisonment despite the fact that it features among the more regular users of CSOs. Of the three areas which impose the most CSOs, Dublin and Limerick are below the national average in terms of equivalence at 25 hours and 21 hours respectively.

There are several possible reasons for high equivalences in some areas and the reasons are not necessarily the same in all areas. Although equivalence should not be sensitive to sample size it is likely that at least some of the high equivalences might be explained wholly or partly on the basis of very small samples. Other factors are a preponderance of prison sentences at the lower end of the scale and CSOs at the top end of the scale. Meath and Louth, for example, are the other court areas which have exceptionally high equivalences. In Louth this would appear to result from correspondingly low prison sentences. Given that the offences in question are unlawful taking of a motor vehicle and handling a stolen computer it cannot be assumed that these are cases in which a prison sentence would not normally have been considered if it was not for the CSO option. In Meath, however, the average prison term of 4.8 months is close to the national average of 5.2 months. The high equivalence rate there would appear to result from the sustained imposition of CSOs at the top end of the scale. Indeed, the range of CSO lengths in Meath is 200-240 hours.

These figures suggest that there is considerable variation throughout the country with respect to the number of CSO hours which are being imposed relative to the length of the substitute term of imprisonment or detention.

There is a clear difference in the rural and urban equivalences, but it is hardly dramatic. The average equivalence in rural areas is 32 hours for one month imprisonment, while in urban areas it is 26 hours. It would appear that the higher rural equivalence is primarily the result of lower average prison sentences being imposed in lieu in the rural areas compared to the urban areas. The average length of CSOs in rural areas is actually shorter than in urban areas; 126 hours as against 146 hours. However, the length of average prison sentences in lieu in the rural areas is also much shorter, 4 months compared to 5.6 months in urban areas. It is also worth noting that the range of prison terms imposed in rural areas is shorter than in urban areas; 14 days to 18 months as against 14 days to 24 months.

It is more difficult to explain why there should be this difference in the length of prison sentences in lieu between rural areas and urban areas. The likelihood is that a combination of factors is responsible rather than any single factor. At least part of the explanation can be found in the type of offences which attract CSOs in rural and urban areas. As a broad generalisation it can be said that there is a tendency in rural areas to resort to CSOs more readily for less serious offences than is the case in urban areas. These less serious offences tend to attract lighter prison terms in lieu of a CSO. Half of the less serious assaults, are to be found in rural areas despite the fact that the rural cases account for only one third of the sample. Exactly the same applies to public order violations, most of which consist of drunken and/or rowdy behaviour in a public place. Twice as many of the possession of offensive weapon cases are to be found in the rural areas as might be expected given the overall breakdown of cases between the rural and urban areas. Again, most of these are relatively minor given the nature of the weapons and the circumstances in which the offences were committed.

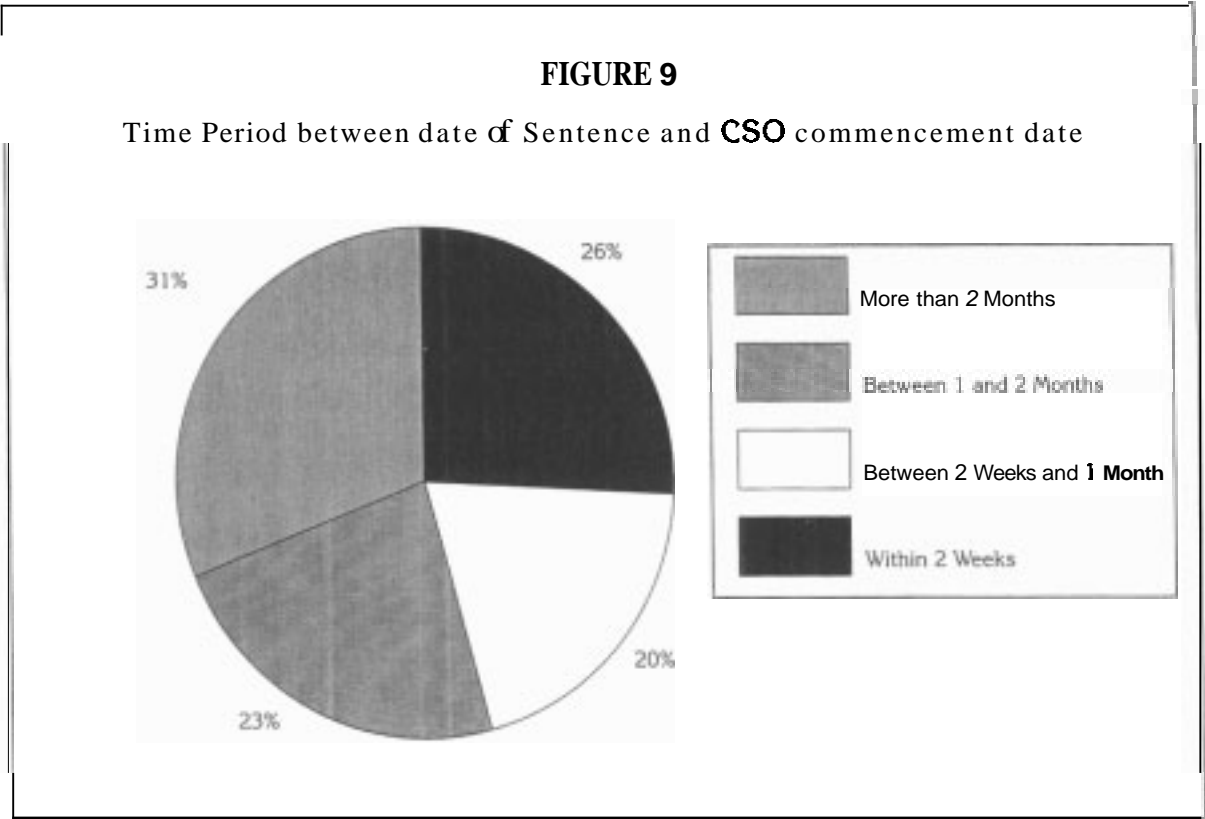
Of particular significance in this context are driving offences, not least because they account for 15% of the total sample (the joint second most common offence). More than half of these arise in rural areas despite the fact that the rural cases make up only one third of the sample. Almost one quarter of the rural cases concern driving offences, compared to one tenth in urban areas. Many of these driving cases are relatively minor, such as a first conviction for drunk driving or driving with no insurance. Given the sort of non-CSO punishments which are typically imposed in such cases, it would be very difficult for the judge to impose a significant prison term in *lieu* of a CSO. It would appear, however, that this restraint does not carry over into the length of CSO imposed. In the rural areas the average prison term in *lieu* of a CSO for driving offences is 3 months, which is significantly below the overall rural average of 4 months and very significantly below the urban average of 5.6 months. By comparison the average CSO imposed in rural areas for driving offences is 135 hours. This is higher than the overall rural average of 126 hours.

It is also worth noting in this context that all of the robberies, nine tenths of the MPV offences and four fifths of the larcenies (the most common offence in the sample) occur in the urban areas, despite the fact that urban cases make up only two thirds of the overall sample. These offences tend to attract longer prison sentences either because of the circumstances in which they were committed or because the offender already has a previous criminal record for similar offences. Burglary, malicious damage and drugs offences also tend to be serious for the same reasons. All of the drugs offences in the sample are found in urban areas while the burglaries and malicious damage cases are also over-represented in these areas.

Commencement

It was possible to determine when the community service work commenced relative to the date the sentence was imposed in 96% of cases in the files. Of these about one quarter commenced within two weeks of the sentence being imposed. 20% commenced within a period of two weeks to one month of sentence being imposed, 23% commenced between one month and two months of the sentence being imposed, while 31% did not commence until at least two months after the sentence had been imposed (see Figure 9). In 4% of cases the work actually commenced before the sentence was formally imposed. Before a CSO can be put into operation certified copies of the court order must be sent by the District Court clerk to the relevant probation officer who, in turn, must give a copy to the offender. The probation officer will then interview the offender with a view to arranging a suitable work project. All of this takes time. Nevertheless, it is noteworthy that work had commenced within one month of sentencing in less than half of the cases in the sample.

Among the larger probation areas there seems to be a significant difference between Dublin and the others in the speed with which the community service work commences after sentence is imposed. In Dublin work was commenced within two weeks in 36% of cases. In Cork, Limerick and Waterford the equivalent figures are: 16%, 17% and 4% respectively. In Dublin work did not commence in 42% of cases until more than one month after sentence was imposed. The equivalent figures for Cork, Limerick and Waterford are: 66%, 70% and 61% respectively. In Dublin work did not commence until more than 2 months after sentence was imposed in 25% of cases. The equivalent figures for the Cork, Limerick and Waterford areas are: 35%, 40% and 43% respectively. It follows that Dublin is significantly faster than the other urban areas in putting CSOs into operation.



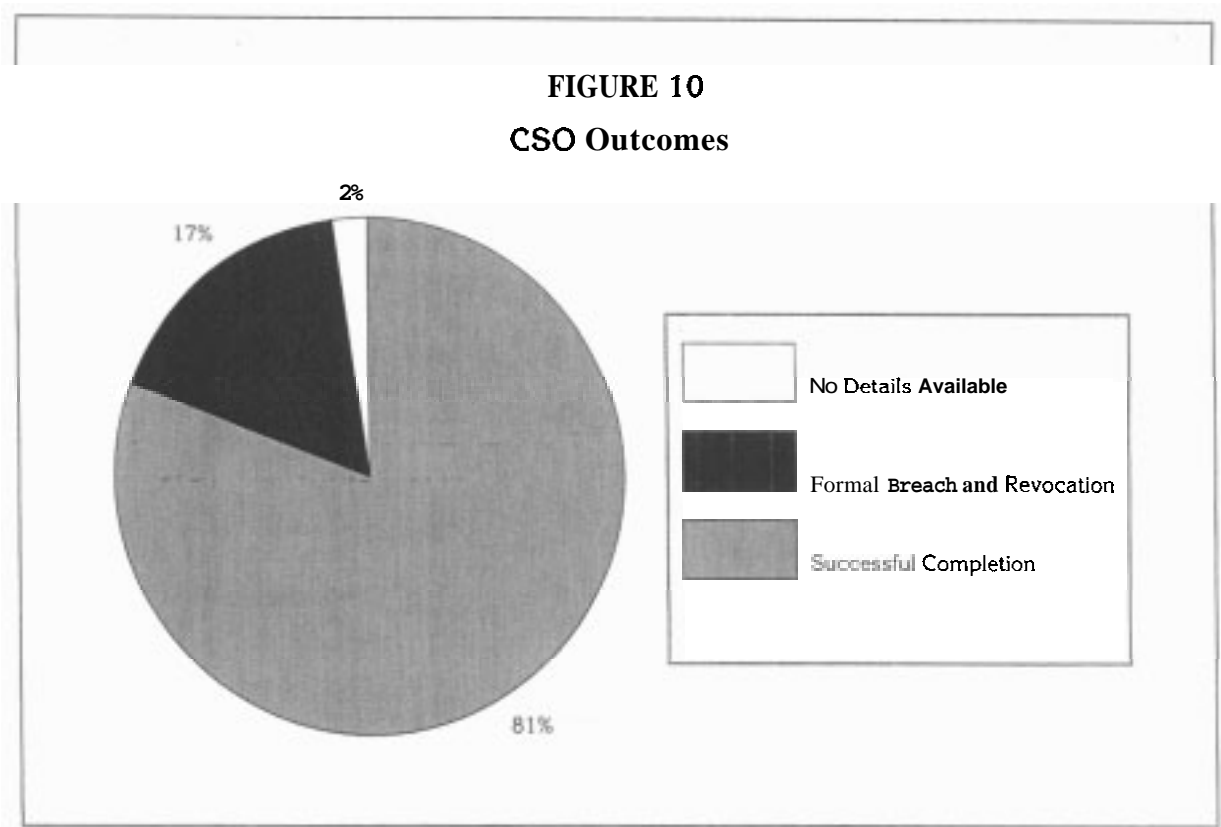
Some probation officers suggested in the course of the interviews that one possible explanation for the difference between Dublin and the other urban areas in putting CSOs into operation are the difficulties associated with finding suitable projects in rural areas. Although the Limerick, Cork and Waterford probation areas can be broadly classified as urban for the purpose of this study, the reality is that each of them incorporates substantially more rural components than the Dublin probation area. Unfortunately, this explanation is not fully supported by the statistics from the rural probation areas. In 35% of cases in these areas work is commenced within 2 weeks of sentence being imposed, while the delay is more than one month in 35% of cases and more than 2 months in 25% of cases. These figures are actually much more in line with the Dublin figures, suggesting that there may well be other factors affecting the figures in the Limerick, Cork and Waterford areas.

There are several other possible explanations for delay in commencement of CSO work. For example, some offenders may prove uncooperative by failing to keep pre-arranged meetings with the probation officer and/or project supervisors. Sometimes a work project will become unavailable before the work actually commences. Another possibility is delay in the transmission of the CSOs from overworked District Court clerks to the probation officers. Work cannot officially commence under a CSO until the order has been transmitted by the Clerk to the probation officer and from him or her to the offender.

Completion Rate

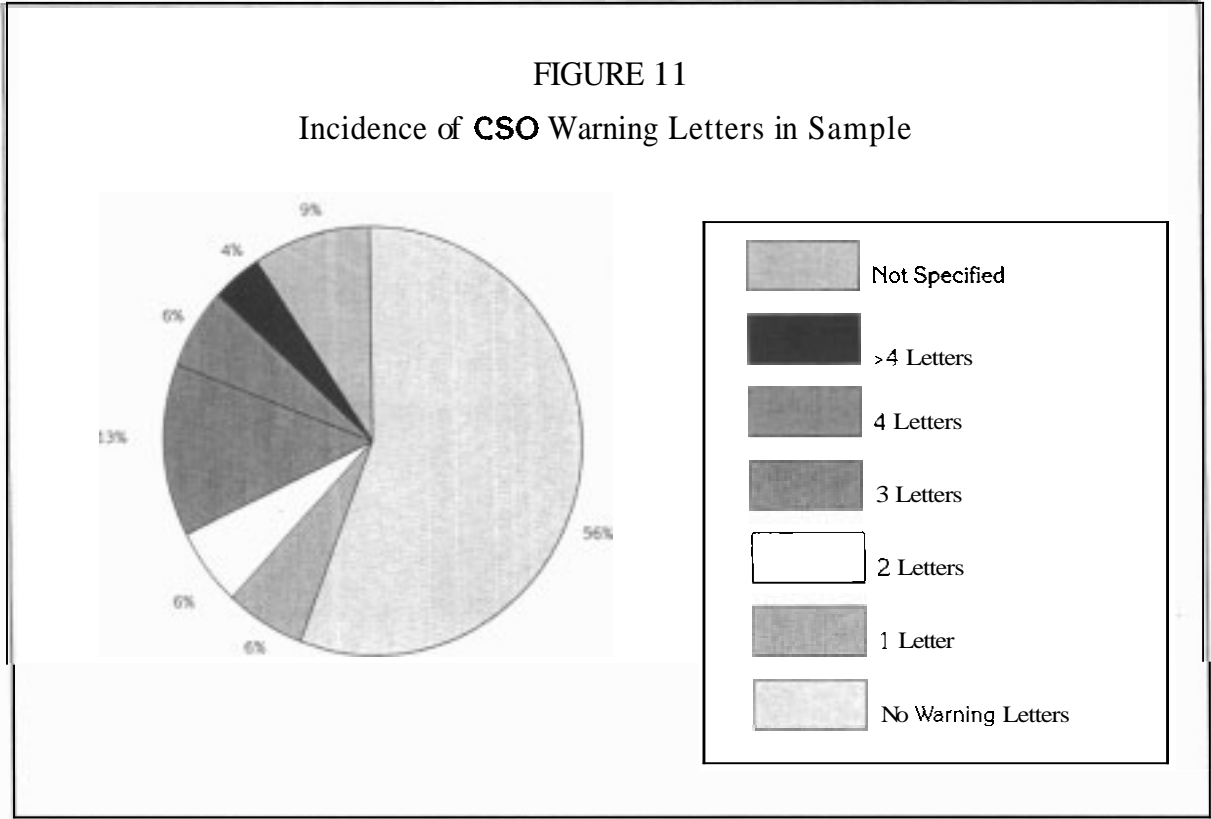
Information on the completion and revocation of CSOs was available for 94% of the 269 offender case files in the survey. Of these the CSO was completed successfully in 81% of cases (see Figure 10). This figure refers to each offender for whom a probation officer has issued the

certificate confirming that he or she has completed the requirements of the CSO. This must be considered a very high success rate by any standards.



It is worth noting, however, that successful completion does not necessarily mean that the offender fulfilled the terms of the CSO without any breaches. It is clear from the files in several cases that some offenders failed to turn up for work on occasions without a reasonable excuse. If this persisted for a period the probation officer would contact the offender and encourage him or her to comply with the terms of the order. Initially this would be done by phoning the offender or leaving a message for him or her at home. If that did not produce results the probation officer would write a mild letter to the offender notifying him or her that he or she was in breach. If the problem proved more persistent the tone of the letters would harden until the offender was left in no doubt that if he or she did not regularise the situation court proceedings would be commenced to revoke the order and activate the prison term. In 3% of the successful completions (2% of the total sample) the offender had a formal breach registered against him or her. In these cases the court exercised its discretion in favour of continuing the order.

Sixty two percent of the files contained no evidence of one or more warning letters having been sent to the offenders in question (see Figure 11). It would seem to follow that 62% of offenders fulfilled the terms of their CSOs without the need for a written warning from a probation officer. It does not follow, of course, that 62% of offenders fulfilled the terms of their CSOs without a hitch. There is evidence which suggests that probation officers did not resort to written warnings everytime an offender failed to comply strictly with the terms of his or her CSO. Persuasion and verbal warnings proved sufficient in some cases. It is not possible, however, to assess how often this happened.



Thirty eight percent of files (93) contained evidence of one or more warning letters to the offender. This is a substantial figure in itself. The frequency of letters in these cases is set out in Table 7.

Table 7

Number of Letters	Percentage (%)
1	17
2	16
3	39
4	16
≥5	12

These figures suggest that the successful completion of CSOs in about 40% of cases is not straightforward. Clearly probation officers are investing a considerable amount of time and effort in persuading offenders to complete their CSOs. The fact that three or more letters have had to be sent to at least two thirds of recalcitrant offenders suggests that the probation officers put a lot of effort into promoting successful completion. This is also reflected in the relatively low rate of revocations (see below).

There are a few interesting observations to make on the spread of warning letters across probation areas. The number of offenders who received warning letters in the larger areas

(Dublin, Cork and Limerick) generally reflect the national average. Castlebar is the only probation area where no warning letters were issued in any of its five cases. Other probation areas where the issue of warning letters is distinctly below the national average are Tralee and Waterford at 21% and 29% of total samples of 14 and 21 respectively. At the other end of the scale are Galway and Sligo. Warning letters were sent to all three offenders in the Galway sample and to five out of the eight offenders in the Sligo sample.

There was a general consensus among the probation officers interviewed that offenders are given at least three **warning** letters before breach proceedings are contemplated. Once breach proceedings have been initiated there is a set procedure which must be adhered to in all areas.

Seventeen percent of offenders (43) were the subject of a formal breach and revocation. This is higher than the national figures for prosecutions for non-compliance with CSOs in 1996 and 1997 which are 13% and 12% respectively.⁹¹ Nevertheless, it is not so high as to give cause for concern over CSO completion rates. Indeed, it is broadly in line with comparable figures from other European jurisdictions.

In each of the revocation cases in the files a warning letter had been sent to the offender on at least three separate occasions prior to the institution of revocation proceedings. Eighty percent of the offenders in question were repeat offenders, compared to the sample average of 57%. All but one of the offenders were male in the age range of 17-36 with an average age of 27 years. There was no significant difference between the revocation rates in rural and urban areas. However, some significant differences are apparent across the individual probation areas.

Among the larger probation areas Cork has the highest revocation rate at 24%. Dublin and Limerick are 19% and 18% respectively. Cork's share of the revocations is also significantly higher than its proportion of the overall sample. The revocation rates in Dublin and Limerick, by comparison, are roughly in line with their respective shares of the overall sample. Some of the smaller areas returned very high revocation rates, while others returned very low or zero rates. It is unlikely that any significance can be attached to these figures given the smallness of the samples. However, Waterford would appear to have the lowest significant rate of revocations in the country with only one revocation out of a total sample of 21. Waterford also happens to have the highest percentage of offenders over the age of 25 years (70% compared to the national average of 46%) and an exceptionally high proportion of offenders with no previous criminal record (84% compared to the national average of **43%**) This suggests that CSOs are likely to be more successful with older, first time offenders.

The breakdown of the primary offences in the CSO revocation cases is set out in Table 8.

Surprisingly, perhaps, public order offences feature almost twice as frequently among the revocations as in the sample as a whole. Over one quarter of all CSOs handed out for public order offences resulted in revocation. Driving offences and MPV offences also feature more frequently among the revocations, at 19% and 12%, than their respective proportions of the overall sample. Almost one fifth of the CSOs handed out for both offences resulted in revocation. **Drugs** offences feature two and a half times more frequently than their proportion of the sample. It is dangerous, of course, to draw any conclusions from this as their number is so low. Nevertheless, it might be considered significant that two of the six CSOs handed out for drugs offences resulted in revocation. Possession of offensive weapons is another offence which does

⁹¹*Dáil Debates* 16 June 1998, col. 980.

not fare so well in terms of successful completion. Two of the CSOs imposed for this offence resulted in revocation.

Table 8

Offence	Percentage (%)
Driving offences	19
Public order offences	16
Larceny	16
MPV offences	12
Less serious assault	9
Malicious damage	9
Burglary	7
Possession of offensive weapon	5
Drug offences	5
Serious assault	2

CSOs would appear to have most success with the less serious assaults. They feature among the revocations in just over half their proportion of the overall sample. Less than 10% of them result in revocation. Serious assaults, larceny, burglary and malicious damage all feature less frequently among the revocations than their proportion of the sample. Ten percent of the serious assaults resulted in revocation, while the equivalent figures for larceny, burglary and malicious damage are 11%, 13% and 13% respectively. There is no obvious reason why CSOs should be completed more successfully for these offences as opposed to driving offences or public order offences.

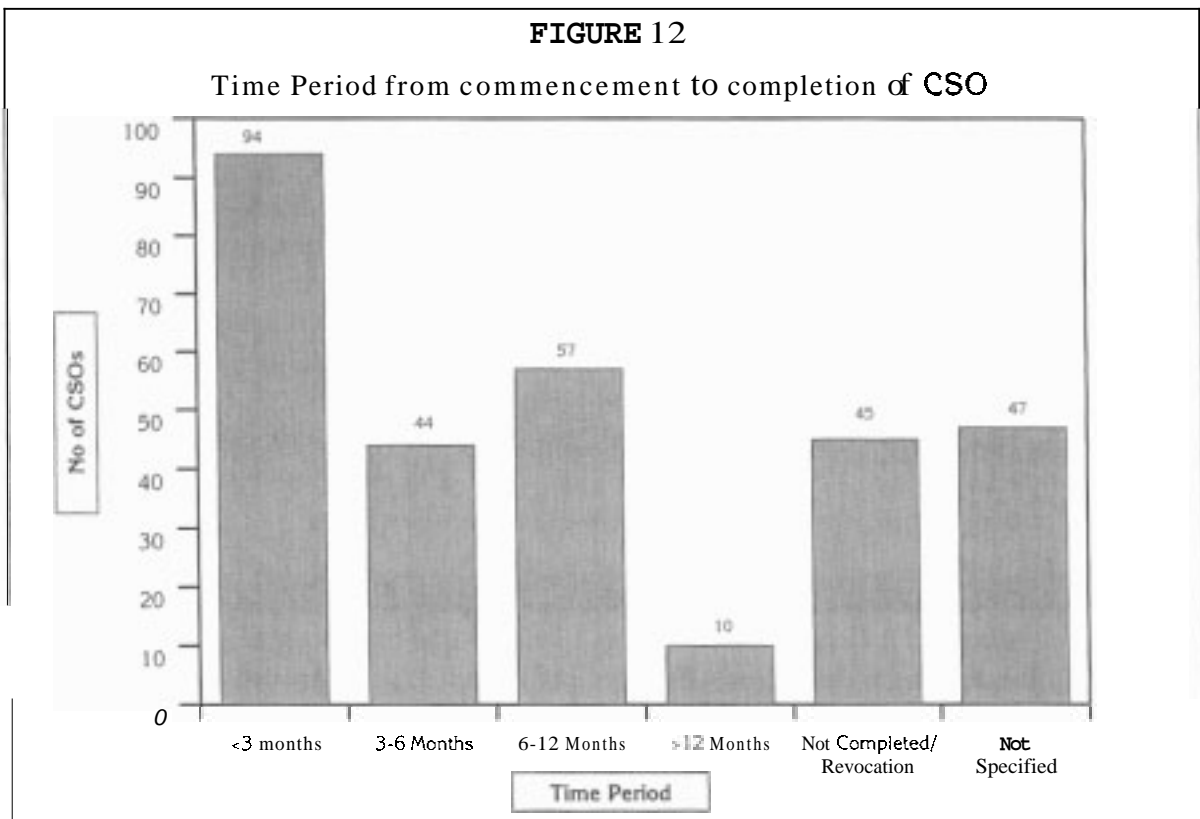
It would appear that the length of a CSO has only a marginal influence on revocation. The average length of CSOs in the revocation cases is 147 hours (5.7 months imprisonment *in lieu*). This is only slightly above the sample average of 141 hours (5.1 months imprisonment *in lieu*). The actual nature or location of the employment did not appear to be a significant factor in the failure rate. It is also worth noting that almost one quarter of offenders in the revocation cases did not work any of the CSO hours. This suggests that a significant number of these offenders may not have given a whole-hearted consent to the option of a CSO or, having given their consent, lost their enthusiasm when confronted with the reality of fulfilling their obligations under the CSO.

There was only one case in the court survey which involved revocation. The offender, a 22 year old male with previous convictions, had been sentenced to 200 hours community service with ten months imprisonment *in lieu*, for falling asleep while in control of a mechanically propelled vehicle. After completing 94 hours he was brought back before the District Court for failing to complete the remaining hours. The proceedings were adjourned for one week during which the offender was remanded in custody. At the resumed hearing the probation officer explained that the offender was working six days a week on a building site and was finding it hard to complete

his CSO. The judge fixed bail at £100 and put the hearing back for two months in order to allow the offender complete the hours.

Duration

Under the 1983 Act work performed under a CSO must normally be completed within one year of the date on which the order was made. Information was available from the files on the start and/or completion date of 90% of the CSOs imposed. When non-completions were excluded it was found that 26% were completed within two months, 68% were completed within six months and 94% were completed within twelve months. Only 6% took more than twelve months to complete (see Figure 12). It follows that, excluding non-completions, the vast majority of CSOs are completed within the twelve months limit.



Given the relatively high unemployment rates among CSO offenders coupled with the fact that the average length of a CSO is about 140 hours one might have expected faster rates of completion than the 26% within two months and the 68% within six months. It is accepted, of course, that offenders in full time employment will be available for community service work for only one day per week and, at most, the equivalent of two. Given the relatively high number of offenders in the sample who were classified as general labourers or tradespersons, coupled with the labour shortage, particularly in the building industry, which Ireland has experienced over the last few years, it can also be expected that many offenders would find it difficult to work even the equivalent of one day community service in the week. Taking a low of one day per week for an employed person at eight hours a day, it should be possible to work off an average CSO in about eighteen weeks. Even a maximum CSO of 240 hours should be worked off within thirty weeks

In theory unemployed offenders should be able to work off a CSO much more quickly than employed persons. In practice it would appear that the probation and welfare service generally restricts the number of hours per week which an unemployed offender can work to approximately twenty. This is necessary in order to maintain a degree of equity between employed and unemployed offenders on CSOs. Nevertheless, if an unemployed offender works the equivalent of even two days per week it is apparent that he or she should complete an average CSO within nine weeks. Similarly a maximum CSO of 240 hours should be completed within fifteen weeks. When these figures are coupled with those for an employed offender, and considered in the light of the fact that 70% of the offenders in the sample are not in full-time employment, it would appear that CSOs are not being worked off as quickly as they should be.

It is very difficult to determine from the files concrete reasons for this apparent slowness in working off CSOs. The files generally do specify how many hours per day and days per week the offender should work pursuant to the arrangements agreed with the probation officer and the project agency. However, the record of hours actually worked per day and the days worked per week often varied during the course of a CSO. It was necessary, therefore, to focus attention on the hours and days actually worked as opposed to those specified in the arrangements agreed at the commencement of a project. What these suggest is that CSOs should be worked off even more quickly than that which would result from a notional work rate of eight hours per week for an offender in full-time employment and sixteen hours per week for others.

Of the 241 CSOs completed the work record shows the hours worked per day in 221 cases. In 73% of these the offender worked for at least six hours per day. The vast majority of these were eight hour days. In only 3% of the cases did the offender work less than four hours per day. In the remaining 24% of cases the hours worked per day seemed to vary from day to day. It follows that an explanation for the slowness in working off CSOs does not appear to lie in offenders, whether in full-time employment or otherwise, working very short days.

Information on the weekdays worked was available in respect of 76% of the completed CSOs. Of these 17% (the second largest single category) worked only on a Saturday while another 7% worked only one day per week between Monday and Friday. The largest category, at 51%, had no pattern to the days which they worked throughout the week. Only 4% worked for four days a week between Monday and Friday while there was no concrete evidence of any offenders working a full five day week Monday to Friday or on Sundays. The fact that more than half of the offenders had no clear pattern to the days they worked each week makes it very difficult to offer concrete figures on the average number of days offenders worked each week. What can be said for certain is that of those who completed their CSOs at least 25% worked more than one day per week. Undoubtedly, this is a gross under-estimate of the number of offenders who actually worked more than one day per week. Indeed, the true number may be as high as 76%. The problem is that only 25% worked a consistent pattern of more than one day per week. The remainder includes offenders who would have worked more than one day per week in some weeks, one day per week in others and/or not at all in some weeks.

Given these statistics on the hours and days per week which the offenders actually worked it would appear that the most likely explanation for the slowness in completing CSOs is absenteeism or breaks in the continuity of work projects. There were some cases where it could be determined from the files that a work project had ended prematurely through no fault on the part of the offender or the probation service. In other cases it was apparent that a change in the

circumstances of the offender resulted in breaks in the continuity of the work project. It can also be expected that excusable absences due to illnesses etc were a factor in individual cases.

Nevertheless, there are a number of other factors which suggest that inexcusable absenteeism is a problem. The files contain warning letters sent by probation officers to offenders who are in breach of the terms of their CSOs. It has been seen above that these occur with sufficient frequency to suggest that absenteeism is a problem. Moreover, it is apparent from the files in many of these cases that the offender was absent from work for one or more extended periods. It is also worth noting that the statistics on the days per week worked by offenders reveal that by far the largest category (51%) consists of offenders who had no set pattern to the days they worked per week. It can be expected that offenders who are prone to absenteeism would come within this category. Also, the probation officers interviewed generally confirmed that absenteeism among offenders was a significant problem, particularly for those offenders who found their work placement boring and for those who were coming near the end of their term.

It is worth noting that there did not appear to be any significant difference between rural and urban probation areas in the speed at which CSOs are completed. The rural areas are slightly behind the urban areas in the proportion which were completed within 2 months, despite the fact that the average length of CSOs in rural areas is slightly shorter. The difference, however, (20% as against 26%) is hardly significant.

Work Projects

Work projects undertaken by offenders on community service are quite varied. Most, however, can be described as environmental. This can involve general environmental work, such as litter removal in or around urban areas, and maintenance work in graveyards, sports facilities, churches, schools, charities, youth clubs and old peoples homes. Painting, decorating and gardening projects also feature very prominently. The manufacture of toys for charity outlets provides a large number of placements in Dublin. There are also a range of more unusual projects such as furniture restoration, kitchen work, a cookery course, ship-loading (for charity) and child care in a community creche facility. There was no evidence to suggest that any of them were projects undertaken with a view to the realisation of a profit. Equally, it would appear that they all concerned work projects that would have been undertaken on a voluntary basis.

It would appear from the interviews with the probation officers that insurance cover is the greatest restraint on the availability of work projects. The regulations issued pursuant to the 1983 Act require a probation officer to be satisfied that the body for whom work is to be performed under a CSO is adequately insured against liability in respect of injury, loss or damage caused to or by the offender in performing the work. However, very few county councils or corporations will make work projects available as a result of the legal advice they have received concerning insurance cover. Even the probation and welfare service in some areas is reluctant to take on some high risk offenders, such as sex offenders. Where projects are available either the host agency or some other organisation has provided the necessary insurance cover. In Cork, for example, the Lions Club organises insurance cover for all environmental projects. Nevertheless, according to some of the probation officers, it seems that many more varied and meaningful projects would be available nationwide if the insurance problem could be overcome.

Some probation officers suggested that suitable work projects are more difficult to arrange for offenders in rural areas than in urban areas due to a shortage of suitable work supervisors (see below) and transport difficulties. They asserted that they could recommend CSOs in more rural

cases if they had the resources to arrange for transport for offenders to and from work projects. The regulations issued pursuant to the 1983 Act do make provision for the Minister to pay travel expenses where he is satisfied that the offender is unable by reason of lack of means to travel to and from the place of work. Although there were forty cases in the files survey where offenders were credited hours for time taken to travel to and from the work site, it was not possible to determine from the files whether the power to pay travel expenses was widely or regularly used. While there was one file which included information about travel expenses paid to the offender, it would appear that financial information is not generally recorded on the files. It was not possible, therefore, to reach a conclusion on the assertion that an alleged unwillingness to pay travel expenses was depriving rural offenders of suitable work projects.

Some probation officers also suggested that courts in rural areas are cognisant of the alleged difficulties in securing work projects for offenders and accordingly are more reticent about referring individuals for CSO consideration than their urban counterparts. While it does appear that CSOs may be under-utilised in rural areas it is not possible to determine from the files or the court survey whether this is due to an actual shortage of work projects in these areas, a perceived shortage of work projects in these areas, a shortage of suitable project supervisors in these areas, the unavailability of transport for offenders to potential work projects or some other factor. What can be said is that there is a difference of opinion among some probation officers about the availability of sufficient work projects and the supposed need for transport provision in rural areas. The views of some probation officers on this matter are cited above. Others suggested that if there is a problem in rural areas it is largely the result of offenders looking for work projects outside of their own locality because they are embarrassed about having to work off a sentence within the community where they are known.

Perception of CSO Workers

There was a general consensus among the probation officers interviewed that the host agencies had a very positive attitude towards community service offenders and the community service scheme in general. There were no reports of local resistance to community service projects. The officers identified their active personal contacts with the host agencies and the performance of the "supervisors" (see below) on individual projects as being critical to the establishment of this positive image of community service.

The Supervision of the Offender on Community Service

Each offender is subject to direct supervision in the carrying out of his or her community service work. In many cases the direct supervision will be undertaken by the manager or staff of the project agency in question. In other cases supervisors are specially employed for the purpose. These supervisors are usually selected from the unemployment register and employed on a casual basis. There was general consensus among the probation officers interviewed that the "supervisor on site" is the crucial nexus in any successful community service project. The probation officers rely on them to carry out the direct supervision of the offenders and deal with day to day problems. The officers visit the project from time to time to check that the work is proceeding.

It would appear that the most frequent problem for probation officers concerns offenders failing to comply with attendance requirements at the work project. Much time is spent in following up on non-attendance cases or offenders who are "slow to do their hours". Since many of the

offenders have never had a regular work routine in their lives it can be quite difficult for them to adjust to the demands of a community service project.

Offenders Attitudes to Community Service

All of the probation officers interviewed stated that the initial response of offenders to being sentenced to a CSO was one of "delight that they were not going to jail". Most offenders also respond very well to the demands of community service. Others, however, become bitter as they progress through their hours. The problem frequently seems to be "boring work". These are the offenders who are most likely to give rise to attendance problems. Some probation officers also reported that not all offenders favoured community service over imprisonment. There are offenders who would prefer to serve a period in prison rather than a longer period of unpaid work in the community. Indeed, two such cases were observed in the course of the court survey. It was not possible, however, within the confines of the research, to reach any conclusions about the relative numbers or characteristics of those who refuse the opportunity to do community service.

CHAPTER 6

Procedure

Introduction

Typically, the CSO issue arises once the accused has been convicted and the judge is considering an appropriate sentence. The judge may raise the possibility of a CSO himself or herself or it may be raised in the course of the mitigation plea by the offender's lawyer. The matter is never raised by the probation officer in court. If the judge is prepared to consider making a CSO he or she will specify the sentence of imprisonment or detention which he or she has in mind as an alternative to a CSO. The judge will then ask the offender if he or she understands what is involved in a CSO and whether he or she would consent to a CSO as an alternative to the custodial sentence. If the offender consents the judge will adjourn the case for the preparation of a report on the offender by the probation officer. When the report is handed in at the resumed hearing the judge will proceed to pass sentence after having read the report and having considered any representations which may be made by or on behalf of the offender. The judge may also ask further questions of the offender, the probation officer or the prosecuting garda officer before making the final decision on sentence.

Further details of what happens in practice are set out below under the heading of "The Hearing". At this point, however, it is worth noting that the judge does not always proceed to make a CSO in every case which he or she adjourns for the preparation of a community service report on the offender. Statistics released by the Minister for Justice, Equality and Law Reform in 1998 reveal that of the 1,450 cases adjourned for the preparation of a community service report in 1997 about one fifth did not result in the making of a CSO.⁹² In 1996 more than one quarter of referrals did not result in a CSO. It is likely that the vast majority of refusals are the result of unfavourable CSO reports.

The Court

Of the 297 CSOs in the survey sample 283 (96%) were imposed in the District Court. In two of these cases the court was sitting as a Juvenile Court. Only thirteen (4%) were imposed in the Circuit Court and one in the Central Criminal Court. The two cases dealt with by the District Court sitting as a Juvenile Court were in Dublin. In one case a 17 year old youth with a previous criminal record was convicted of the unlawful taking of a motor vehicle and sentenced to a CSO of 80 hours with 6 months detention *in lieu*. In the other case a 17 year old youth with no previous criminal record was convicted of allowing himself to be carried in a stolen vehicle and sentenced to a CSO of 240 hours with 6 months detention *in lieu*. It is likely that other cases were dealt with by the District Court sitting as a Juvenile Court but these were the only two cases in which such information was specifically recorded on the files.

Of the thirteen CSOs imposed in the Circuit Court four resulted from an appeal against severity of sentence imposed in the District Court, while the other nine were imposed following trial and

⁹²*Dail Debates* 16 June 1998. col. 980.

conviction at first instance in the Circuit Court. The offences and sentences imposed in the nine cases heard at first instance are set out in Table 9.

Table 9

Offence	Sentence	Previous Record
Assault on female	240 hours/12 months	Yes
Robbery	150 hours/Bound Over 3yrs	Yes
Malicious damage	200 hours/24 months	Yes
Larceny	150 hours/10 months	Yes
Issuing false receipts x 26	200 hours/N.K.	No
Assault	150 hours/3 months	Yes
Assault	150 hours/6 months	No
Public order offence	90 hours/3 months	Yes
Drunk driving	100 hours/3 months	No

The offences and sentences imposed in the appeals are set out in Table 10.

Table 10

Offence	Sentence	Previous Record
Assault	100 hours/6 months	N.K.
Larceny	150 hours/9 months	Yes
Public order offence	50 hours/2 months	Yes
Assault	150 hours/3 months	No

Given the small number of cases involved it would not be appropriate to draw substantive conclusions about the use of CSOs in the Circuit Court, apart from the fact that they are rarely imposed as a substitute for a prison term at that level. Nevertheless, it is worth making two observations. First, the highest substitute prison term in the cases tried at first instance is two years. This is the absolute maximum term of imprisonment or detention which may be imposed by way of consecutive sentences on conviction for several offences in the District Court. It might be concluded, therefore, that the Circuit Court is reluctant to resort to CSOs in cases which would not have attracted a prison term in excess of anything which could have been imposed in the District Court. It must be said, however, that the 1983 Act does not confine the use of CSOs as substitutes for terms of imprisonment or detention which could have been imposed in the District Court. There is no statutory upper limit on the length of custodial sentence which can be substituted by a CSO, apart from the fact that CSOs are not available for offences for which the sentence is fixed by law. It might seem surprising, therefore, that the Circuit Court does not make more use of the CSO, particularly given the fact that custodial sentences within the range of those which could be imposed by the District Court are often handed down by the Circuit Court.

The second observation worth making concerns the geographical spread of the thirteen cases. Four of them are in the Limerick probation area, three in the Tralee probation area and two in the Waterford probation area. These figures are substantially in excess of what might be expected from the sample sizes in each of these areas. The three in Dublin is probably below what one might expect given the size of the Dublin sample. More surprising, perhaps, is the complete absence of cases from the Cork area. The thirteenth case is in Athlone.

A CSO was imposed in only one case in the Central Criminal Court. The seriousness of this case only serves to highlight the fact that CSOs are not being used as frequently as might be expected in the Circuit Court and the Central Criminal Court. In the case in question the accused was convicted of rape. The Court adjourned the case for the preparation of a probation report on the offender. When the case came back before the Court for sentencing the Court imposed a sentence of seven years imprisonment. However, it also stipulated that it would review the sentence after the expiry of one year. With this in mind the Court asked the probation service to submit a further report on the offender for the review hearing. This report should include an assessment of the offender's suitability for a CSO. When the case came up for review the Court suspended the remaining six years on a number of conditions, including a CSO of 240 hours. In effect the Court combined a CSO with a part-suspended prison term. This, of course, would appear to be in breach of both the spirit and the letter of the Act. The intention behind the Act is that the court should choose between a CSO or a custodial sentence. Any attempt to combine the two would defeat the underlying policy to divert offenders away from prison. Moreover, the Act specifically states that the court before whom the offender is convicted may make a CSO in respect of the offence of which he is convicted *instead of dealing with him in any other way*. The clear implication is that a CSO cannot be combined with a term of imprisonment or a sentence of imprisonment which is suspended in whole or in part.

Clearly CSOs are rarely considered as sentencing options outside of the District Court, despite the fact that the legislation making them available as an option does not draw any distinction between the level of court in which the offender was convicted. This might convey the impression that CSOs are being used primarily as a punishment for minor offences. Certainly, as has been seen, there is evidence to suggest that the District Court occasionally resorts to CSOs in cases which might not otherwise have attracted a custodial sentence. It must be said, however, that most of the cases in the files sample concern indictable offences and many of them were committed in circumstances which could not readily be described as minor. The District Court has jurisdiction to deal with a wide range of indictable offences in any case where both the accused and the DPP have consented. In these cases the District Court can impose a maximum sentence of twelve months on a single count, or 24 months where sentences imposed on separate counts are to run consecutively. There is no statutory maximum sentence of imprisonment or detention which may be imposed for summary offences. However, it is generally agreed that if an offence is punishable on conviction by a sentence of imprisonment or detention for a period in excess of twelve months, the accused has a constitutional right to jury trial. In other words it must be treated as an indictable offence and can only be dealt with summarily by the District Court if both the accused and the DPP have consented.

Although CSOs are imposed primarily in the District Court it is apparent that they are very infrequently applied in some District Courts. Of the 23 District Court areas in the State, four do not feature at all in the files survey. Of the 297 CSOs imposed in the sample, eleven District Court areas account for no more than four each. Virtually all of these are rural areas. One, however, is Area 7. Despite the fact that it includes Galway City it has only four CSOs in the

survey. It is not clear why there should be so few in this area. The interviews with the probation officers did not shed any further light on the matter as they, too, were surprised that the number was so low in Galway.

In the absence of statistics on the sentences of imprisonment handed down in each District Court area over the period of the research it cannot be assumed that the very low numbers of CSOs made in some rural areas result from a lack of familiarity with or enthusiasm for CSOs among the judges concerned. In the course of the court survey one judge openly acknowledged that he was not favourably disposed to the use of CSOs because he felt that the requirements imposed on their use by the 1983 Act were too restrictive. Given the limited nature of the court survey it was impossible to determine whether he was in a minority of one or whether there are other judges who are reluctant to use CSOs because of the restrictions imposed by the Act. There is also some evidence in the files of a few judges being prepared to stretch the criteria governing the availability of CSOs. Examples are: the imposition of CSOs below the statutory minimum of 40 hours, the use of a CSO as an alternative to being bound over for three years and the use of a CSO in conjunction with the suspension of part of a prison sentence. It must be acknowledged, however, that these are isolated cases.

All of the probation officers interviewed were of the opinion that there is a very high degree of awareness of community service as a sentencing option among both the judiciary and defence solicitors. The view was also expressed, however, that some judges in the rural areas used them conservatively because they "knew" that it was difficult to find suitable work projects for the offenders. As explained above, it was not possible to determine from the files whether some judges were reticent about the use of CSOs for this reason.

The Sentencing Court

Each CSO case will have come before the court at least twice; once for trial and conviction and once for the final imposition of sentence. It might be expected that the trial judge and the sentencing judge will be the same person. From the information on the files it was possible to identify the trial judge and the sentencing judge in respect of 281 CSOs. In about one quarter of the cases the judge who imposed the CSO was not the trial judge. Dublin accounted for 71% of these cases. Indeed, in 45% of all the cases in Dublin the sentencing judge was not the judge who had conducted the trial. This can be explained by the fact that there are a relatively large number of judges sitting at any one time in the District Court in the Dublin metropolitan area due to the heavy case load. It is necessary from time to time to assign judges temporarily to specific court sittings in order to deal with a build up of cases in the localities concerned. Equally, cases may be transferred from one sitting to another in response to judicial vacancies caused by holidays, illness etc. Given that there is a time lag of some weeks or even months between conviction and the imposition of a CSO, this movement of judges inevitably can result in a CSO case coming before a judge other than the judge who convicted the accused.

The fact that the identity of the judge may change from the trial to the imposition of sentence in some CSO cases does not mean that there is a lack of continuity or a risk of unfairness in the disposal of these cases. Although it is not specifically required by the legislation the trial judge will normally specify the length of CSO and the length of substitute prison term which he or she has in mind when referring a case for a community service report. The very fact that the case is referred for CSO consideration shows that the trial judge considers that the offence is suitable for punishment by way of the CSO specified. The only outstanding issue is whether the offender is suitable for a CSO and whether appropriate arrangements can be made in his or her

case. These are matters which will be investigated by the probation officer. When the case comes back to court the only issues for the judge who will impose sentence are whether the offender is suitable for a CSO, whether suitable arrangements can be made and whether the offender consents. Even if the sentencing judge is not the original trial judge there is little danger of a sentence being imposed which bears no relation to the nature of the offence, culpability of the offender and harm to the victim. If the community service report is favourable and the offender consents the judge will normally proceed to impose the CSO specified by the trial judge. By the same token, if the report is unfavourable or if the offender refuses to consent the sentencing judge will either impose the term of imprisonment specified by the trial judge or send it back to be dealt with by the trial judge. It follows that the sentencing in CSO cases should not be affected by change in the identity of the judge from the trial to the imposition of sentence.

The Hearing

The files contain no information about the manner in which the CSO issue is considered in court. The court survey, however, provided an opportunity to get a glimpse of the proceedings in such cases. It must be borne in mind that the cases covered did not constitute a statistically significant sample of the cases before any individual court or courts generally. The following account is offered only as a glimpse of what happened in particular courts on the days on which the researcher happened to be present.

In all of the cases observed the accused pleaded guilty, a conviction was recorded and the case referred for a community service report in a time range of two to five minutes with an average of just over three minutes. The solicitor for the accused in each case gave a short plea in mitigation, minimising the accused's previous criminal record and emphasising his or her tough upbringing. It would appear from the interviews with probation officers that the judge would not normally seek a comment from the probation officer in court before deciding whether to request a community service report. While the average of about three minutes per case might seem quite short this must be seen in the context that the case is not being disposed of finally at that hearing. It will come back before the court again for consideration of the community service report and the final imposition of sentence. Nevertheless, the fact that relatively short discussion and consideration is given to whether a case should be referred for CSO consideration suggests that there is a high degree of experience and consensus among the participants as to which cases are and which are not suitable for a possible CSO. This is to be expected given that CSOs have been part of the system now for almost twenty years.

In those cases where a community service report was handed in to court, the sentencing lasted between one and six minutes. The average in Dublin was two and a half minutes while in Limerick it was one minute. Once again these figures must be interpreted in the light of the fact that the only issue at this point in each case was whether the community service report was favourable and whether the offender consented. It is also important to remember that the figures quoted (and the associated averages) apply only to the small number of cases covered in the court survey. It is quite possible that different figures would emerge from a larger sample spanning a much longer period of time.

The cases covered in the court survey actually revealed a range of practices in the courts. In some, for example, before imposing a CSO the judge advised the offender to seize the opportunity which he was being given to build a more productive and fulfilling future for himself. In some others the judge moved straight to the imposition of sentence. In one case the judge asked the Garda superintendent if he had any comment to make before imposing a CSO. In

two other cases the judge deferred the imposition of a CSO until full compensation had been paid into court by the offenders. It is worth noting in this respect that the 1983 Act specifically states that a court is not precluded from making an order for compensation under any other enactment when making a CSO under the Act.

For the most part the accused were silent throughout, apart from two cases in Dublin where they spoke up to decline the option of a CSO. In none of the cases did the accused give an audible consent when asked by the judge. In one case a CSO was imposed on the accused in his absence. On the issue of consent the 1983 Act merely stipulates that a court cannot impose a CSO unless the accused has consented. Neither it nor the regulations or rules made pursuant to it make provision for how this consent should be articulated. As explained in the chapter on the legislation, it can be assumed that a consent will only be valid if it is an informed consent. Nevertheless, that still leaves a large grey area with respect to how much information and understanding the accused must have about the CSO before he or she can give an informed consent. There is also some uncertainty about how that consent should be articulated. It is at least arguable that the mere fact that the accused has not articulated a refusal when asked by the judge whether he or she consents is not sufficient in itself to constitute a consent for the purposes of the Act. Even if the lack of objection can satisfy the consent requirement for the purposes of the Act, it may not satisfy the requirements of international law prohibiting forced labour.

In none of the cases in the court survey did the offender give or show any response to the imposition of a CSO. The probation officers encountered during the survey indicated that most offenders had a positive attitude to a CSO sentence. In two of the Dublin cases, however, the offenders refused the CSO option. In one case the offender opted for three months imprisonment instead of 100 hours community service, while in the other the offender opted for six months imprisonment instead of 200 hours community service.

From the interviews with the probation officers it seems that some courts will occasionally combine a CSO with a probation order, a fine or an order for compensation. Indeed, as noted above, there were two cases in the Dublin Court survey where the judge deferred the imposition of a CSO until the offender had paid full compensation into court. While a compensation order can be made in addition to a CSO in any individual case, it is not possible under the legislation to combine a CSO with an additional form of punishment such as a fine, a term of imprisonment or a probation order. These limitations have come in for criticism in some quarters and, as explained in chapter 8, are out of step with developments in some other European jurisdictions.

It seems that probation officers do not generally participate in the CSO sentencing procedure apart from supplying the court with the community service report. According to the probation officers interviewed, judges do not normally consult the probation officer before deciding whether to refer a case for CSO consideration. Although the 1983 Act states that the judge may hear evidence from the probation officer before imposing a CSO it seems that this rarely happens in practice. Not surprisingly, perhaps, probation officers do not take the initiative in making oral representations to the court. Indeed, in one case observed in the court survey where the judge imposed a CSO of 200 hours the probation officer did not notify the judge that the offender had been given a CSO of 120 hours in another court. Under the legislation the maximum CSO which could have been made in respect of the offender at the sitting in question was another 120 hours (as opposed to the 200 hours). Rather than bringing the matter back before the court for correction, the probation officer dealt with it administratively.

Bail

It was possible to determine whether an offender was remanded on bail or in custody pending a decision on the imposition of a CSO in 95% of the cases. In 99% of these the offender was remanded on bail. This might seem surprising given that the offender has been convicted and the court, at least notionally, is considering a custodial sentence. On the other hand it can be argued that to remand the offender in custody would defeat, or at least seriously compromise, the whole purpose in considering a CSO as an alternative to imprisonment.

Time Lapse between Conviction and Sentence

The imposition of sentence normally follows swiftly upon conviction. In cases where the court is considering a custodial sentence, however, it would not be unusual for the decision on sentencing to be postponed until the court was supplied with further information on the circumstances of the offender. Where the court is considering the possibility of a CSO as a possible alternative to a term of imprisonment or detention it must first consider a report about the offender by a probation and welfare officer. Almost invariably this means that a final decision on sentence will be postponed until a community service report is presented to the court. In other words there will be a delay of some weeks between conviction and the imposition of a CSO in any individual case.

The probation and welfare service publication on the management of CSOs advises officers to seek a sufficient period of time from the court to prepare the report. The period suggested is three weeks where the offender is not in custody.⁹³ Probation officers interviewed estimated that it takes anything from three to six weeks to prepare a report. Some said that it could take more than six weeks when a backlog of work has built up. A lot can depend on the particular area and the character of the individual judge. According to some probation officers encountered on the court survey some judges like to keep the pressure on by demanding a report to be handed in within four weeks. It was the view of these officers that the court workload for one day could be quite manageable while before the same court and a different judge the next day it could be overwhelming. Not all of the extra work would stem directly from CSO cases, as the probation officer present in court could be called upon to deal with other court related probation work. The impression gained from the court survey is that probation officers in the urban areas are operating under greater pressure in court than their colleagues in the rural areas. The former must be prepared to respond efficiently as if operating a conveyor-belt type system in order to keep up with the volume of dispositions. In the latter the pace of proceedings is slower and more personal. By the same token, however, it is acknowledged that probation officers in rural areas generally have to combine community service work with other probation duties, while some probation officers in the urban areas work only on CSOs.

Once the report has been prepared the case can be brought back to court for final sentencing. This, of course, will not always happen immediately. Much will depend on the frequency of court sittings in the area concerned and the case load. Even allowing for five weeks to write a report and up to two weeks for the case to come back before the next sitting of that court it is apparent that the time lapse between conviction and the imposition of a CSO should be well short of two months.

In the sample it was possible to calculate the time lapse between conviction and the imposition of a CSO in 97% of the cases by probation area. The time lapse in 33% of these was less than

⁹³*"The Management of the Community Service Order* op.cit. at p. 3

one month, in 32% it was between one month and two months; and in the remaining 35% it was in excess of two months. The fact that one third of the cases took less than one month between conviction and the imposition of a CSO suggests that a significant number of reports are being prepared in less than four weeks. Equally, the fact that more than one third of cases take more than two months between conviction and the imposition of a CSO suggests that there are inordinate delays somewhere in the system affecting a significant number of cases.

Among the urban areas Cork is the fastest with only 21% of cases taking more than two months. In Waterford, on the other hand, almost 50% took more than two months. Generally, it would appear that the urban areas are faster in moving from conviction to the actual imposition of a CSO. Forty one percent of the cases in the rural areas took more than two months compared to 31% of those in the urban areas. Similarly, only 23% of the former took less than one month, compared to 35% of the latter.

There are several factors which can result in delay between conviction and the imposition of a CSO. The possibilities include: under resourcing in the probation service, a lack of cooperation from the offender in preparing the CSO pre-sentence report, difficulties with a proposed work project, court delays, or a combination of one or more of these factors. In some cases a proper assessment of the offender's suitability may require time-consuming investigation. Equally, the probation officer may use the assessment process in some cases to test the offender's suitability in terms of punctuality and reliability in keeping appointments. It was not possible from the information on the files to draw any definite conclusions about the relative importance of these factors or their relative importance in individual probation or court areas.

There can be little doubt that a significant factor is the time that it takes for the probation service to organise a suitable community work project for the offender. According to the probation and welfare service publication on the management of CSOs the officer preparing the report should engage in detailed discussion with the agency supplying the work placement concerning matters such as hours of attendance and other conditions.⁹⁴ It may also be desirable to arrange a meeting between the officer, the offender and a representative of the agency before presenting the report. Delays can occur even while attempting to arrange the initial interview with the offender. In the court survey, for example, there were two cases in which the offender left the court with such haste that the probation officer found it impossible to get relevant details from him. Even when an initial interview is arranged it is not unusual for the offender to cancel it or fail to attend. Delay is occasioned by the time it takes to arrange another interview, not to mention the possibility of further cancellations or failures to attend. By the same token, however, there was a general consensus among the probation officers interviewed that offenders tended to cooperate very fully with the preparation of reports. It was also said in the course of the interviews that the probation officer will usually consider it necessary to interview the gardai involved in the case. Generally, the higher the court the more background work will be done on the case.

Community Service Report Styles⁹⁵

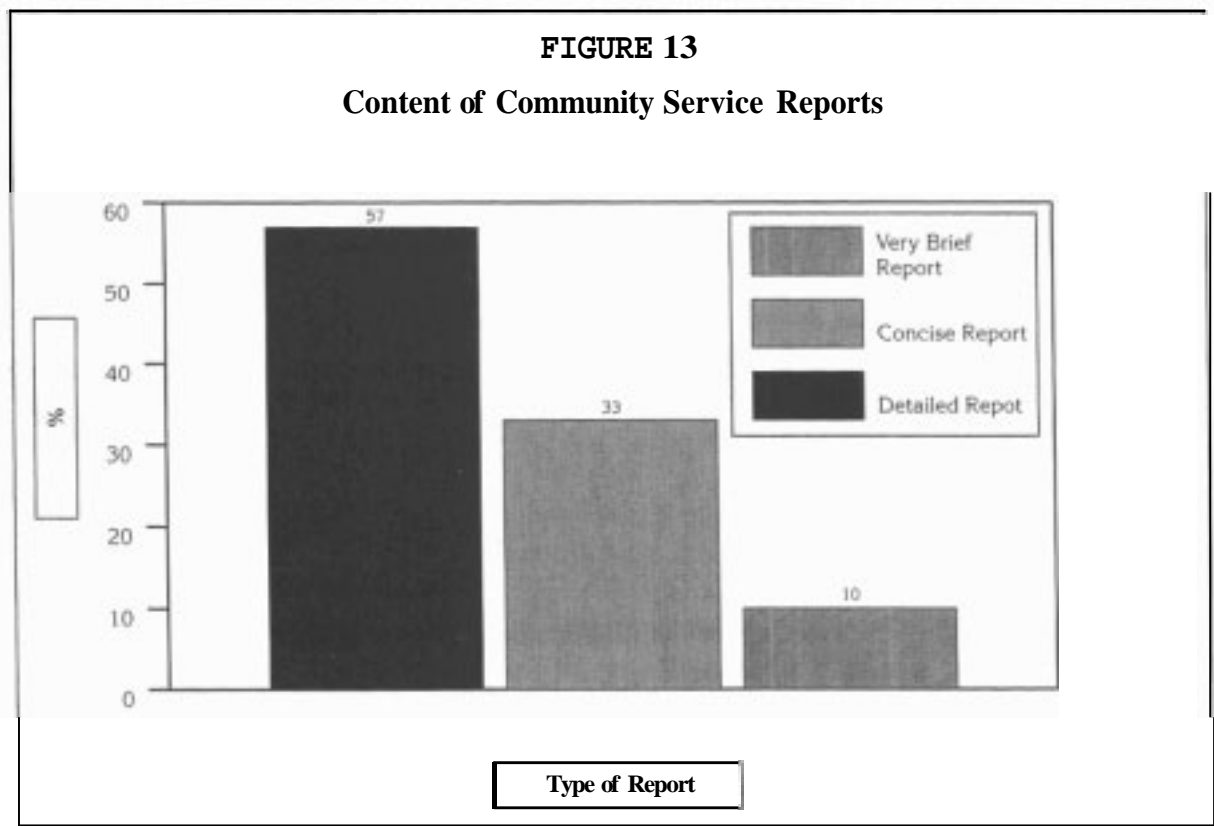
The survey sample contained 257 CSO reports which can be classified on the basis of content. At the outset, however, it is worth noting that three of these reports were used for more than one CSO. Moreover, in the overall sample there are ten files for which it is not possible to make a value judgment on the style and content of the associated reports. In four of these files there

⁹⁴*ibid.*

⁹⁵The work which is necessary, and the time that it takes, to complete a community service report is described above under "Time Lapse between Conviction and CSO Sentence".

is no report despite the fact that a report had been requested by the court. In a further three files the court had not requested a report.⁹⁶ Another file contains a probation report instead of a community service report.

Of the 257 community service reports available in the files 57% can be described as detailed reports, 33% are concise, while the remaining 10% can be described as very brief (see Figure 13). A detailed report typically covers two or three pages and contains substantial information about the offender's personality, background, education, skills, employment, family circumstances as well as details about the offence and the circumstances in which it was committed. These reports often contain details of a mitigating explanation from the offender about why he or she committed the offence. By contrast the very brief reports are less than half a page in length and contain very sparse information about the offender and, usually, no information at all about the circumstances in which the offence was committed. Many of these are no more than four or five lines. In between are the reports which might be described as concise. Typically, these will be about one page long and will contain information about the offender's current family and employment circumstances, as well as some information about the offence. They lack the detail and comprehensiveness of the full and detailed reports but are more informative than the very brief reports.



Not surprisingly, perhaps, the reports from a specific area reflect similar characteristics of style and content. This is particularly evident in the Limerick probation area. Not only does Limerick account for all of the reports which can be described as very brief, but 84% of its reports fall into this category. Seventy nine percent of the reports from the Cork probation area come within the concise category, as does 85% of those from Tralee. Together Cork and Tralee account for **43%**

While the legislation does not specifically oblige the court to request a report on the offender, the court must consider a report about him by a probation and welfare officer before it can make a CSO; Criminal Justice (Community Service) Act, 1983, s. 4(1)(a).

of all reports in this category. One hundred percent of the reports from the Wexford, Sligo, Navan, Dundalk and Athlone probation areas fall into the detailed category. A few areas reflect a greater mix of report styles. In the Dublin probation area, for example, 70% of the reports can be classified as detailed while 30% can be classified as concise.

The 1983 Act does not prescribe the format or contents of a community service report. It merely states that a court shall not make a CSO unless it is satisfied after considering, *inter alia*, a report about the offender by a probation and welfare officer that the offender is a suitable person to perform work under an order and that arrangements can be made for him or her to perform the work. It would seem to follow, therefore, that a report must at least provide information about the offender's suitability to perform work under a CSO and the arrangements that can be made for him or her to perform such work. There is no further guidance in the Act on what information would be relevant to the offender's "suitability" or how much detail should be included about what "arrangements" can be made. It would appear that these are matters for the discretion of the probation officer drawing up the report. If a judge in any individual case required more information than was contained in the report he or she could exercise the power to take oral evidence from the officer.

The probation and welfare service publication *The Management of the Community Service Order* offers further administrative guidance on the preparation and presentation of community service reports. It stipulates that when preparing the report the probation officer should pay particular attention to: (a) the suitability of the offender for community work with reference to his or her attitude to the offence and the injured party; and (b) the availability of suitable work. It goes on to say that the "only purpose of the report is to evaluate an offender's suitability for community service and to make the consequent recommendation."⁹⁷ It also states that reference to the consent which the offender has already given to the court should be made in the report. The publication then proceeds to list the following detailed indicators for or against the suitability of the offender for community service:"

- (a) Has s/he a permanent address?
- (b) Has s/he a work record?
- (c) Does his/her working hours leave enough free time to do Community Service?
- (d) Will family responsibilities allow him/her to do Community service?
- (e) Is s/he in good health?
- (f) Has s/he any psychiatric, emotional, or environmental problems which make him/her unsuitable to perform Community Service?
- (g) Will the Court be able to make a Community Service Order without taking unwarranted risk, bearing in mind the offence and past record of cooperation with the Service?
- (h) Is s/he likely to be sufficiently motivated to complete a Community Service Order?
- (i) Is s/he without a constructive use of his/her leisure time?
- (j) Has s/he a serious drink or drug habit?
- (k) Has s/he a record of violence?
- (l) Does the offence or record include sexual misbehaviour?
- (m) Does s/he understand the demands of the order and the implications of failure to complete?

⁹⁷*The Management of the Community Service Order* *op.cit.* at p. 3.
"*ibid.* at p. 4.

These indicators are not meant to be exclusive. They should be considered in the context of all the available information about the offender.

It is easy to see from these guidelines why a substantial proportion of the reports come within the "detailed" category. Less easy to explain is why so many reports are very brief. The fact that they are concentrated largely within one probation area suggests that there are local factors at play. Seemingly one or two judges are very precise about the sort of information they need in a community service report. In line with the Statutory requirements they want to know only whether the offender is suitable for a CSO and whether suitable arrangements can be made for that offender to perform community service. In order to satisfy themselves on these matters they do not consider that they need detailed information on matters such as the background of the offender or the circumstances in which the offence was committed. Inevitably the probation officers will be influenced by their perception of what a judge wants to see and what he or she does not want to see in a community service report.

The interviews with probation officers also revealed that individual officers have their own personal perspectives on their role in preparing a community service report. It must be emphasised, of course, that these are personal perspectives and do not necessarily represent the views of the probation and welfare service. Some officers gave a very blunt functionalist view of their role: "I assess their suitability and concurrently investigate an appropriate placement"; "I simply assess the guy to see if he is suitable or not"; "[I make] an honest assessment of people's ability to do a CSO. I need to be able to stand over it in court". Others see their role more in terms of a mission to assist in the rehabilitation of the offender: "I'm a social worker so I try to make a connection *vis-a-vis* a fairly dynamic report to the court"; "I see it as somewhat broader than just community service. I also try to look at the addiction issues"; "I give a picture to the court of who the client is. I often point out the terrible disadvantages these people have faced in life"; "I let the client know of this great opportunity to stay out of prison".

All of the community service reports in the sample are either favourable or neutral on the suitability of the offender for community service. This is hardly surprising given that the sample consists of cases in which CSOs were imposed. In the court survey, however, it is interesting that two of the nine reports submitted in Dublin were unfavourable on the suitability of the offender for community service. In one of these the trial judge had specified a prison term of ten months or 240 hours community service on an offender with previous convictions who was convicted of burglary. On receipt of the unfavourable community service report the sentencing judge imposed the custodial sentence and increased it to twelve months.

It is also worth noting that in one case where a favourable community service report was handed in the judge imposed a fine.

Generally the consensus among the probation officers interviewed was that the judges rarely question or seek to go behind the information or opinions contained on the face of a community service report. In practice this means that the judge will normally impose community service in the light of a favourable report. The only exceptions are when the offender is before the court on additional charges. It does not necessarily follow, however, that community service will be denied in the light of an unfavourable report. There were cases in the court survey where CSOs were made despite the fact that the probation officers concerned had handed in unfavourable reports. These cases have been explained on the basis of clerical errors, mistakes in interpreting the report or further material coming to light in favour of the offender.

The Courts

It was possible in 97% of the files sample to identify the judge who convicted the offender and referred the case for CSO consideration. In all 44 different judges were represented.

Forty two percent of the judges feature in more than one court area; 16% feature in more than two areas, while two individual judges, feature in four different areas. Not surprisingly, several judges are represented in the urban court areas: 25 in Dublin, 7 in Cork City and 5 in Limerick. It is also worth noting that five different judges feature in the Tipperary/Waterford area and four in Cavan.

In any individual area where a significant number of CSOs have been imposed it is invariably the case that most arise from convictions and referrals from one or a small number of judges. This is true even in those areas where a relatively large number of judges feature. In Dublin, for example, while 25 judges feature overall, 5 of them account for 62% of the cases. Seventy two percent of the judges in Dublin feature in no more than three CSO cases each. Of the five judges who feature in Limerick one judge accounts for 68% of the cases. Indeed, the 26 cases in which he features in Limerick is the highest total for a judge in any individual court area. The next highest at 17 is found in both Wexford and Dublin.

It is difficult to draw any firm conclusions from these statistics. The fact that some judges feature more frequently than others does not necessarily mean that some are more open to the use of CSOs than others. The differentials might be explained, at least partly, on the basis of differential workloads. Equally, there may be local circumstances which render community service a less viable option. There is a view among some probation officers interviewed, for example, that it can be difficult to arrange suitable work projects for offenders in some rural areas. Equally, it can happen that a probation officer has not been established long enough in his or her area to be in a position to identify and develop a sufficient number of suitable work projects. A quite different problem was highlighted by a judge interviewed in the course of the court survey. She explained that she was very much in favour of CSOs, but most of her sittings were in an area which was ravaged by heroin abuse. The grim reality is that most of the young offenders who were coming before her would not be suitable for community service. This point was echoed by some probation officers working in urban areas with serious heroin problems.

CHAPTER 7

Costs

On the second reading of the Criminal Justice (Community Service) Bill, 1983 in the Dail the Minister estimated that with 350 CSOs in a year the average weekly cost of each CSO would be £36.26.⁹⁹ As the number of CSOs increased the average weekly cost of each would decrease. For example, with 700 CSOs in the course of a year, it was estimated that the average weekly cost of each would be £18.13 per week. By comparison the average weekly cost of keeping someone in prison in 1983 was said to be £424. In other words, on the basis of about 700 CSOs in a year, prison was likely to be more than 20 times more expensive per offender than CSOs.

The accuracy of these costs and relativities depends on the method used to calculate them. The Minister did not explain how the average weekly costs of CSOs or prison were calculated. Calculating the running cost of the CSO scheme is a difficult task. While some costs can be ascertained accurately at the end of the financial year, others are more fluid. The former includes costs such as: the salaries and expenses of probation officers working full-time on CSOs, emoluments and expenses paid to project supervisors, equipment and materials used on work projects and the travel expenses incurred in respect of journeys by some offenders to and from the place of work. More difficult to calculate are the costs associated with the salaries of probation officers who combine CSO duties with other probation work and administrative costs associated with the CSO scheme.

The inherent difficulties in calculating the global costs of CSOs are accentuated when an attempt is made to calculate the cost per offender for the purposes of making comparisons with the cost of keeping a person in prison. A crude comparison can be gained by dividing the annual cost of the CSO scheme by the number of offenders who were on the scheme during that year and comparing the result with that produced by dividing the cost of the prison service by the number of prisoners in the same year. This will give the annual average costs per CSO offender and per prisoner for that year. Using this method it would appear that the current weekly cost of an offender on a CSO is £39.40, while the weekly cost of a prisoner is £1027.

Since CSOs should be imposed only as a substitute for a prison sentence it would appear that the CSO scheme provides a potential saving of £988 per CSO offender per week in prison expenditure. The reality, of course, is that not every individual served with a CSO would have served time in prison if CSOs were not available. One of the reasons why CSOs were introduced in the first place was because the prisons could not cope with the numbers of individuals being sentenced to imprisonment. Even with the expansion in the prison building programme since 1983 and the availability of CSOs it is apparent that supply has never managed to outstrip the demand. In the absence of CSOs, therefore, it is likely that many individuals sentenced to imprisonment would not have served their sentences in prison. Moreover, it would appear from this research that a number of individuals sentenced to CSOs would not necessarily have been

⁹⁹Dáil Debates Vol. 342. col. 322

sentenced to a term of imprisonment if CSOs had not been available. It follows that CSOs are undoubtedly a much more inexpensive method of dealing with offenders, but £988 per offender per week is probably an overestimate of the actual savings in prison expenditure.

It must be remembered, of course, that CSOs were not introduced primarily to reduce prison expenditure. Their primary purpose was to provide the courts with a broader range of sanctions for dealing with offenders. The particular attractions of the CSO are that it keeps the offender out of prison, does not disrupt the offender's family life, does not disrupt the offender's employment or education, helps to rehabilitate the offender through the discipline of having to work in the community and making meaningful reparation to the community for his or her crime, and benefits the community through work projects which would not otherwise be done. These are the real benefits to flow from CSOs. The fact that over four fifths of CSOs are being completed suggests that these benefits are being realised. Clearly, however, it is not possible to quantify such benefits in any meaningful manner.

CHAPTER 8

Comparisons with Other European Jurisdictions

Introduction

Community service orders were introduced in many other European jurisdictions in the course of the 1980s. Their operation in some of these jurisdictions in the late 1980s and early 1990s has been surveyed in a two volume work published by the International Penal and Penitentiary Foundation.¹⁰⁰ Although some of the research is now dated it nevertheless provides a very useful basis for comparison with the Irish legislation governing CSOs and the operation of CSOs in practice. The following comparative assessment of CSOs in France, the Netherlands, Denmark and Germany is based primarily on that publication. The comparative assessment of CSOs in England and Wales relies heavily on *Community Service by Order* (1982) edited by Pease and McWilliams and George Mair's chapter "Community Penalties and Probation" in *The Oxford Handbook of Criminology 2nd ed* (1997).¹⁰¹

England and Wales

The drafting of the Irish Criminal Justice (Community Service) Act, 1983 was influenced by the existing legislation in England and Wales. Community service orders were introduced in England and Wales by the Criminal Justice Act 1972 consequent on a recommendation from the Advisory Council on the Penal System in 1970.¹⁰² The Council had been asked to consider "what changes and additions might be made in the existing range of non-custodial penalties, disabilities and other requirements which might be imposed on offenders" in order to tackle the problem of overcrowding in prisons. In recommending the CSO the Council submitted that it would serve the objectives of: reparation, rehabilitation, punishment and the avoidance of custody.

It is generally accepted that one of the underlying policies of CSOs as introduced by the 1972 Act was to provide an alternative to custodial sentences. Unlike the Irish legislation, however, the legislation in England and Wales does not specifically confine CSOs to cases where a custodial sentence would otherwise have been imposed. Instead the order is available simply if the offence charged is an imprisonable offence. Unlike its Irish equivalent it is also available as an alternative to imprisonment for default in the payment of a fine.

For the most part the procedure under the legislation in England and Wales is similar to that under the Irish 1983 Act. Before the court can make an order with respect to a convicted offender it must obtain a pre-sentence report on the suitability of the offender for community service and explain to him or her the purpose, effect and requirements of an order as well as the possibility

¹⁰⁰See A Kalmthout and P Tak *Sanctions-Systems in the Member States of the Council of Europe, Parts I and II: Deprivation of Liberty, Community Service and Other Substitutes* (Deventer: Kluwer, 1988 and 1992)

¹⁰¹See also, *Evaluating the Effectiveness of Community Penalties* (Aldershot: Avebury, 1997) edited by George Mair.

¹⁰²They were introduced in Northern Ireland in 1979 on foot of a 1976 Order in Council.

of a review of the order. The offender must consent before the order can be made. There is no specific statutory requirement for the court to state the sentence of imprisonment which it will impose if the offender does not consent to the order. As in Ireland, the minimum length is 40 hours while the maximum is 240 hours. The order must normally be worked off within twelve months, and breach can be punished by a fine and/or by revocation of the order. Just like the Irish provisions, the legislation in England and Wales does not include any guidance on the equivalence between hours of community service and days of imprisonment.

The CSO scheme in England and Wales was substantially amended by the Criminal Justice Act 1991 which introduced a number of measures which have no parallel under the Irish legislation. The CSO is now defined as a sentence of the court, as opposed to an order. The primary innovation, however, is the "combination order". This permits the court to combine a CSO with other community penalties; most particularly a probation order and attendance at a probation centre. While a fine can be imposed in addition to a CSO, there is no provision for combination with a custodial sentence or a suspended sentence.

Although the 1991 Act does not confine CSOs as a substitute to actual sentences of imprisonment, it does provide guidance to courts on the ranking of CSOs in a hierarchy of criminal sanctions. There is no equivalent in the Irish legislation. Before deciding on the appropriate sentence in any individual case a court in England and Wales should consider whether the offence is so serious as to warrant an order or whether it is so serious that it requires custody. While this does not specifically confine CSOs as an alternative to custodial sentences the clear implication is that it should be used only to deal with serious offences which might otherwise have been punished by a sentence of imprisonment. National Standards issued by the Home Office in 1992 suggested that the "combination order" should be used primarily in the Crown Court (i.e. for offenders who are convicted on indictment). In other words it should be considered as a serious sentence even higher up the scale than the pure CSO. The revised issue of these Standards (1995) omits the reference to the Crown Court.

Although substantial research has been, and continues to be, carried out on CSOs in England and Wales it is not always comparable with the practice in Ireland. The administration and supervision of CSOs in England and Wales is devolved to the counties and regions. This is reflected in the fact that research into the operation of CSOs tends to be conducted at the level of individual probation areas. Research projects which attempted to undertake a national study discovered that variations within community service schemes were such that no two probation areas were identical. Equally, it was not possible to choose a sample which could be said to be representative of all community service schemes.¹⁰³ It follows, therefore, that there is relatively little in the way of national data in England and Wales which can be used for comparative purposes. For the same reason, care must be taken when making comparisons between the practice there and that in Ireland.

The work done on CSOs in England and Wales by Ken Pease in the late seventies and early eighties is still worthy of note. It revealed that initially, just as in Ireland, CSOs were being used frequently in cases where a custodial sentence would probably not have been imposed had CSOs not been available. A lack of consistency from one local authority area to another was also a major problem. Although the Home Office issued guidance in 1974 indicating that the primary purpose of a CSO was as an alternative to custody it was some years before this began

¹⁰³See, for example, J Hine "Trying to Unravel the Gordian Knot: an Evaluation of Community Service Orders" in *Evaluating the Effectiveness of Community Penalties* op.cit. at pp.96-119.

to feed through into court practice. Even so a Home Office study in the late eighties found considerable differences in the operation and organisation of CSOs throughout the country. Mair suggests that the range of documented disparities had serious implications for equity of treatment among offenders. The Home Office has sought to combat this problem by publishing and updating guidance in the form of "National Standards" as indicated above.

The general practice with respect to breach of CSOs in England and Wales during the 1970s was very similar to that in Ireland today. Eighty one percent of orders were completed successfully. Individual probation areas differed on the number of unjustified absences which were tolerated before breach proceedings were initiated. Most areas suggested two or three, although in practice breach proceedings were only instituted if the number was much higher.

A significant difference between the experience in England and Wales compared to that in Ireland is the extent to which CSOs are used in the Crown Court. Although they rarely feature in the Irish Circuit Court, they are a regular feature of sentencing in the Crown Court in England and Wales. Indeed, over one third of all CSOs in England and Wales are actually made in the Crown Court.

There is no direct comparison to the combination order in Ireland. It has been adopted enthusiastically by the courts in England and Wales. Although it was meant to be reserved for serious cases, the majority are actually made in the magistrates court.

France

The French provisions on CSOs came into effect in January 1984 by way of an amendment to a Bill dealing generally with sentencing. It stipulates that a CSO can be imposed either as the principal sentence or as a condition for a suspended sentence of imprisonment. While the regulations governing both are very similar, the former has a more limited area of application than the latter.

It would appear that the French provisions on CSOs are more flexible in some respects but more restrictive in others than the Irish provisions. Under the former a CSO is available by reference to the possible sentence which could be imposed for the offence rather than the actual sentence of imprisonment which would otherwise be imposed in the individual case. It follows that a CSO in France can be imposed as an alternative to a prison sentence or a fine while in Ireland they are available only as a substitute for the former. Equally, a CSO in France can be combined with other punishments (apart from imprisonment) and it can be imposed in association with a suspended sentence. In Ireland neither of these options are available, although the offender can be required to pay compensation or forfeit property or accept secondary penalties such as revocation of a licence.

In other respects the Irish provisions are more flexible. For example, there is no statutory limit on the length of prison sentence (apart from a sentence fixed by law) which can be substituted by a CSO. In France by comparison the CSO is available as a principal sentence only in respect of offences which carry a possible prison sentence of between two months and five years. Furthermore, it is not available as a principal sentence if in the previous five years the offender has been sentenced to an unconditional prison sentence of four months or more, or for offences which are punishable by life imprisonment or time limited confinement or the deprivation of civil rights. It follows that many of the Irish offenders in the files survey would not qualify for a CSO under the French provisions.

In France, the trial judge fixes the number of hours community work to be carried out and the period within which it must be completed. The minimum number of hours which can be imposed is 40 while the maximum is 240. While this is identical to the position in Ireland, the French judge is more restricted when dealing with young offenders between sixteen and eighteen years of age. The minimum and maximum applicable to them are 20 and 120 hours respectively.

It is not clear whether cumulative CSOs for several different offences can exceed the maximum in France. Generally, the community work must be completed within eighteen months in the case of adult offenders and twelve months in the case of juveniles. There is provision for the period to be suspended if special circumstances arise. As in Ireland, the legislation does not provide a conversion measure between CSO hours and other penalties.

The French provisions on consent are more tightly drawn than their Irish counterparts. A French judge may make a CSO only if the offender is present in court. Before pronouncing sentence the judge must inform the offender of his or her right to refuse to do community service and the offender must reply. Although the trial judge does not actually determine the type of community work, he or she will give the offender some general information about the nature of the work involved. While this enhances the capacity of the offender to make an informed consent it can give rise to difficulties in practice. In some cases problems have arisen as a result of the judge not being adequately informed of the nature and availability of community work projects available in the area where the offender lives, while in others there have been cases where CSOs were imposed but could not be carried out due to the lack of a suitable project. The greater flexibility achieved by the Irish provisions in leaving the decision on the nature of the work project to the probation service avoids these problems but, arguably, at the expense of a more informed consent by the offender.

If the offender is amenable to a CSO the judge in France must then proceed to explain the obligations which attach to the sanction and the consequences of not fulfilling them. Before imposing the order the judge must form an opinion as to whether the offender is physically and mentally fit to complete the community work. Unlike the position in Ireland, however, it would appear that he or she normally forms this opinion by questioning the offender about his or her occupation, how he or she spends his or her free time and his or her abilities. Only if the judge considers it necessary will he or she adjourn the hearing and request the probation service to make a social enquiry report. It follows that the Irish community service report is not a prerequisite in all CSOs in France.

While the range of work projects used in France are very similar in nature to those in Ireland it would appear that the former must satisfy more detailed regulations in order to qualify. The French regulations also depart significantly from their Irish counterparts by maintaining a substantial judicial input into determining the sort of work projects which will qualify generally and the actual work to be done in any individual case. Work under a CSO can be carried out for the government, public bodies, societies and foundations. Private bodies may also provide projects under certain conditions. These bodies must be non-profit making, their personnel must be sufficiently qualified to offer help and support to the person doing the community work, their activities must be of a high quality and there must be a guarantee that a project once started can be completed. Private bodies wishing to supply projects must apply for and receive the necessary authorisation from the sentencing judge for the judicial area in question.¹⁰⁴ All

¹⁰⁴This does not refer to the judge who imposed the sentence in the individual case. A sentencing judge is attached to each court. His or her functions include, *inter alia*, the overall supervision of CSOs in his or her area. There is no equivalent judicial figure in Ireland.

institutions, public and authorised private bodies, must apply to the sentencing judge to have their projects registered on the list maintained by the sentencing judge. The application must be accompanied by an explanation of the nature of the proposed work, the hours of work, place of work, qualifications of the personnel and the number of places being offered.

The sentencing judge (as distinct from the trial judge) for the area in which the offender lives determines the details of the community work to be done by the offender. This judge will interview the offender and explain to him or her what the CSO entails. The judge will then choose from the list of projects one which seems best suited to the individual and his or her family circumstances. In the case of a juvenile the work must be of an educational nature or directed towards the rehabilitation of the offender. The sentencing judge must also determine the number of hours to be worked daily and weekly, taking into account legal limits on the maximum number of working hours. Before commencing the work the offender must undergo a medical examination. He or she is also given a document listing all the requirements with which he or she must comply during the term of the CSO. Generally he or she comes under the supervision of the sentencing judge and, where applicable, a probation officer appointed by the sentencing judge. The offender is obliged to accept visits from the probation officer and to provide information which has a bearing upon the performance of the work. Further conditions may be applied where the CSO is imposed in association with a suspended sentence.

The actual supervision of the work in France is carried out by a worker appointed by the project agency, in addition to the sentencing judge and the probation officer. This person must see that the offender works the set hours and that the work is carried out properly. A responsible member of the project agency must inform the sentencing judge of any failure to comply with the CSO requirements. He or she also has the authority to suspend the implementation of the work in certain situations. When the work has been completed this staff member must inform the sentencing judge and the offender in writing.

Breach of a CSO in France can attract a harsher penalty than in Ireland. Equally, however, it would appear that the French sentencing judge has more flexibility than that available to the probation officer in Ireland. In France any act contravening a condition of a CSO as a principal sentence is a criminal offence punishable with imprisonment of between two months and five years (one year and five years for recidivists). The court can impose a suspended sentence or a fine. It would also appear that the sentence for the original offence (i.e. the sentence for which the CSO was an alternative) can be implemented in its entirety. A prosecution for breach may be taken if recommended by the sentencing judge. Alternatively the sentencing judge might deal with the matter by adjusting the work schedule or changing the project. In the case of a breach of a CSO which is associated with a suspended sentence the matter can be sent back to the court which imposed the sentence. That court may revoke the suspended sentence either wholly or partially. In addition it may also require the offender to complete the unexpired portion of the CSO.

Opinion polls in France suggest widespread public acceptance and support for CSOs. There has been substantial participation from potential project agencies, although the larger national public utilities are not as well represented in projects as had been initially anticipated. Nevertheless, it would appear that local government bodies in France participate in the CSO scheme more actively than their Irish counterparts. Almost two thirds of projects are supplied by local government bodies, with one fifth being provided by private organisations. Placement with a

private body appears to be the norm for suspended sentences, the "more difficult offenders" and offenders in paid employment.

Although resort to CSOs in France increased substantially year by year in the late eighties, it seems that they have not managed to bring about a substantial shift in sentencing practice. The implicit object in the introduction of CSOs in France was to reduce the use of short-term prison sentences. However, the rising number of custodial sentences, short and long, continued unabated throughout the eighties. In 1985 CSOs made up no more than 1% of correctional sentences and that figure did not change for the remainder of the 1980s. This has been explained on the basis that magistrates still use CSOs almost exclusively for "persons guilty of minor offences and even then only a very select group." In many cases they have been imposed as a substitute for non-custodial sentences. Equally, it is felt that there is still a great deal of resistance in many courts to CSOs. While these criteria can find echoes in the Irish experience it would appear that the experience in Ireland has been generally more positive in terms of fulfilling Irish policy objectives. Although there is evidence that CSOs may be under-utilised in some areas and are being used in many cases where a Sentence of imprisonment might not have been imposed, it would appear that these are not major problems in Ireland.

CSOs in France have been used primarily for property crimes (67%). Traffic offences and offences against the person are the next most popular at about 13% each. These are followed by: criminal damage (3%), fraud (3%) and public order offences (1%). According to Barré and Tournier property offences are strongly over-represented among the offences for which CSOs are considered relative to correctional sentences. Traffic offences are also over-represented, while offences against the person, public order offences and drug offences are all under-represented.

Over two thirds of all those sentenced to a CSO in France were tried and convicted summarily. Only 8% of offenders were subject to a pre-trial investigation and over 90% were not subjected to any form of judicial control prior to trial. These statistics all support the proposition that CSOs are used primarily for minor offences or modest manifestations of major offences. While it is dangerous to draw comparisons between France and Ireland in this matter given the differences in criminal procedure, it is worth noting that these figures broadly reflect the Irish experience that CSOs feature almost exclusively in the District Court.

The average age of offenders on CSOs is 25 years, while more than two thirds are under 25 years of age. The proportion of women doing community service (6%) is greater than the percentage serving custodial sentences (3.4%) or correctional sentences (3.2%). The percentage of offenders with previous criminal records when given a CSO increased from 44% to 60% between 1984 and 1986. About two-thirds of offenders were unemployed when sentenced to a CSO. The typical offender sentenced to a CSO is: someone who has committed a fairly minor offence (usually a property offence), male, under 25 years of age, unemployed, of French nationality, a first-time offender, unmarried and with a fixed address. Once again this is broadly in line with the profile of the typical CSO recipient in Ireland.

The average length of a CSO imposed as a principal sentence in France increased from 103 hours in 1984 to 120 hours in 1986. The maximum is imposed in less than 10% of all cases. CSOs imposed in association with a suspended sentence are, on average, 28 hours less than those imposed as a principal sentence. The reason for this would appear to be that the former (unlike the latter) are considered to be educational rather than punitive. Ireland, of course, does not have the "special condition" variant, nor does it have the lower minimum and maximum for

sixteen to eighteen year olds. This helps explain why the national average length in Ireland (141 hours) is significantly longer than that in France.

In the first three years of CSOs it would appear that only a small amount of the work was specifically directed toward education, training and social assistance. The largest proportion of CSOs involved maintenance work. There is scope for unemployed young persons who have completed their CSOs to continue their community work.

The number of CSOs in France which were not completed or were not carried out at all is fairly small, about 14%, which is very similar to the figure in Ireland. All these cases were brought up before the court again. Usually this resulted in the CSO being revoked and a prison sentence being imposed or the enforcement of the original sentence where the CSO was imposed as a special condition. It seems that many of the revocations resulted from the offender coming before the court again for further offences.

The Netherlands

Community service as a criminal punishment was first introduced into the Dutch Penal Code in 1989 following an experimental period of over eight years. It can be imposed in one of two forms: as a principal sentence imposed by a judge, and as a special condition imposed under a conditional pardon. The focus here is on community service as a principal sentence as that is by far the most common form in which it appears in practice. In any event, most of the rules are common to both forms.

The CSO as a principal sentence in the Netherlands is generally more flexible than its counterpart in Ireland. In the Dutch penal code the CSO is ranked after the custodial sentence and before the fine in order of severity. It is imposed as a substitute for a custodial sentence, although it can also be imposed in substitution for detention in default of payment of a fine. The maximum number of hours which may be imposed is 240 and there is no prescribed minimum. Although the Dutch legislation does not define an equivalence between hours of community service and a period of imprisonment, there is a maximum of six months on the length of an unconditional prison sentence which can be substituted by a CSO. Moreover, the CSO is not confined to a substitute for an unconditional prison sentence. It can be used in substitution for a part-suspended sentence, a part-unconditional prison sentence where the unconditional part does not exceed six months imprisonment and not counting any period spent in remand detention, and a completely or partially revoked suspended sentence provided that the revoked part does not exceed six months. In the Netherlands the judge must state the prison sentence which he or she would impose instead of the CSO before the final decision on sentence is taken.

Although the Dutch legislation does not provide for the combination of community service with other principal penalties, in practice it would appear that the judges are managing to combine it with a fine and/or special conditions in some cases. This is done by making the proposed prison sentence the unconditional part of a part-suspended sentence. After its conversion into a CSO the part suspended remains. Like any suspended sentence this can be combined with a fine and special conditions. If the fine or special conditions are broken the CSO can be stopped. It follows that the equivalent of a proposed prison sentence of six months becomes not the 240 hours indicated in the legislation but these hours plus a fine and one or more special conditions.

The Dutch provisions on the availability of work projects differ only superficially from the Irish. Under the former a judge may only impose community service after he or she has established

that a person or institution will be willing to offer a project within a short period of time. The offer need only contain a statement about the nature of the proposed work. In practice these legislative requirements are interpreted very loosely. Only a few districts insist on the requirement of a concrete offer before the court hearing. Most districts accept that the offer will be made at the hearing itself, after the indictment by the public prosecutor. A general statement of willingness to do community service coupled with a reference to a list of locally accepted projects is deemed sufficient. This means that it is the special community service coordinator of the probation service, as opposed to the judge, who decides on the type of work.

In the Netherlands, as in Ireland, community service cannot be imposed without the consent of the offender. His or her consent must be recorded in the minutes of the court session. This consent must be given before pronouncement of the sentence. In practice this means that the judge has to tell the offender what sentence he or she intends to impose before actually proceeding to pass sentence. This causes a problem where the trial is before a full court as the sentencing hearing takes place fourteen days after the trial hearing. In these cases the court usually asks the offender at the end of the hearing whether he or she would consent to do community service if the court decides to impose a prison sentence. Two decisions of the Supreme Court suggest that the accused must consent not only to the type of sentence (community service) but also to its level. While the accused in Ireland will ordinarily be aware of the substituted term of imprisonment or detention when he or she consents, he or she will not normally know the nature of the work. As indicated earlier this may raise a doubt about the validity of the consent.

Apart from the fact that a CSO cannot be used as a substitute for an unconditional prison sentence of more than six months, the Dutch legislation does not lay down a conversion rate for community service hours relative to days in prison. In practice each district maintains a tariff list which are only departed from in special circumstances. Unfortunately there are considerable differences in the conversion rates applied between the districts and, sometimes, even within districts. Some districts adhere to a ratio of one day's imprisonment to one and one third hours community service, while other districts operate rates of anything up to four hours. Some districts operate weekly or monthly tariffs, with one district treating ten hours community service as the equivalent of one week's imprisonment while in others it is up to forty hours.

In the Netherlands if the offender has spent any time in pre-trial detention the sentence must state what tariff is being used to deduct the remand time from the community service. Deduction is compulsory just as it is when a suspended or unconditional prison sentence is imposed. However, unlike the other principal sentences, the judge is not bound by any statutory conversion rate when deducting remand time from a CSO. There is no provision in the Irish legislation for compulsory deduction for time spent in custody on remand. In practice, of course, the judge will normally take such time into account when imposing the final sentence. In any event very few offenders in Ireland are served with a CSO having spent time in custody on remand.

In the Netherlands the probation service and the project agency are responsible for the actual implementation of CSOs. Within the probation service (which is a private service) the organisation and implementation of CSOs has been entrusted to distinct units composed of specially appointed community service officers. As well as drawing up community service offers, they supply information about community service to the public, recruit projects, maintain a project bank and inform the prosecution service, judge and legal representative of the accused

about available places and the type of work they have to offer. They also assist in the selection of project places, draw up time schedules, address problems which may arise on individual projects and inform the judicial authorities and other appropriate bodies about the manner in which the community service is being or has been carried out. This latter information giving task takes the form of a supervisory report on the conduct of the offender. Its content and Submission is not subject to the cooperation or consent of the offender. Indeed, the officer is not free to withhold information in the interests of his or her client where it has been requested by the prosecutor. In particular the officer must **inform** the prosecutor if the community service cannot be carried out, when it has ended and if the offender proves unable to carry out the work. If problems occur on the community service project the officer may take steps to resolve them after consulting the offender and the manager of the project. He or she may give the offender instructions which the offender must follow. If the offender fails to follow them the officer may give him or her an official warning and if this has no effect the community service may terminate.

It is not compulsory in the Netherlands to make a social enquiry report on an offender for the purposes of community service. In practice reports are requested in about 10% of all crimes. This contrasts with the position in Ireland where a formal report on the offender is a statutory requirement. In the Netherlands, however, the issue of a **CSO** is normally considered by the judge in the absence of any information about the offender apart from that which is immediately available as a result of his or her appearing before the court on the criminal charge. In one district the prosecutor, as a matter of practice, informs the community service officer if he or she is considering recommending a prison sentence. The officer then contacts the accused with a view to preparing a community service offer. In this district the proportion of **CSOs** to short unconditional prison sentences is twice as high as the national average.

The judge is not obliged to honour a community service offer. However, if a judge does not honour it he or she is obliged to give reasons. If the judge does accept the offer he or she must state not only the prison sentence it replaces, but also the number of hours to be worked, the type of work and the period within which the work must be started and completed. In practice it would appear that the probation service and the prosecutor effectively determine the nature of the work and the work periods.

The work carried out as community service must be unpaid and must be of a "generally beneficial" nature. While this is very similar to the position in Ireland it would appear that there is greater flexibility in practice in the Netherlands. Any unpaid work carried out on behalf of others is deemed acceptable provided the person doing the work does not have any personal or business relationship with the beneficiaries and provided the activities are not wholly commercial or solely directed at making good the damage caused by the offence. Providing the work meets these stipulations it may be carried out for private as well as public and semi-public bodies, as long as they have a public function. Examples are institutions in the fields of health care, the environment, **socio-cultural** work, nature conservation and social work.

The functions and responsibilities of the project agencies are not set out specifically in the Dutch legislation. However, community service is covered by labour legislation so the person doing community service generally has the same rights and obligations as employees and volunteers working for the same establishment. Apart from that, the responsibility of the project agency is largely confined to recording and supervising attendance, and guiding and supervising the work.

Problems can arise in the Netherlands with respect to the social security entitlement of unemployed persons on community service. These problems are not addressed in the legislation. As a result there are certain restrictions on the number of hours which an unemployed person can work per week on community service without jeopardising his or her benefit entitlements. In the Netherlands the insurance issue, which is proving problematic in Ireland, is dealt with by the probation service taking out a collective third party liability and accident insurance policy to cover risk of injury to a person on community service or injury caused by such a person.

The prosecution service in the Netherlands is responsible for the formal supervision of community service as it is for all penal sanctions. For this purpose it may request information about the progress of CSOs from probation institutions and others who are carrying out a probation function. It may also give further instructions to these institutions and individuals. It may not, however, instruct the project agency directly. The prosecutor may make changes to the time periods or the type of work set by the judge if he or she feels that the community service is not being carried out to full satisfaction. The offender can object to these changes to the judge who can revoke or vary them. If the prosecutor feels that the community service has been a total failure he or she has up to three months after the end of the specified community service period to recommend revocation and enforcement of the prison sentence. This request is made to the judge who imposed the order. He or she may either accept or reject the request. If the judge accepts it he or she must impose the original prison sentence reduced by the period which represents any community service which has been carried out. The judge is completely free to decide how to calculate this and he or she is also free to decide not to enforce all or part of the prison sentence. The revocation procedure is the same as that for the revocation of suspended sentences. There is a hearing in open court in the presence of the offender, the probation officers and where possible a defence lawyer.

The prosecution service is obliged to inform the offender as soon as possible when it has decided that the community service has been carried out to its satisfaction. There is no provision for community service to be ended, shortened or otherwise changed in cases where it cannot be completed due to circumstances beyond the offender's control. The prosecutor cannot change the number of hours to be served.

Denmark

The CSO was originally introduced on an experimental basis in Denmark as a condition of a suspended sentence. It is available in a case where the judge considers that a sentence of imprisonment is appropriate. Instead of imposing the sentence of imprisonment, however, the judge could postpone it upon condition that the accused did not commit any further offences during a probationary period, placed himself under the supervision of the probation service and during the probationary period carried out hours of unpaid work specified by the probation service. It is also possible to attach further conditions. Since a suspended sentence could be imposed for any offence and for any length of time it is theoretically possible for a CSO to be imposed no matter how serious the offence in question. However, it is expected that community service will replace unconditional prison sentences of up to six or eight months. While there is no minimum age limit on community service very few young people below the age of eighteen years will qualify for it as an unconditional prison sentence is not usually applicable to them. It is also worth noting that the use of CSOs as alternatives to detention for default in payment of fines is not precluded in Denmark. This, of course, is not an option in Ireland.

The accused's consent is a vital precondition for a CSO. As in Ireland, however, the Danish judge only needs the accused's consent in general terms. There is no specific requirement to inform the accused in advance of the number of hours community service which will be imposed or the length of prison term which it replaces.

Before a judge can impose a CSO the probation service must submit a report on his or her suitability for community service. As in Ireland these reports often do contain relevant information about the accused's family circumstances, employment history and education.

With a lower limit of 40 hours and an upper limit of 200 hours, the range of CSOs in Denmark is shorter than that in Ireland. The maximum period of twelve months in which an order should be completed is the same in both countries. For CSOs up to 150 hours the Danish judge should indicate a shorter time span, in accordance with a graduated table, within which the order should be worked off. No distinction is made between employed and unemployed offenders in fixing the number of hours which must be worked or the period within which an order should be completed. However, it is acknowledged that unemployed persons are in a position to work off a CSO much faster than employed persons. It is also considered that if orders are worked off too quickly they lose the punitive elements of being required to do community service for a certain period. Accordingly, a maximum of 20 to 24 hours is normally imposed on the number of hours which may be worked off per week. As has been seen, a similar standard applies in Ireland, albeit for different reasons.

Although there are examples of CSOs being used in Denmark in place of suspended sentences or probation orders, they are used mostly as substitutes for short prison sentences. Nevertheless, there is no fixed conversion rate between CSO hours and a term of imprisonment. As in Ireland there are considerable differences from one court to another. In some cases forty hours community service is the equivalent of thirty days imprisonment, while in others it is the equivalent of seven months.

As in Ireland it is the responsibility of the probation service in Denmark to find suitable work projects. The procedure followed in placing an individual on a project is also very similar in the two countries. In Denmark, however, there is a reluctance to use projects which will bring the offenders into contact with vulnerable client groups. Further complications can arise from the fact that the employment and social security legislation applies to individuals engaged in community service.

The actual supervision of the offender is carried out on a day to day basis by the project agency, subject to the general supervision of the probation service. As in Ireland, not every infringement or irregularity will be reported. Where infringement proceedings are taken the court does not necessarily have to revoke the suspended sentence and impose the unconditional sentence, although that is an option. It can impose a warning and/or impose further conditions. Where it does revoke the suspended sentence account will be taken of the time worked on the CSO.

Germany

The German provisions governing CSOs differ in many significant respects from those in Ireland. Not only is the relevant German legislation and regulations much more detailed and comprehensive than their Irish counterparts but they differ from one German state to another. It must also be said that the principles underlying the availability and organisation of CSOs differ substantially between Germany and Ireland. Indeed, the differences are such that it is difficult to

make any meaningful comparisons between the two jurisdictions. Nevertheless, it is worth giving an overview of the German provisions and practice in order to convey a sense of the widely differing regimes in which CSOs can be applied.

In Germany today community service is used primarily as an alternative to detention in default of payment of a fine. It is not actually available as a direct alternative to the fine itself and is not available as a direct alternative to imprisonment. However, this must be interpreted in light of the fact that courts are generally expected to impose fines in preference to short term prison sentences, as there are strict controls on the use of short term prison sentences as a custodial sanction. It follows that when community service is adopted as an alternative to detention in default of a payment of a fine, it may be functioning indirectly as an alternative to a short prison sentence. Equally, of course, it may be functioning indirectly as an alternative to a pure fine. Community service can also be applied as a special condition for a suspended sentence, parole, a caution with conditional deferral of sentencing, a conditional waiver and a conditional pardon.

In theory community service in default of detention for non-payment of a fine is available only after all possibilities for recovering the fine have been exhausted. In practice it would appear that community service is seen as a standard method of paying the fine. When fines are unpaid the community service machinery is often put into motion immediately. Nevertheless, it is the offender who must actually apply for community service. This serves the equivalent of the consent requirement in Ireland. Indeed, the German provisions placing the onus on the offender to apply for community service might be considered as a stronger guarantee of a fully informed consent.

Since 1987 all the federal states have drawn up regulations to deal with the conversion of a threatened default detention into community service. There are differences between the rules, primarily in respect of the conversion scale being used, which agency is to act as an intermediary, the criteria for refusing to allow community service and the legal status of the rules. The following is a summary of the position which applies generally.

When the authority responsible for the execution of fines is of the opinion that the offender will not be able to pay his or her fine, the authority will inform the offender of the possibility of offering to do community service when demanding payment of the fine. This communication will be accompanied by a booklet which explains community service including how and when an offer can be made, together with a few standard application forms. A list of available projects is often included. The time allowed for the offender to respond varies from one to several weeks. When the offender submits an application for community service this is taken as an implicit consent to do community service. The offender may either seek out a project place for himself or herself or ask for help from the probation service. Usually he or she can turn to the court social worker for this purpose.

Where the offender makes an offer to do community service the execution authority may turn it down if it is clear from the outset that the work will not be properly carried out or that the offer seems unrealistic. In some states community service is not an option if the offender has no fixed address, or is in detention at the time of submitting the offer or is expected to be sentenced to imprisonment in the near future. Where it is a possibility the probation officer will first of all discuss with the offender possible arrangements for the payment of the fine. If payment is not possible the probation officer will give the offender information about the community service

option. The probation officer will also function as an intermediary between the execution authority, the project supplier and the offender.

If the execution authority accepts the offender's offer to do community service, it fixes the period for completion. This is dependent on the number of days default detention that have to be worked off and the individual's free time. Unlike the position in Ireland all of the states' regulations have conversion tables for this purpose. Generally they operate a tariff of six hours community service as an alternative to one day of imprisonment. Most of the regulations authorise the execution authority to apply a more lenient tariff in certain circumstances, with a minimum of three or four hours community service per day of imprisonment.

The regulations do not specifically prescribe a maximum number of hours which may be imposed. In theory a fine can be anything up to 360 day-fines or, for multiple offences, 720 day-fines. If six hours community service is taken as the equivalent of one day's default detention, it would seem that up to 2,160 hours community service could be imposed on an offender in respect of one offence and up to 4,320 hours for multiple offences. In practice, however, the number of day fines imposed is seldom more than thirty. Consequently most community service orders are for 180 hours or less. It is not uncommon for community service imposed as an alternative to default detention to be longer than a community service imposed as a special condition of a suspended sentence which has been imposed as an alternative to a principal prison sentence of the same duration as the fine/default detention.

All the states allow community service to be carried out with private organisations operating for the public good as well as government institutions. Some mention a preference for projects with old people's and nursing homes, church and charitable institutions, sporting bodies and public services such as public works departments, cleansing departments and forest maintenance. To be accepted as a project agency the institution must declare that it is willing to be responsible for supervising the project, that it will inform the probation service and the execution authority of any problems and that it will make a report when the project has been completed. All states specifically limit community service to unpaid work.

Community service does not constitute a work relationship in the sense intended in labour law, social security law and tax law. The legislation specifically states that it must only be used to replace a threatened subsidiary detention and it must only involve unpaid, non-profit-making activities. The legislative intention is to prevent the saving which community service entails for the offender (i.e. there is no longer a fine to be paid) being considered as "an advantage which can be evaluated in money terms" for the purpose of the Income Tax Act or the Labour Incentives Act. As a result, social security payments cannot be reduced and income tax is not payable. Equally the number of hours which can be worked on community service is not limited by the statutory maximum weekly work hours. However, the majority of those on community service are insured against accident at work.

There is no uniform arrangement for the preparation, organisation and supervision of community service in Germany. In some cases these tasks are entrusted to the Court Aid for Adults which is attached to the office of the public prosecutor. In other cases they may be the responsibility of professional probation officers of the district court or volunteers from the independent probation assistance organisations. Although the law does make provision for the making of social enquiry reports or community service reports on the offender, they are not compulsory nor even usual. They may be made either by the Court Aid for Adults or professional probation officers

depending on the purpose of the report and who has requested it. In practice an interview with the offender is generally considered sufficient to consider the possibility of a community service proposal.

The offender in Germany can stop doing community service at any time. He or she must then pay the remaining fine or serve the default detention which has not been worked off. The execution authority can revoke the community service if: the work is not being carried out properly; instructions given by it, the project officer or the probation officer are not followed; the offender is repeatedly absent or behaves badly while on the project; or the work is not completed within the permitted period. In a few states committing a new offence is also a ground for revocation. Only a few states give the offender a right to be heard when revocation is being considered. Where the community service is imposed as a special condition of a suspended sentence the offender has a statutory right to be heard when revocation is being considered.

The use of community service as an alternative to default detention in Germany has been declared a great success in the professional journals and in the various ministerial surveys. They point to the large measure of cooperation from the community in making projects available, the large number of offenders who successfully complete their community service and the consequent financial saving to the prison system.

Community service is not included in either the federal or state statistics so it is not possible to get an exact picture of how many orders are imposed and completed annually. Equally, it is difficult to compare the situation in the various federal states as they do not operate a uniform system of record keeping. Nevertheless, it is possible to highlight a few general characteristics of how community service operates in practice.

About 15% of the half million people who are convicted and fined each year fail to pay their fines. In about 80% of these cases the enforcement order sent to the defaulting offenders is accompanied by an offer to substitute the fine for community service. About 10% to 15% react positively to the offer. Approximately 85% of requests to do community service result in a project being found (i.e. about 9% to 13% of those who were originally informed of the possibility when they were served with the enforcement order). Of these 75% worked off their penalty completely or at least partly. In effect, therefore, about 1% of the fines originally imposed are paid off in the form of community service.

About **13%** of requests to do community service are turned down by the execution authority. It has not proved difficult in practice, however, to find enough project places for suitable offenders. The projects are usually found with public or semi-public institutions in the non-profit making sector, such as: sports clubs, social, cultural and religious organisations, hospitals and nursing homes, rehabilitation centres, old people's homes, youth centres, children's day centres, museums, animal sanctuaries, the fire service and nature conservation organisations. The actual work is mainly cleaning and repair work, painting and environmental work, garden and road maintenance work. This is similar to the experience in Ireland.

Although there are large differences between the states it seems that there is an approximate 60/40 divide between those who complete their community service work and those who end it of their own accord and pay the rest of the fine. The average length of a completed project is 180 hours. This is substantially in excess of the average CSO in Ireland which is about 140 hours. The average day-fine/days default detention substituted by community service was about

22 days (the equivalent of 130 hours). While this is closer to the Irish average it must be remembered that in Germany there is likely to be a fine or imprisonment residue to be paid or served, as the case may be. It is not infrequent for heavy sentences to be imposed. The heaviest in Bavaria was 736 hours, 780 hours in Kiel and 900 hours in Hamburg and Hessen. According to Albrecht and Schadler occasionally over 1,000 hours have been carried out due to the redemption of more than one fine or for other reasons.

The percentage of orders stopped because the execution authority recalls its consent varies from 20% to 35%. Recent studies show an average failure rate of 15% to 25%. This is broadly in line with the Irish experience.

Since the German system of CSOs operates on the basis of substituting community service for detention in default of fines it necessarily follows that it results in a reduction in the use of imprisonment. Nevertheless, the statistics show that there has been no decrease in the number of enforced default detentions. Although there may be several reasons for this, it is likely that part of the explanation lies in the use of CSOs as a direct alternative to paying off fines rather than as an alternative to unavoidable imprisonment due to default in payment of the fine.

Conclusion

It is apparent from this brief survey of CSOs in other jurisdictions that there are a number of distinctive characteristics shared across all of the jurisdictions. Indeed, with the exception of Germany, it would appear that the differences are relatively minor compared to the similarities. Nevertheless, no two jurisdictions are exactly the same. Probably the most notable difference between the Irish approach and that in other jurisdictions concerns flexibility. Most other jurisdictions permit the CSO to be combined with other sanctions and some permit it to be used as a substitute for non-custodial sanctions. The Irish legislation by contrast is quite rigid in the sense that a CSO must stand by itself as an alternative to a custodial sanction. Even England and Wales have become more flexible in their use of CSOs.

Ireland could also benefit from the approach taken in some other jurisdictions to matters such as consent, the conversion rate between CSO hours and prison terms and the promulgation of more detailed policies and guidelines on the application of CSOs.

Although there are differences between Ireland and some other European jurisdictions in the design and implementation of the CSO scheme, it is also the case that the law and practice in Ireland generally conform to common European standards. In 1992 the Committee of Ministers of the Council of Europe adopted common European rules on community sanctions and measures which were prepared by a committee of experts under the authority of the European Committee on Crime Problems.¹⁰⁵ These rules establish a set of standards to enable the national legislatures and relevant executive authorities to provide and implement community sanctions and measures in a just and effective manner. The rules are divided into three parts. The first part lays down general principles governing: the legal framework of community sanctions, judicial guarantees and complaints procedures, fundamental human rights and the cooperation and consent of the offender. The second part deals with the human and financial resources of a community sanction scheme, including the selection, qualifications and training of the professional staff and the selection of community work projects. The third part deals with the

¹⁰⁵ "Recommendation No. R (92) 16 of the Committee of Ministers to member states on the European rules on community sanctions and measures (Strasbourg: Council of Europe, 1994).

management aspects of community sanctions, including: conditions under which community sanctions are to be implemented, sanctions for non-compliance and evaluation of community sanctions and measures.

Generally, it would appear that Irish law and practice conform to these European rules. Nevertheless, there are one or two areas in which there may be room for improvement. Rule 6 stipulates that the nature and duration of community sanctions and measures shall be in proportion to the seriousness of the offences for which the offender has been sentenced or of which a person is accused and take into account his personal circumstances. While Irish practice generally conforms to this standard it is of some concern that the relationship between CSO hours and terms of imprisonment should vary so markedly from one part of the country to another. Perhaps there is scope for more specific correlations between CSO hours and terms of imprisonment to be laid down in the Irish legislation. Similarly, a case can be made out for a more detailed statement in the legislation of the duties and responsibilities of the probation service with respect to CSOs. Rule 7 specifically states that the duties and responsibilities of the implementing authority shall be laid down in law.¹⁰⁶

The consent and cooperation of the offender feature prominently in the European Rules. While the Rules state that the consent of the offender is required before the imposition of the sanction and that the consent must be informed and explicit, they do not address fully what information the offender needs in order to give an informed consent. It is at least arguable that he should know in advance the number of hours involved and the length of the alternative term of imprisonment or detention. In practice, of course, the Irish offender does have this information prior to giving his or her consent. The legislation, however, does not specifically require the court to state this information in advance. More problematic perhaps, is the apparent tendency of Irish courts to accept the offender's silence or lack of audible dissent as his or her consent to a CSO. The European Rules state that the consent should be explicit.

Another matter on which the Irish legislation would benefit from greater clarity concerns health and safety. The European Rules stipulate that the working and occupational conditions of offenders carrying out community work must be in accordance with all current health and safety regulations.¹⁰⁷ While the Irish 1983 Act and consequential regulations do not make specific provisions for such matters, in practice it is assumed that the general legislation and regulations on health and safety at work apply to CSO work.

The European Rules lay particular emphasis on the availability of a simple complaints procedure for an offender who is aggrieved at decisions taken by the probation service with respect to the implementation of his or her CSO.¹⁰⁸ While there is provision in the Irish legislation for an offender to seek a review of his or her CSO in the District Court it is not clear that this is sufficiently flexible to deal with complaints concerned with implementing matters other than the number of hours or the period of time in which they must be worked. The European Rules also stipulate that a failure to comply with the conditions or obligations attaching to a community sanction shall not itself constitute a criminal offence.¹⁰⁹ The Irish legislation would appear to be out of

¹⁰⁶See also Rule 8 which states "The powers of the implementing authorities to decide on methods of implementation, to delegate their implementing duties to third parties if necessary, or to enter into agreements concerning implementation with the offender, other authorities or third parties, shall be laid down by law."

¹⁰⁷Rule 68.

¹⁰⁸Rules 15 – 19.

¹⁰⁹Rule 84.

step here as it makes it a criminal offence for the offender not to comply with certain obligations associated with his or her CSO.¹¹⁰

The European Rules specifically encourage the regular evaluation of community sanctions.¹¹¹ They also stipulate that the regular and external scrutiny of the work of the implementing authorities should be provided for in law; this scrutiny to be carried out by qualified and experienced persons.¹¹² It is arguable that there is room for improvement in these matter in Ireland. Interestingly, when the 1983 Bill was introduced into the Dail the Minister indicated that he was considering the feasibility of establishing a committee to monitor the operation of the CSO scheme. This committee would be composed of various interests including voluntary and official social aid groups, the judiciary, trade unions and employers. Its function would be to advise on any problems which may arise in the operation of the CSO scheme and on possible improvements. It would appear that this committee was never established.

¹¹⁰Criminal Justice (Community Service) Act, 1983, s.7(4).

¹¹¹Rules 89 and 90.

¹¹²Rule 11.

CHAPTER 9

Summary of Conclusions

The Offender

The standard recipient of a CSO is a young, single male who is unemployed (or underemployed) with poor educational qualifications and vocational skills and is living in the parental home. Just over half of the recipients will have a previous criminal record.' While 40% of these records can be described as minor, a significant proportion of offenders will have served a prison sentence or CSO in the past.

This offender profile is not absolutely uniform throughout the country. There are variations across the District Court areas. In Dublin, for example, **two-fifths** of the recipients have suffered from alcohol or drug dependency in the past and four-fifths have a previous criminal record.

The Offences

The most frequent offences attracting CSOs are larceny (22%), less serious assault (15%) and driving offences (15%). Using broader categories the breakdown of all offences in the sample is: property offences (41%), road traffic and vehicle offences (24%), offences against the person (23%), public order offences (9%) and others 3%. There is considerable variation in the spread of offences across the District Court areas. In one area, for example, all but one of the CSOs in the sample were imposed for driving offences.

It is worth noting that the primary differences between rural and urban areas in this context concern driving offences, public order offences and offences concerning the unlawful use of an MPV. The first two occur with greater frequency in the rural areas, while the third occurs with much greater frequency in urban areas.

There is evidence to suggest that CSOs are being used in some instances for offences which might not have attracted a custodial sentence if the CSO option had not been available.

The Community Service Order

Application

Generally, CSOs are used in accordance with the legislation. Nevertheless, the survey did throw up some examples of a more creative or flexible approach in the application of the legislation to the facts of individual cases. There were some examples of CSOs being used in conjunction with other punishments and one case in which CSOs below the statutory minimum were imposed. This is particularly significant because there was a feeling among some judges and other practitioners in the field that the legislation was too restrictive in confining CSOs as a substitute for a prison term.

There is also evidence to suggest that CSOs are being used in some cases where a custodial sentence might not otherwise have been imposed. Almost half of all recipients do not have a previous criminal conviction. The most frequent offences committed by these offenders are road traffic offences, public order offences and less serious assaults.

Length

There is considerable variation in the range of prison terms across court areas. The lowest prison term imposed is 14 days while the highest is 24 months.

The average length of a CSO is 141 hours. While CSOs in rural areas tend to be slightly shorter than their urban counterparts, 136 hours compared to 142 hours, the difference is not of any great significance. All but one of the larger areas in terms of sample size conform to the norm.

The average length of the alternative **prison** term is 5.1 months. Here there are surprising variations even across the larger sample areas. There is no obvious explanation for the variation.

Equivalence

The relationship between the number of CSO hours and length of alternative prison term varies substantially and randomly across court areas. In terms of a national average, one month of imprisonment is equivalent to a CSO of 27 hours. The average in individual areas, however, varies at the extremes from 63 hours to 11 hours. The extent to which the averages vary from one area to another suggests that there is considerable uncertainty about the number of CSO hours which should be imposed relative to the length of a prison term. It is probable that this uncertainty is exaggerated, at least in some areas, by a tendency to resort to CSOs in cases where a prison term would not normally have been imposed had CSOs not been available.

Commencement

In almost one third of the cases the community service work did not commence until more than two months after the CSO was imposed. Dublin is considerably faster than most other areas in this regard. It is difficult to be certain about the reasons for the delay. Relevant factors would appear to be: offenders failing to keep appointments, difficulties in securing work projects in some areas and delays in the transmission of the court order from the District Court clerk to the probation officer.

Completion

More than four fifths of CSOs were worked through to completion. However, almost 40% of offenders were served with one or more warning letters for breaches of their community service obligations.

The 17% of offenders who had their orders revoked is higher than the national figures for prosecutions for **non-compliance** with CSOs in 1996 and 1997.¹¹³ However, it compares very well with equivalent figures from other European jurisdictions. In four fifths of the cases the individual was a repeat offender. While there is no significant difference in the revocation rates for rural and urban areas, there are some differences across individual probation areas. Among the "urban" probation areas Cork has the highest revocation rate while Waterford has the lowest. The offences which feature disproportionately among the revocation cases are public order

¹¹³12% in both years. See Dail Debates 16 June 1998.

offences, driving offences and MPV offences. The actual length of a CSO does not appear to have any effect on revocation rates. It is possible, however, that offender boredom with the nature of their work project could be a factor.

The prospects for CSO completion would appear to be best among older, first-time offenders and with less serious assaults.

Only one quarter of CSOs are completed within 2 months, while well over one third take more than 6 months to complete. These figures suggest that CSOs are not being worked off as quickly as one might expect. While there may be a range of factors responsible for this, the most likely explanation would appear to be absenteeism on the part of offenders.

Work Projects

The work projects consist primarily of environmental work, painting and decorating, gardening and helping out at old people's homes, youth clubs and charities. The nature of the work is such that it would not normally be done if it had to be paid for. It would appear that offenders generally adopt a positive attitude to their community service work. However, there is evidence to suggest that a significant number get bored with the work as it progresses.

While the availability of work projects does not appear to be having a major deleterious effect on the viability of CSOs, it is possible that more varied projects would be available if problems with insurance cover could be overcome.

Procedure

Courts

CSOs are widely used in the District Court throughout the State. However, it would appear that they are infrequently applied in some areas and by some judges. Unfortunately, it is not possible from the statistics available to determine the reasons for this with any degree of certainty. At least one judge is reluctant to use CSOs because he considers the legislation too inflexible, while another judge would appear to use them primarily for driving offences. However, there is no evidence to suggest that these are anything but isolated examples.

CSOs are rarely used outside of the District Court. It is not possible from the statistics available to identify the reasons for this with any certainty.

Generally, the judge who imposed the CSO is the same judge who convicted the offender weeks earlier. In one quarter of cases, however, it is a different judge. Most of these cases are in Dublin.

Period between Conviction and Sentence

The time period between the decision to refer a case for CSO consideration and the final decision on a CSO is less than one month in one-third of cases. In more than one third of cases, however, the period exceeds two months. There are several factors which may contribute to this delay including: a back-log of work in the probation and welfare service, a lack of cooperation from the offender in preparing the CSO pre-sentence report, difficulties with the proposed work project, court delays or a combination of any or all of these. From the information available it was not possible to be any more definite about the respective importance of these individual factors.

The Hearing

The decisions whether to seek a community service report and whether to impose a CSO on the basis of the report are dealt with in a matter of minutes in the court. While the offender is asked if he or she consents before a CSO is imposed, it would appear that a CSO is often imposed even though the offender has not given a clear and audible consent. It would also appear that very little, if any, time is spent in court explaining the options to the offender and what each entails.

Community Service Report

For the most part community service reports in the sample can be categorised under three different styles: detailed; concise and very brief. More than half fall within the first category while only 10% fall within the third category. All of the very brief reports are to be found within one probation area. They would seem to be the result of a perception among the probation officers concerned of what the judge does and does not want to see in a report.

For the most part judges act on the basis of the community service report when deciding whether to impose a CSO.

Costs

It would appear that CSOs are a much more economical sanction than prison. On the basis of the statistics to hand, however, it would be unsafe to assert that they are more successful than prison in steering offenders away from crime.

Comparisons with Other Jurisdictions

There are many similarities between the Irish CSO legislation and practice and that in other European jurisdictions. The primary difference concerns flexibility. Most other European jurisdictions permit CSOs to be used in conjunction with certain other punishments and, to a limited extent, as a substitute for non-custodial sanctions. The Irish legislation, by comparison, is quite rigid in the sense that it permits CSOs to be used only as a stand alone substitute for a custodial sentence.

Generally, the Irish legislation and practice conforms to the European Rules on Community Sanctions and Measures adopted by the Committee of Ministers of the Council of Europe in 1992. Areas in which Ireland might not be fully in line with these Rules are: proportionality between the offence and the duration of the associated CSO, the promulgation of detailed rules on the duties and responsibilities of the probation service with respect to CSOs, the definition of what is meant by the offender's consent to a CSO, the availability of a simple complaints procedure for an offender who is aggrieved at decisions taken by the probation service with respect to the implementation of his or her CSO, the treatment of the offender's failure to comply with certain obligations attaching to his or her CSO and the requirement for a regular evaluation of CSOs.

Platters for Further Consideration

Although it is not part of the terms of reference for this project it is worth making a few suggestions for further consideration.

Variations in the use of CSOs across court areas could be tackled by the drafting of more detailed guidance on the circumstances in which CSOs are an appropriate sanction. The general stipulation that they are to be imposed as an alternative to a custodial prison sentence is probably too broad. This guidance should make it clear that the CSO is not confined to summary conviction or minor offences. A major drive is needed to encourage Circuit Courts to make more use of the CSO option. The 1983 Act should be amended to make it clear that CSOs can be imposed in any case where the accused has appealed against sentence only.

The proposed guidance should also address the appropriate relationship between the number of CSO hours and the length of the alternative custodial sentence. Judges should be given some indication of the number of hours which it would be appropriate to impose as an alternative to particular custodial sentences. It may also be worth considering a limit on the maximum length of prison sentence which can be substituted by a CSO.

Some thought should be given to the possibility of combining CSOs with other forms of sanction and/or extending their availability. In most other European jurisdictions they are available in combination with certain other sanctions and as a substitute for fines. In Ireland it would already appear to be the case that some judges are using CSOs as a punishment for offences which would normally have attracted a suspended sentence or a fine.

The legislation and regulations may not be sufficiently exacting in dealing with the offender's consent. Perhaps some thought should be given to more precise regulations which lay out the information which should be given to the offender, how it should be given, when it should be given and the manner and form in which the offender should give his or her consent.

Further research could usefully be carried out on why judges in some areas are not making more use of CSOs. Equally, in three years time it would be worth returning to the individuals in the files survey to check whether they had re-offended.

APPENDICES

APPENDIX I

Methodology

The Files Survey

The files survey covers a national sample of offenders in respect of whom a CSO had been made between 1 July 1996 and 30 June 1997. This period was chosen as it was most likely to provide the most recent CSOs which had actually been completed. The national total of offenders in respect of whom a CSO had been made during this period is 1093. The breakdown across the probation and welfare areas is set out in Table 11.

Table 11

Probation Area	Number of CSO Offenders
Dublin	450
Limerick	150
Cork	124
Waterford	85
Wexford	63
Tralee	57
Navan	34
Sligo	32
Dundalk	27
Castlebar	20
Kilkenny	20
Galway	15
Portlaoise	10
Athlone	6

The probation and welfare service maintains a file on each offender in respect of whom a CSO has been made. It does not open a new file for each occasion on which an offender is served with a CSO. The same file is used and simply updated. This file will also contain a record of all probation orders and supervision by the Probation and Welfare Service in respect of the offender. The research sample was taken from the files of all offenders in respect of whom one or more CSOs had been made during the survey period. The sample was obtained by taking every fourth file from the relevant files in each probation and welfare area. This provided a total sample of 269 files.

There were a few difficulties in compiling the sample on the basis of every fourth file in each probation and welfare area. It happened occasionally that the fourth file was not available as it could not be located. In these instances the fifth file was selected. If it was not available then the third was selected. Even so it transpired that the sampling method produced a shortfall in a few areas, the most notable being Dublin. Instead of the anticipated 112 files the sampling method produced only 108 from Dublin. Four more files were selected at random from the Dublin area in order to correct this shortfall. Given that they were selected at random and that they represented less than four percent of the total Dublin sample, it is considered that their inclusion did not affect the integrity of the sampling method to any significant degree.

Another minor problem was posed by the fact that some areas had so few CSO files that the sampling method, when applied to those areas, would produce one or at most two for the purpose of the survey. Accordingly, it was decided that the last file would be included in the survey for any such area where the sampling method left a remainder of two or three files. In Athlone, for example, the strict sampling method produced a sample of one file out of a total of six. Accordingly, it was decided to increase the sample to two files by including the sixth file in the sample. Similarly, in Portlaoise the sampling method would produce a sample of two files out of a total of ten. This was increased to three by including the tenth file as part of the sample.

The resultant sample of 269 files represents approximately one quarter (24.6%) of the national files maintained for individuals who had been sentenced to a CSO during the survey period. The breakdown from area to area is set out in Table 12.

Table 12

Probation Area	Files Sample
Dublin	112
Limerick	37
Cork	30
Waterford	21
Wexford	15
Tralee	14
Navan	8
Sligo	8
Castlebar	5
Dundalk	5
Kilkenny	5
Galway	3
Portlaoise	3
Athlone	2

Many of the files contain data on the individuals concerned stretching back over several years. The focus of the research however was confined to the file data relevant to CSOs issued during

the survey period. Rather than send the full file, therefore, the probation and welfare officers constructed secondary files consisting of the relevant data from the relevant files. These secondary files were conveyed to the research team and were used as the basis for the statistical analysis. The research team had access to a number of primary files from the Dublin area and were able to satisfy themselves that the secondary files generally contained all of the relevant information available in the primary files.

Although each file relates to a single offender it happened that some offenders had been served with more than one CSO during the survey period. They can be broken down into two categories. First, there are a small number of offenders who appeared before the courts more than once during the survey period in respect of quite separate offences. These appearances resulted in the imposition of separate CSOs. This occurred in respect of three offenders in Cork, five in Dublin, one in Galway, one in Limerick and one in Tralee. In most of these cases each offender accounted for two separate CSOs. The only exception was Dublin where the five offenders in question accounted for a total of thirteen separate CSOs. It was felt that each of these had to be treated as a separate CSO for the purpose of the survey. Accordingly, it can be expected that the sample used for the purposes of analysis in most instances will be larger than the 269 sample files. In terms of CSOs imposed in separate cases the total sample is 279. This figure takes account of four files in Dublin where there is no record of a CSO being imposed (see later). The breakdown across the probation areas is set out in Table 13.

Table 13

Probation Area	Files Sample
Dublin	116
Limerick	38
Cork	33
Waterford	21
Tralee	15
Wexford	15
Navan	8
Sligo	8
Dundalk	6
Castlebar	5
Kilkenny	5
Galway	4
Portlaoise	3
Athlone	2

The second category is much more problematic. It consists of files in which an offender was sentenced to several CSOs at the same court sitting in respect of distinct offences arising out of the same criminal matter. For example, an offender might be convicted of taking a mechanically

propelled vehicle, driving with no insurance and assault on a Garda, all arising out of the same event. Instead of imposing a single CSO to cover all of the offences the judge might impose a separate CSO in respect of each offence, a course of action which he or she is quite entitled to take. The problem it poses for the survey is in determining whether these files should be treated as single cases or whether each should be treated as multiple cases equal to the number of distinct CSOs imposed. In favour of treating them as single cases is the fact that each relates to a single criminal incident or event which is disposed of at the same sitting of the court. It is also significant that in none of these cases did the cumulative duration of the individual CSOs exceed the maximum limit of 240 hours, while in one case some of the individual CSOs imposed were below the minimum limit of 40 hours.¹¹⁴ This might suggest that the judge was effectively imposing a global CSO in respect of each case and that, therefore, they are more appropriately treated as single, as opposed to multiple, cases for the purpose of the survey. On the other hand there is the fact that the judge has carefully tailored a separate CSO for each offence of which the offender was convicted, with the individual CSOs running consecutively. This suggests that, at least for some purposes, the cases in question should be treated as multiple cases.

The conclusion reached was that the multiple CSOs imposed on an individual offender should be treated cumulatively as a single case for most purposes. However, where the analysis was concerned with (i) the duration of CSOs, (ii) the equivalence between CSOs and terms of imprisonment and (iii) the relationship between CSOs and offences, they would be treated as multiple cases equal in number to the actual CSOs imposed. It follows that the sample used for the purposes of analysis will, on occasions, be even larger than the 279 indicated above. All of these extra CSOs are actually concentrated in the Dublin, Waterford and Wexford probation areas. In Dublin six offenders were sentenced to a nominal total of fourteen CSOs, in Waterford three offenders were sentenced to a nominal total of twelve CSOs and in Wexford one offender was sentenced to a nominal total of two CSOs. When these nominal CSOs are treated as separate CSOs the total sample increases to 297. The Dublin sample becomes 124, Waterford becomes 30 and Wexford becomes 16.

A problem of a different kind is presented by the fact that four of the Dublin files do not disclose the imposition of a CSO at all. In two of them there was no information whatsoever pertaining to the offender in the file. Of the other two, one concerned a case where the Probation Act had been applied in lieu of a CSO while the other contained no record of a CSO having been imposed. It was decided nevertheless that they cannot be excluded from the survey as they had been selected pursuant to the sampling method described above. Since there are only four of them and they are all from Dublin they will have no significant effect on the statistical or qualitative analysis.

The data from the secondary files (and the selection of primary files) was inputted onto a computer database using Microsoft Access and Excel. The data from each file was processed under the following variables: area; date of birth; sex; marital status; children; family; address; residence; education; skills; occupation; disability or illness; previous criminal record; garda station; remand; charge; outstanding charges; date of conviction; date of CSO sentencing; length of CSO; custodial alternative to CSO; court; convicting judge; sentencing judge; nature of work; date work commenced; duration of work; breaches of CSO; date of CSO completion; details of offence; details of extenuating factors; details of report style; other comments. While most files

¹¹⁴In this case the offender was convicted and sentenced as follows at the one sitting of the Court: larceny to the value of £585, 50 hours; larceny to the value of £10, 40 hours; larceny to the value of £35, 20 hours; larceny to the value of £20, 20 hours; criminal damage to a window, 30 hours; criminal damage to a window and door, 10 hours; criminal damage to a car, 20 hours; and intimidating his father with a knife, 40 hours.

contain data on all of these variables and all files contain data on most of them, some files lack data on some variables. However, missing data is not sufficiently concentrated under any of the variables to pose a significant difficulty for analysis.

The fact that the files are categorised according to probation and welfare areas means that comparisons can be made across areas. However, care must be taken in making any such comparisons. The samples in some of the areas are often too small to base significant conclusions on what is happening in those areas. Cork, Dublin and Limerick all have sufficiently large samples for the purpose of meaningful statistical analysis. For most purposes Waterford, and even Tralee and Wexford, can also be considered sufficiently large. The Galway sample, surprisingly, is much too small to draw meaningful conclusions from it.

Although the files were selected by reference to probation and welfare areas they included details of the court which convicted and sentenced the offenders. This meant that it was also possible to classify each case by court area. This is significant because the court areas are not synonymous with the probation and welfare areas. Accordingly, it was possible to analyse the data from the files sample at three levels: nationally, by probation and welfare area and by court area. The fact that the data could be analysed by probation and welfare area and by court area meant that comparisons could be drawn between one part of the country and another, subject to the inevitable limitations posed by the samples in some areas being too small for meaningful comparisons. It was also possible to conduct comparative analysis on a rural/urban basis. To this end the following District Court areas were classified as urban: Dublin Metropolitan Area, Tipperary/Limerick (District Court area 14),¹¹⁵ Cork (District Court area 19),¹¹⁶ Kilkenny/Waterford (District Court area 22)¹¹⁷ and Galway (District Court area 7).¹¹⁸ The others were classified as rural. It must be said, of course, that this rural/urban comparison is not perfect as some of the urban areas (Tipperary/Limerick, Kilkenny/Waterford and Galway) incorporate substantial rural components. It was considered, however, that the size of the urban centres within these areas was sufficient to justify their classification as urban for the purposes of the research.

The Court Survey

Given the fact that CSO cases were very rare in many court sittings and infrequent even in busy court sittings in the larger areas, it was not practicably feasible to conduct a court survey which would produce comparable data to that which could be gained from the files. Nevertheless, it was considered important to survey a few court sittings in rural and urban areas over set periods in order to assess how CSOs cases were actually handled in court. In conjunction with members of the supervisory committee the researchers identified District Court sittings to be visited. These were: Limerick City District Court (19 April – 23 April); Tallaght District Court (26 April), Dublin Metropolitan District Court No.45 (27 April), Dublin Metropolitan District Court No.46 (28 April), Dublin Metropolitan District Court at Kilmainham (29 April), Dublin Metropolitan District Court at Dun Laoghaire (7 May), Shanagolden District Court (7 July) and Loughrea District Court (14

¹¹⁵Referred to in the report as Limerick. It should be distinguished from District Court area 13 which covers West Limerick and parts of North Kerry and North Cork (referred to in the report as County Limerick).

¹¹⁶Referred to in the report as Cork City. It should be distinguished from District Court area 20 which covers most of the central, eastern and Northern parts of Cork County (referred to in the report as Cork County), and District Court area 18 which consists essentially of West Cork (referred to in the report as West Cork).

¹¹⁷This consists of most of County Kilkenny and all of east County Waterford, including Waterford city.

¹¹⁸This includes all of west County Galway and much of central County Galway, including Galway City. It is referred to in the report as Galway.

July). These court sittings were selected to ensure a mix of rural and urban sittings as well as a mix of sittings in the Dublin metropolitan area. Arrangements for visiting the courts and meeting with the probation officers concerned were organised through the research and statistics unit of the probation and welfare service.

With respect to each sitting the researcher had an advance briefing from the probation officer attending the court. Typically the probation officer provided an outline of the cases which would give rise to CSO issues that day and gave access to the relevant files. In the Limerick City sittings there were three cases in which a CSO was imposed, three requests for a community service report, one revocation for breach and one case where a community service report should have been available but was not. In the Dublin District sittings there were four cases in which a CSO was imposed, two in which the offenders refused the option of a CSO, one case in which the judge imposed a fine after a favourable CSO was submitted, two cases in which custodial sentences were imposed after unfavourable CSOs were submitted and two cases where the judge refused to impose a CSO until full compensation was paid. In Shanagolden one CSO was imposed while in Loughrea no CSO cases arose.

Clearly, these figures are too small to warrant conclusions on matters such as offender profile, offences, the CSOs and procedure. Accordingly, the analysis in the report is based substantially on the figures gleaned from the files sample, supplemented by insights gained from the interviews with the probation officers (see below). However, where significant issues arise from the court survey they are duly flagged at the appropriate point or points throughout the report. Most of these are to be found in the "procedure" section.

Interviews with Probation Officers

Interviews with a selection of probation and welfare officers around the country were conducted primarily in order to access information about the operation of CSOs which would not be available from the files or the court survey.

The selection of officers to be approached for interview was done by the research and statistics unit in the Probation and Welfare Service in consultation with the researchers. The officers were selected on the basis of their knowledge and experience of community service coupled with their geographical spread. With respect to the latter the objective was to get a representative selection of officers working in rural and urban areas. The resultant selection consisted of seven probation officers and two senior probation officers from Limerick (3), Dublin (2), Cork (1), Waterford (1), Galway (1) and Sligo (1). There were six male and three females. The research and statistics unit made the initial approach to the officers to see if they would make themselves available for interview. The actual timing and location of the interviews were arranged between the officers and the research team.

Interviews were arranged and conducted nationwide over a two week period in July 1999. The researcher interviewed each of the officers at their place of work. The interviews were semi-structured, being based primarily on a template of 35 questions devised by the research team.¹¹⁹ Most of the interviews (7) were tape recorded with the consent of the officers concerned. All of the officers participated fully and positively with the interviews. The officers went to great lengths to facilitate the researcher, including the re-arrangement of busy work schedules. Many of them

¹¹⁹See Appendix II.

were happy to share experiences and advice which went beyond the immediate parameters of the questionnaire. Each interview lasted approximately one hour.

Comparative Review

One of the objectives of the research was to make a critical comparison of the operation of CSOs in other jurisdictions. Resources did not permit research trips to other jurisdictions for this purpose. Accordingly, the practice in other jurisdictions was surveyed from the available literature.

APPENDIX II

Questionnaire

The following questions were put to a selection of probation officers who deal with community service orders.

1. How many cases do you deal with on average at any one time (from the drawing up of a report through to completion of supervised work).
2. Do you combine your CSO work with other probation duties. Can you give a rough breakdown between the two categories.
3. What geographical area does your CSO work cover.
4. What court sittings do you cover in the course of your CSO work.
5. Is your opinion on suitability ever sought prior to the request for a CSO report.
6. Do you have a working relationship with solicitors acting for clients who are potential/actual candidates for a CSO and/or solicitors who normally prosecute such clients.
7. Is the style and remit of your reports influenced directly by the judge/court for whom it is being written.
8. Is the style and remit of your reports influenced by policy guidelines issued from other sources either within or outside the probation service.
9. How long does it take on average to compile a report.
10. What sort of cooperation do you get from the offender etc in the compilation of the report.
11. Do you interview the prosecuting solicitor, gardai, victim etc.
12. What contribution, if any, does the defence solicitor make to the preparation of the report.
13. What do you see as your role in preparing a report.
14. What happens when you cannot complete a report by the return date.
15. How much attention does the judge give to the report.
16. Does a judge accept the report at face value.

17. Does the judge question you about the contents of the report and/or the offender.
18. Does the judge ever impose a CSO in a case where the report was unfavourable.
19. Does the judge ever impose a sentence of imprisonment where a report is favourable.
20. Does the judge ever impose a fine/suspended sentence etc (i.e. no prison sentence and no CSO) after receiving a CSO report.
21. What is the defence solicitor's role when the judge is considering a report.
22. How keenly aware are judges of CSOs as a sentencing option. What is their attitude towards them.
23. Are defence solicitors generally aware of CSOs as a sentencing option. Are they inclined to propose them as a sentencing option. Do they propose them as an option when perhaps a sentence of imprisonment is unlikely.
24. What sort of work projects are used for an offender on CSO.
25. Are there difficulties in finding projects.
26. Is the contents of the CSO report influenced by the availability of work projects.
27. What are the project agencies' perceptions of CSO workers.
28. How are the offenders supervised during their work project.
29. What difficulties do you experience in supervision.
30. What action do you take when an offender is not complying with the terms of an order.
31. Is there a set procedure which must be followed before initiating a prosecution for non-compliance. Is it applied rigidly.
32. What is the typical response of the offender to the community service experience.
33. What is your assessment of the efficiency/value of CSOs.
34. What improvements, if any, would you like to see in the system/procedure.
35. Are there any significant differences in the CSO procedure/practice/experience between rural and urban areas.

APPENDIX III

Bibliography

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APPENDIX IV

Centre for Criminal Justice

Background

The Centre for Criminal Justice was established in February 1997 at the University of Limerick in order to make a substantial contribution to Irish scholarship and learning on the subject of crime and criminal justice. Although based in the Department of Law its inter-disciplinary nature is reflected by active inputs from the Departments of Government and Society and Accounting and Finance.

Objectives

- to advance and disseminate knowledge of Irish criminal justice policy and the design, structure and operation of the Irish criminal justice system, through research, conferences and seminars
- to provide independent research and scholarship on diverse aspects of crime and criminal justice which will be of practical benefit to government policy-makers, the Garda Síochána, the Director of Public Prosecutions, the legal profession, the courts, the probation service, the prison service, the private security industry, crime victims' organisations, business and the general public
- to promote understanding of European and international co-operation on criminal justice and, in particular, how Ireland contributes to and is affected by this co-operation, through research, conferences and seminars
- to promote co-operation with other universities, the Garda Síochána and other public and private bodies with a view to advancing research on crime and criminal justice issues of particular relevance to Irish and European society
- to be a national and international centre of excellence for research on crime and criminal justice.

Funding

The Centre attracts research funding from external sources to support specific research projects in the general area of crime and criminal justice. Many of the projects are conceived and formulated by staff within the Centre, while others originate from external sources in the form of commissioned research. The research itself is carried out by the full-time experts within the Centre, augmented where necessary by temporary research assistants. The Centre has a deliberate policy of attracting research assistants who will register for a Masters or PhD by research. These students are supervised by full-time staff within the Centre.

Projects

Current projects include:

- an empirical study of the criminal jurisdiction of the Limerick Circuit Court;

- an evaluation of the operation of community service orders;
- the law governing undercover policing methods in Ireland (part of an EU wide project)

Publications

The Centre's published output is spread over articles in refereed journals, books and monographs. The results of some projects are published in a series produced by the Centre under the title ***Limerick Papers in Criminal Justice***. Titles currently available in this series are:

- J Paul McCutcheon **Legislation Affecting the Substantive Criminal Law 1996 and 1997**
- Dermot P.J. Walsh **Recent Developments in Criminal Procedure 1996 and 1997.**

Other publications include a special edition of the *Irish Criminal Law Journal* (edited by D Walsh and P McCutcheon) and *Confiscation of Criminal Assets: Law and Procedure* (Dublin: Round Hall Sweet & Maxwell, 1999) edited by P McCutcheon and D Walsh.

Conferences and Seminars

Conferences and seminars are a major feature of the Centre's activities. The Centre is also keen to develop strong working relations with criminal justice departments and centres in other universities, criminal justice agencies at home and abroad and any other body whose work is relevant to the study of crime and the management of crime through the criminal justice system.

Management Board

Professor Dermot Walsh (Law), Director
 Professor Edward Moxon-Browne (Government and Society)
 Mr Ray Friel (Head of Law Department)
 Mr Paul McCutcheon (Law)
 Professor Eamonn Walsh (Accounting and Finance)

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