COVID-19 – Dealing with the backlog of Unpaid Work Orders

Information and views collated from CJVSF members

The challenge ahead

During lockdown, local authorities suspended unpaid work activities in line with the Coronavirus (Scotland) Act 2020. This legislation also extended the period for completing all existing unpaid work orders by 12 months and introduced a minimum period of 12 months to complete the unpaid work elements of any new Community Payback Orders (CPOs).

Social Work Scotland (SWS) have estimated that the backlog caused by this suspension of activity is approximately 700,000 hours of unpaid work. The number of unpaid work hours to be delivered is expected to grow further, as court business resumes and further CPOs are awarded as sentences. At the same time, COVID-19 restrictions will reduce Justice Social Work’s capacity to deliver unpaid work for the foreseeable future. Particular challenges that Social Work Scotland have identified include:

- the need for physical distancing, and the implications for staff to CPO participant ratios
- the type of projects that may be considered suitable is likely to change (e.g. projects will need to be outside or in large, well ventilated indoor spaces)
- Access to public facilities, such as public toilets, may continue to be restricted
- PPE for Justice Social Workers
- Reduced capacity of some individual placement providers.

If this backlog is not addressed, SWS reports “a major risk that Justice Social Work (JSW) will be overwhelmed, with serious consequences for the wider justice system”.

The backlog will also likely have a considerable impact on the individuals sentenced to complete a CPO, for example causing them anxiety and potentially affecting their level of motivation. Furthermore, some people are likely to have disengaged due to struggling with the lockdown changes (mental health, loss of earnings etc). Rising levels of domestic abuse, particularly against children and women, during lockdown has also been a serious concern. Consideration of such issues need to be taken in to account when the justice system restarts, with diversion assessments and referral to appropriate services being made to avoid unnecessary or inadequate support being given.

How can the third sector work with partners to prevent the wider justice system being overwhelmed?

In its letter to Chief Social Work Officers, the Scottish Government encouraged them "to think creatively and take a flexible approach to the distinction between unpaid work and other activity requirements (for example, increasing the use of other activity where possible through online opportunities, or the completion of work books on offending behaviour over the telephone or by post). There may be opportunities for an increase in individual placements through liaison with third sector partners, and we would encourage the continuation of proactive discussions with local Community Justice Partnerships to explore the potential of partner agencies to provide support. The pandemic brings into sharp focus the need for community justice partners to work collectively to find solutions.”

CJVSF members identified three main areas where third sector organisations may be able to collaborate with statutory partners to help address the backlog and prevent the wider justice system being overwhelmed:

- Delivering **Unpaid Work Hours directly** and/or **providing suitable spaces for delivering Unpaid Work**
- Delivering **‘Other Activity’ Hours**, in order to free up social work capacity to focus on delivering statutory obligations
- Delivering **diversion activities**, to help keep people out of the system and prevent the backlog growing even further.

Delivering Unpaid Work Hours and Other Activities

Current definition of Other Activity

Scottish Government’s Guidance on Community Payback Orders, defines an unpaid work requirement as one which, "provides the opportunity, within certain prescribed limits, for an individual to undertake other rehabilitative activities which promote desistance (e.g. alcohol or drug education, interpersonal skills training, personal development or confidence building, literacy and numeracy tutoring, victim awareness, careers advice and employability training (CVs, interviews)). Other activity must not exceed 30% of the specified number of hours in the requirement, or 30 hours, whichever is the lower." 2

One option for addressing some of the backlog could be to vary this amount so that a greater proportion of an unpaid work requirement can consist of activity other than unpaid work. This would allow for greater flexibility in terms of the range of services that could be offered to help increase capacity at this time. Since many of these services have already been adapted to be deliverable online during COVID-19, they can offer a safer alternative in the current climate and services could continue to run even if further restrictions/lockdowns are re-imposed (either locally or nationally).

CJVSF members were also keen to understand whether there would potentially be scope to discharge some people’s hours if they have largely completed their order (e.g. over 80%).

The range of programmes/ services

Some Third Sector organisations already provide Unpaid Work Hours and a number take referrals from Justice Social Work in relation to the provision of Other Activities. Others

anticipated that they would be able to extend their referral routes to enable Justice Social Work to make referrals to their service.

CJVSF members identified a range of potential Unpaid Work and Other Activity opportunities which they could offer, such as:

- Supporting retail activities (online retail activities, if charity shops were deemed to not be viable)
- Collecting and sorting donated goods
- Support with gardening
- Home repairs and food delivery
- Educational activities
- Programmes relating to parenting, wellbeing, life skills, personal development, learning, training, and employability
- Engaging with restorative justice mentoring
- Volunteering.

These opportunities can contribute to making CPOs a credible alternative to custody while building skills and contributing to the rehabilitation process. Please see our accompany paper for some illustrative examples of the types of services currently delivered by third sector organisations.

During lockdown, many third sector organisations have adapted their delivery models and now deliver a range of 1:1 and group programmes using video conferencing facilities or telephone. Some of these programmes are ready (and others could be relatively easily adapted) to be offered as Other Activities for part of a Community Payback Order. Online delivery would also potentially help to overcome some of the geographical barriers to support.

Some third sector organisations also have access green space (gardens, farms etc) that would allow for physical distancing and could potentially be used for outdoor work (either groups or 1:1 support).

**Calculating potential capacity**

In a few instances, third sector organisations noted that they currently have some spare capacity in existing services, which could potentially be diverted to support CPO provision at no cost if existing funders were in agreement. Others have the infrastructure in place to allow for existing services to be expanded (or for new, bespoke services to be developed) relatively quickly in order to provide additional capacity if resources were made available to enable this. For most organisations, calculating the additional capacity that would be available is difficult at this stage, due to the wide range of factors that would influence levels. Organisations anticipated that, to be able to work out the potential capacity that they could offer, they would need the following information:

- The nature of the service(s) required
- The geographical breakdown of the backlog/The locations where the services would be needed
- Number of people affected by the backlog of UPW hours in each area
- The status of the orders – e.g. not started, started but supervision not started etc
- What blockages are the main factors contributing to the backlog (Social Work Scotland’s paper on *Reducing the Backlog of Unpaid Work Hours* sets out a number of factors, including the need for physical distancing, the type of projects and access to public facilities. Getting a better understanding for the extent that each of these in contributing to the backlog in different areas would be useful for seeing where and how the third sector may be best placed to provide support to social work colleagues).
The amount of additional resource that could be made available to support an increase in staffing capacity/ An agreed fair cost per hour value that could be used to cost services  

The ratio of people on orders to supervisors that would be allowed under the restrictions  

The number of UPW hours that could be delivered in a working day (and how much other time would need to be allocated for other staff tasks associated with this – e.g. training, case work, reporting, travel etc).

Third sector organisations were also keen to gain greater clarity on the backlog of court reports and how social work is currently working, in order to be able to come alongside colleagues and support people through the system.

**Required timeframes**

The rough estimates provided by members suggested that 4-8 weeks would be a realistic timescale for getting a new or expanded service up and running. The exact time required would be dependent upon a range of factors including:

- The model of delivery needed (in general, setting up/expanding virtual services was expected to be quicker than setting up face-to-face ones)  
- Whether or not organisations would need to change contracts for existing staff  
- Whether or not organisations would need to recruit additional staff members  
- The flexibility of funders to allow resources to be diverted  
- How quickly referral processes could be put in place  
- How quickly a commissioning agreement/contract could be developed  
- Ensuring digital access for programme participants (where online delivery models were to be used)  
- Availability of a suitable venue for delivering UPW hours/Other Activities (where face-to-face provision is required).  
- Gaining agreement about transport/alternatives for getting people to site  
- Identifying suitable facilities, such as toilets, which could be used by those participating.

**Diverting people from the system**

As the justice system restarts, the other action we can take immediately is to adopt a more preventative approach to reduce people coming into the system. 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. Again, third sector organisations have plenty of experience in this area and are well placed to assist.

**What needs to happen next?**

The backlog challenge has brought to the fore the pressures facing Justice Social Work. We support SWS’s view that this pressure must be addressed and, in tackling the backlog, there is

---

3 From Social Work Scotland predict that the ratio would be between 1:1 and 1:3 for the foreseeable future, in order to allow for physical distancing.  
4 Some third sector organisations noted that they have staff who are currently part time or sessional and could increase hours to take on additional work. Others have staff who are skilled in programme delivery who are currently on furlough who could come back to support additional work if funding were available to support this. Others noted that they had the management capacity and other infrastructure but would need to quickly recruit additional staff for delivery, if expansion of a particular service were desired.
an opportunity to ensure that the structures, processes and roles are in place to support greater use of community support services in the longer term, as well as in the immediate response to the challenges posed by COVID-19. We need to build on the partnership working that has emerged during the pandemic and build capacity for the third sector to work with local authorities to deliver community provision to work through the backlog and this needs to be done on a medium term basis (we would suggest 2-3 years) to allow for effective planning and the sustainability of relevant services.

In order to enable the third sector to contribute effectively to reducing the unpaid work backlog, there will need to be:

- Early discussions at a local level between the Courts, Justice Social Work and third sector providers to identify what activities and support will be needed and to allow a workable plan to be developed.
- Strong work around communications, to raise awareness of the options available to Sheriffs and to develop effective referral routes and processes.
- Appropriate financial resources in place to allow for the scaling up of such activities and to ensure all COVID-19 safety measures are in place to deliver services.
- A clear, agreed commissioning and procurement model for planning and purchasing services.

**Engaging third sector organisations in commissioning discussions at a local level**

Each Community Justice Partnership should have third sector representatives engaged in their partnership who could link in relevant third sector providers at a local level. CJVSF members have indicated, however, that this is not the case across all community justice partnerships. As a national intermediary, CJVSF would also be happy to work with Social Work Scotland to help facilitate connections with other relevant organisations who have expertise and experience of delivering relevant services and may be able to offer similar services in other local authority areas.

**Communications work**

Considerable energy will also need to be put in to a formal cascade of communications, to raise awareness and understanding of the options available and to ensure that any relevant third sector services are formally recognised by the judiciary and Justice Social Work as an appropriate route for delivering UPW hours, as well as by the general public. These communications should include the development of clear and streamlined referral processes so that individuals can access options on hours and start/complete their order without significant further delays.

**Allocating resources relevant services**

If additional resources are to be provided to reduce the unpaid work backlog there needs to be a clear process put in place to ensure that they are utilised effectively. CJVSF have previously expressed our concerns that funding awarded through Section 27 is frequently used to support in-house services, rather than focusing on investing in services that best meet the required outcomes. CJVSF members were clear that any identified resource should be ringfenced specifically for the provision of relevant services, rather than as an additional lump sum for local areas.

Potential options for allocating the relevant resources could include the following approaches:

- A National Framework Model, whereby relevant third sector organisations could join the framework and Local Authorities could then purchase X amount of hours as needed.
• A central pot of Grant Funding held at a national level, which third sector organisations/collaborations could bid in to once agreement had been reached with local social work departments about the outcomes that require to be delivered and appropriate service models for meeting these outcomes
• A Self-Directed Support model, whereby the funding follows the person and the individual is involved in working with social work to determine how best they could make use of their time to support their rehabilitation/ address their offending behaviour.
• Ringfenced funding provided directly to local areas for the purpose of engaging third sector providers, accompanied by clear guidance and practice examples.
• A lead provider approach, whereby a consortia of organisations are commissioned to deliver the service and the lead provider is responsible for channelling the resources to the relevant organisations.