

ANGUS COUNCIL

POLICY AND RESOURCES COMMITTEE – 9 MARCH 2021

COMMUNITY ORDERS (CORONAVIRUS) (SCOTLAND) REGULATIONS 2021

REPORT BY KATHRYN LINDSAY, DIRECTOR OF CHILDREN, FAMILIES AND JUSTICE

ABSTRACT

This report provides an outline on actions taken by the Scottish Government to address concerns raised by Social Work Scotland about the capacity of Justice Social Work services to deliver unpaid work requirements in Community Payback Orders as a result of the COVID-19 pandemic, and the response to this by Angus Council's Justice Service.

1. RECOMMENDATION

It is recommended that the Committee:

- (i) Note the draft regulations being taken forward to reduce the number of hours originally imposed in each unpaid work requirement in Community Payback Orders by 35% (except for some excluded offences), and position for individuals within the Justice Service of Angus Council.
- (ii) Consider the Council's initial response to the draft regulations and progress to date.
- (iii) Require the Director of Children, Families and Justice to ensure that impacted individuals are advised of the status of their Court Order once guidance is received from Scottish Government.

2. ALIGNMENT TO THE ANGUS COMMUNITY PLAN/COUNCIL PLAN

- 2.1 This report is related to the following local outcomes as stated in the Angus Local Outcomes Improvement Plan 2017-2030 and the Council Plan 2019 to 2024:
 - Local Outcome 6 – Improved physical, mental and emotional health and wellbeing
 - Local Outcome 9 – Safe, secure, vibrant and sustainable
- 2.2 Council priorities:
 - We want to maximise inclusion and reduce inequalities

3. BACKGROUND

- 3.1 To help alleviate the pressure on Criminal Justice Social Work services (CJSW), the Coronavirus (Scotland) Act 2020 extended all unpaid work or other activity requirements by 12 months, and required any new orders imposed by the courts to last for at least that long. This was successful in ensuring that CJSW could continue to function effectively in the short to medium term.
- 3.2 However, capacity within CJSW services to deliver unpaid work has remained substantively reduced, due to physical distancing measures and other measures to keep individuals on orders and staff safe, as well as varying local and national restrictions. Concerns have been raised by Social Work Scotland, the Scottish Association of Social Work and Community Justice Scotland that CJSW services are at risk of being overwhelmed; and that action is necessary to ensure existing orders can be delivered safely within a reasonable timescale and new orders can be started.
- 3.3 On 29 January 2021, the Cabinet Secretary for Justice laid before Parliament draft regulations which proposed to vary unpaid work or other activity requirements in Community Payback Orders, by reducing the number of hours originally imposed in each order by 35%. These

regulations will apply to Community Payback Orders with an unpaid work or other activity requirement where hours are outstanding, whilst excluding Community Payback Orders imposed for domestic abuse, sexual offences or stalking.

- 3.4 The Justice Analytical Service estimates around 290,000 hours will be removed from the system and up to 15% of outstanding orders immediately completed (due to individuals having already completed 65% or more of their unpaid work hours). A reduction of 35% (with the exclusions outlined) is seen to strike an appropriate balance between removing enough hours to assist CJSW and ensuring that individuals complete the majority of their unpaid work hours. In addition to the above, any reduction that places the outstanding hours to under 20 (ie, between 0-20) are only to be reduced to, or remain at, 20, as the case may be.
- 3.5 Data collected from all local authorities in May 2020 showed that approximately 700,000 hours of unpaid work or other activity were outstanding across Scotland. Further analysis suggests that if court business was to return to pre-COVID levels in March while the capacity to deliver unpaid work remained very constrained, there could be in excess of 1 million hours outstanding by July 2021 if no other action is taken.
- 3.6 The decision to exclude domestic abuse, sexual offences and stalking offences is intended to mitigate against any further risk of under-reporting of these offences, which is not found to the same extent with other offence types.
- 3.7 The regulations are expected to come into force in March 2021 and will apply to existing Community Payback Orders with an unpaid work requirement (except for the excluded offences, as stated above).
- 3.8 The regulations do not apply to any new Community Payback Orders issued after the regulations come into force.
- 3.9 CJSW services will have a duty to notify individuals of any changes to their Community Payback Orders because of the regulations. Scottish Government have advised they will provide more detailed guidance on what the regulations mean in practice and what actions are required by CJSW services.

4. CURRENT POSITION

- 4.1 In normal circumstances, pre-COVID, the Justice Service in Angus facilitates and supervises around 1400 hours of unpaid work per month, with a mixture of individual and small group activities.
- 4.2 COVID-19 restrictions have significantly impacted on the amount of unpaid work that can be undertaken safely. Most recently, the Chief Medical Officer wrote to local authorities on 18 January 2021 recommending that face-to-face unpaid work orders are suspended in those Councils under enhanced Level 4 stay at home restrictions.
- 4.3 Between 1 April 2020 and 1 January 2021, 4,256 hours of unpaid work or other activity was undertaken within Angus. The figure between 1 April 2019 and 1 January 2020 saw 13,433 hours undertaken (68% difference).
- 4.4 As of 1 January 2021, there were 152 individuals with 177 open Community Payback Orders containing 18,567 hours of outstanding unpaid work. It should be noted that the courts were suspended from around 23 March 2020 until 8 June 2020, which has impacted on the processing of individuals and sentencing, and thus on the number of Community Payback Orders imposed. By comparison, on 1 January 2020, there were 215 individuals with 250 open Community Payback Orders containing 17,895* (imposed hours, not necessarily all outstanding) hours of unpaid work.

*This information is from the Community Payback Order annual return, as determining 'historic current' figures cannot be produced easily in the reporting system, making a direct comparison to current figures difficult.

- 4.5 Preliminary work has been undertaken within the Justice Service to scope the local impact of the draft regulations. This has identified that there are currently 100 individuals, with 112 open Community Payback Orders with unpaid work conditions, removing non-categorised offences/breaches.

- 4.6 The unpaid work projection regarding Community Payback Orders in scope for a 35% reduction in hours, as of 3 February 2021, is outlined in the table below:

Total original hours	15,474
Total outstanding hours	12,637
Reduction by 35%	5,416
New original disposal hours	10,058
Completed hours	2,837
New outstanding total	7,414
Orders immediately completed	10
Orders taken to below 20 hrs	13

- 4.7 The Justice Service will continue to quality assure our local information and data to ensure that all eligible individuals are identified and informed. This will be further checked once Scottish Government guidance is received, which may provide further clarity. Thereafter, we will write out to all impacted individuals to update them on the status of their order.
- 4.8 In terms of renewal, the Justice Service continues to explore options and opportunities for those on Community Payback Orders with an unpaid work or other activity requirement, including extending the access to 'other activities', 30% of which can count towards their hours. Whilst the steps taken with the new regulations are welcome, the Justice Service is acutely aware that there will be increased demands in the months ahead.
- 4.9 The expansion of community justice services focusing on early intervention and prioritising responses which are proportionate, just, effective and promote rehabilitation is a key priority for the Scottish Government. More preventative approaches to reduce people coming into the justice system continue to be a focus locally and nationally. Putting appropriate diversion and prevention initiatives in place will help to reduce the justice system being overwhelmed further down the line and offers the opportunity to improve outcomes for individuals, families, and communities. However, this also requires structured intervention by practitioners, therefore the expected growth of diversion will be monitored by the Justice Service, to ensure resources are effectively deployed.

5. PROPOSALS

- 5.1 It is proposed that the Committee:
- Note the draft regulations being taken forward to reduce the number of hours originally imposed in each unpaid work requirement in Community Payback Orders by 35% (except for some excluded offences), and position for individuals within the Justice Service of Angus Council.
 - Consider the Council's initial response to the draft regulations and progress to date.
 - Require the Director of Children, Families and Justice to ensure that impacted individuals are advised of the status of their Court Order once guidance is received from Scottish Government.

6. FINANCIAL IMPLICATIONS

There are no financial implications arising directly from this report.

NOTE: No background papers, as detailed by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

REPORT AUTHOR: Peter McDonnell, Service Leader, Justice
EMAIL DETAILS: People@angus.gov.uk

List of Appendices:

The Community Orders (Coronavirus) (Scotland) Regulations 2021
<https://www.legislation.gov.uk/sdsi/2021/9780111049105/contents>