

# Community sentences across borders

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## Executive Summary

- There is national and international evidence that community sentences are more effective at reducing re-offending than short-term prison sentences and provide better value for money. When research has adjusted for the fact that individuals going to prison have a higher risk of re-offending than those who receive community sentences, evidence continues to show that the reoffending rate of offenders on community sentences is lower.
- Our research shows that community sentences have consistently reduced re-offending in both England and Wales and in Scotland over the past ten years.
- Despite this success, there has been a 24% decrease in the number of community sentences in England and Wales over the past ten years, with much of the decline occurring since 2011. This decline has not been substantially impacted by recent reforms, implemented in 2015, as to who operates the probation services that supervise people on community sentences (known as Transforming Rehabilitation). As community sentences have fallen, there has also been a decline in the use of short-term prison sentences.
- In contrast in Scotland, there has been an 18% increase in the use of community sentences over the last ten years. Much of this increase has occurred since 2011. Community sentences now make up nearly 20% of all sentences passed by Scottish courts, compared to only 12% ten years ago. At the same time, the use of short prison sentences has declined.
- Our analysis suggests that the difference in the use of community sentences are not attributable to differences between the two jurisdictions in the volume of sentencing cases going through court, where both countries have seen significant decreases in the number of cases coming to and being sentenced at court.
- Our analysis also suggests that the difference in the use of community sentences are not attributable to differences in the offence mix coming to court in the two jurisdictions, where trends have been broadly similar in England and Wales and Scotland.
- We surmise that changes in policy and in practice in Scotland are more likely to explain the rise in the use of community sentences than these other factors. We, tentatively, suggest that the introduction of the community payback order and the presumption against short three month prison sentences (both introduced in 2011) seem likely to explain at least some of the rise in the use of community sentences in Scotland. It remains unclear what has caused community sentences in England and Wales to decline so much since 2011.
- Further research is needed to explain what is behind these trends and the impact policy change may be having in the two jurisdictions.

## Background to the briefing

On 22nd November 2016, the Lord Chief Justice for England and Wales said to the House of Commons Justice Select Committee that “there is an awful lot we can do to avoid sending certain people to prison... There is a lot more that we should be doing first and immediately to explore non custodial options more.”<sup>1</sup>

The evidence suggests that the Lord Chief is right. There is considerable evidence that community sentences are an effective means of reducing re-offending. Internationally, there is consistent evidence that re-offending rates are higher for those leaving prison than those serving community sentences.<sup>2</sup> Studies by the Ministry of Justice in England and Wales (which control for the differences in the offender

characteristics of those on community sentences and those receiving short prison sentences (of less than 12 months) show that the proven reoffending rate of offenders on community sentences is consistently lower than for those who had served short-term prison sentences.<sup>3</sup> Moreover, community sentences can often represent good value for money, especially in comparison to short prison sentences— even the most expensive intensive community sentences cost just over one tenth of the cost of a prison place per year.<sup>4</sup>

Despite this evidence, there has been growing discussion about the use and effectiveness of community sentences in England and Wales. A number of critical inspection reports suggest that all is not going as planned in the Transforming Rehabilitation reforms to probation in England and Wales.<sup>5</sup> Moreover, in 2017, a report by Crest Advisory<sup>6</sup> drew attention to the fact that, in England and Wales, there has been a 24% reduction in the number of community sentences since 2004. Meanwhile, a new report published<sup>7</sup> by the Scottish Government in 2017 showed that re-offending for all offenders was at an 18-year low, which also indicated that this has been achieved with an increase in the use of community sentences and a decrease in the use of short prison sentences.

### Purpose of the briefing

Recognising this evidence, the Centre for Justice Innovation has conducted preliminary research to look at community sentencing in England and Wales and in Scotland. Specifically, this briefing looks at:

- i. Explanations for the change in the use of community sentences in the two jurisdictions;
- ii. The relationship between the use of community sentences and short-term prison in the two jurisdictions;
- iii. The impact of community sentences on re-offending in the two jurisdictions.

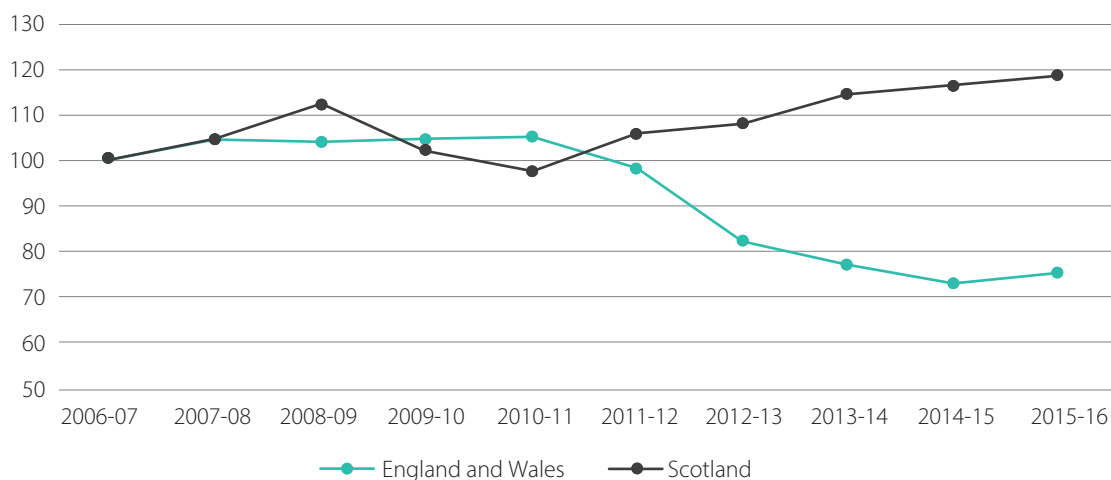
This effort to look across borders aims to understand what is going on and to see if there are lessons that can be shared between the two jurisdictions.

### Explaining changes in the use of community sentences across borders

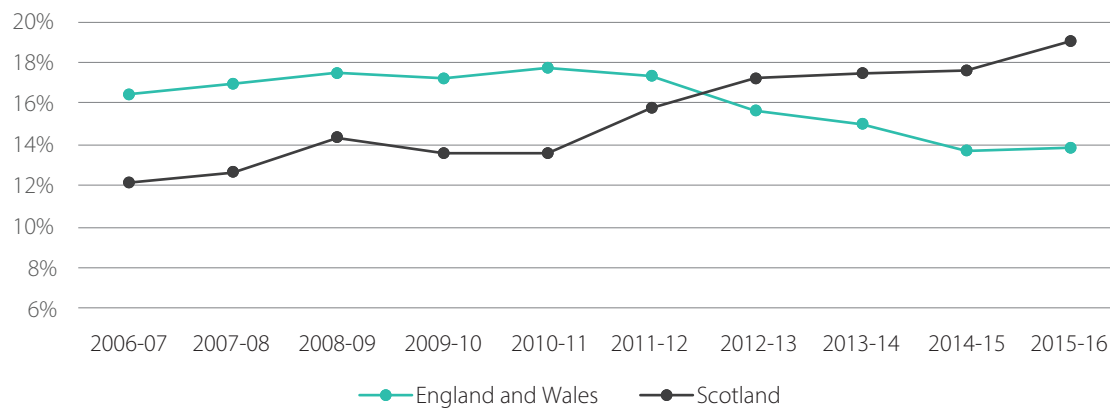
As we have noted, community sentences<sup>8</sup> have fallen by 24% in England and Wales over the last ten years (figure 1). In England and Wales, the decrease in the use of community sentences started in earnest in 2011/2012. Community sentences were 17.5% of all sentences in 2011/12 but are now just 13.7% of all sentences in 2016 (see figure 2).

Yet, just by looking across the border, it does not have to be this way. In Scotland, community sentences<sup>9</sup> are flourishing. They have increased by 18% in Scotland over the last ten years (figure 1) and community sentences as a proportion of all sentences given out by Scottish courts has increased by 7 percentage points (see figure 2).

**Figure 1: index of community sentences, 2006/7 to 2015/16, England and Wales and Scotland<sup>10</sup> (2006/7=100)**



**Figure 2: community sentences as % of total sentences, 2006/7 to 2015/16, England and Wales and Scotland<sup>11</sup>**



To examine why this is happening, we looked at whether these changes could be attributed to any one, or combination of, three different causes: (i) changes in the number of offences that the courts have to sentence; (ii) changes in the mix of offences that the courts have to sentence; (iii) changes in community sentencing policy.

**Changes in the number of sentencing cases before the court**

One reason that the number of community sentences could have risen in Scotland is that the overall number of sentencing cases could have risen, meaning there have been simply more cases in which community sentences could be given out.

Our analysis, however, shows that this is not the case. In fact, despite the two jurisdictions seeing markedly different trends in the use of community sentences, both jurisdictions have seen similar, substantial decreases in the volume of sentencing cases over the last ten years (see figure 3), England and Wales by 11% and Scotland by 26%.

**Figure 3: index of all sentences, 2006/7 to 2015/16, England and Wales and Scotland<sup>12</sup> (2006/7=100)**



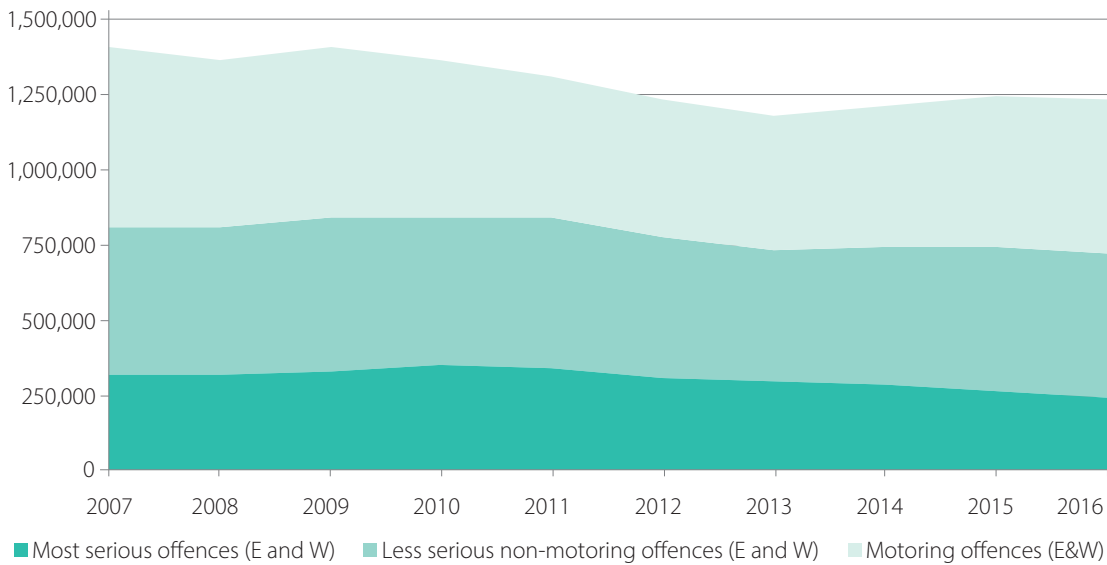
**Changes in the offence mix**

Recognising that the differences in the use of community sentences in the two jurisdictions cannot be explained by changes in overall number of sentencing cases, we have looked at whether there has been any substantial and comparative change in the mix of offences<sup>13</sup> that the two court systems have been dealing with. For example, a rise in the proportion of sentencing cases for the most serious offences in England and Wales could mean that fewer cases were appropriate for a community sentence, thereby explaining the decline in the use of community sentences.

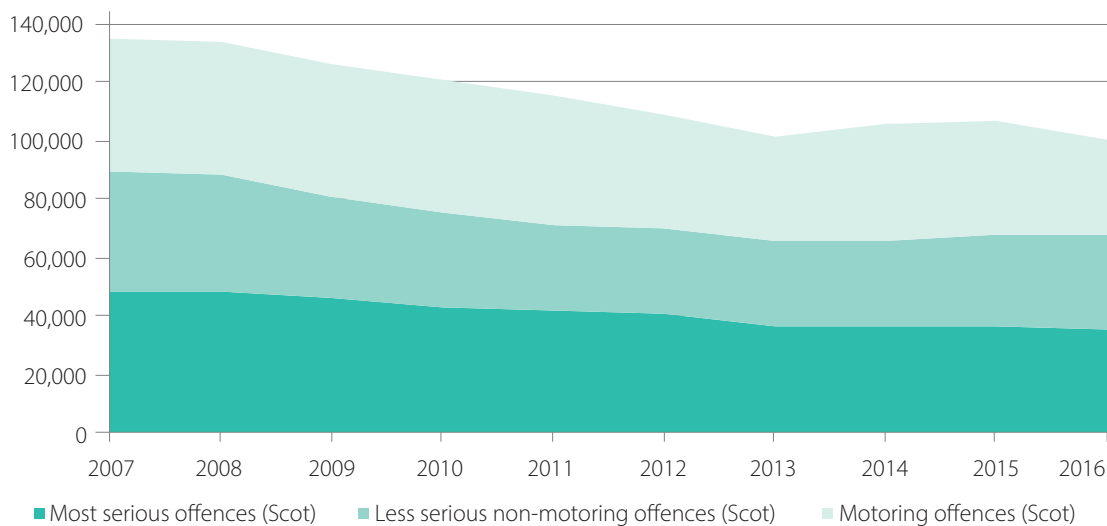
However, as with our analysis of the volume of sentencing cases, there have been broadly similar trends in the offence mix in both jurisdictions, suggesting that the change in the use of community sentencing is not attributable to changes in the offence mix. Our analysis shows that there have been broadly similar changes in the types of cases that the two court systems have had to deal with. Overall,

both jurisdictions have seen falls in the number of each type of offence over the last ten years (see figures 4 and 5). Moreover, there has been little change in the proportions of these offence types in either jurisdiction.

**Figure 4: all sentences by index offence group, 2007 to 2016, England and Wales<sup>14</sup>**



**Figure 5: all sentences by index offence group, 2006/07 to 2015/16, Scotland<sup>15</sup>**



### Changes in policy

Having found no clear explanation for the different trends in the use of community sentences within either the changes in the number of cases before court nor in the offence mix, we have next looked at whether the differences could be explained by differences in community sentencing policy.

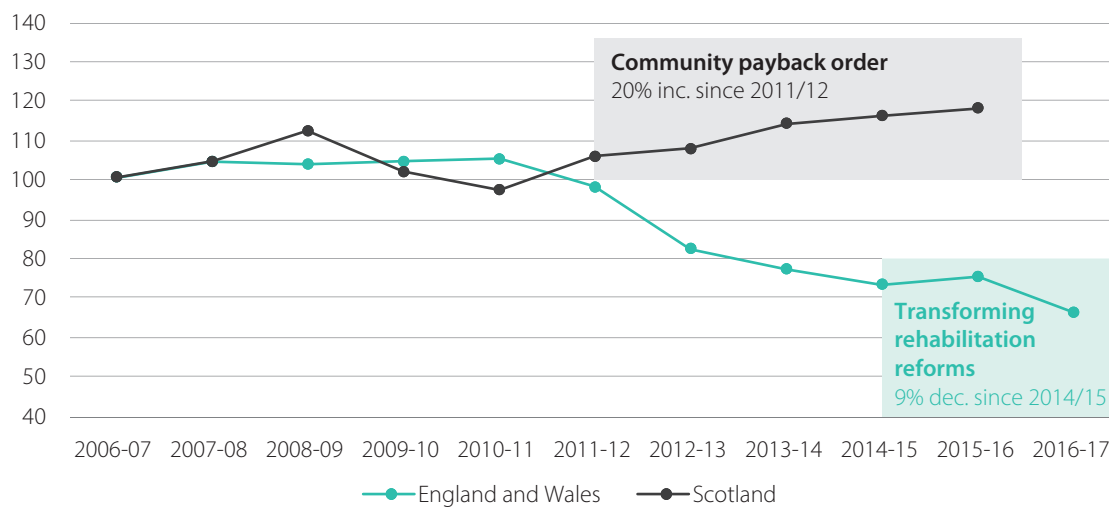
Both jurisdictions have seen significant changes in community sentencing policy over the past ten years. In England and Wales, there have been two major changes in community sentencing in the last ten years. The legislative structure of community sentences was reformed in the criminal justice act 2003, whose provisions were implemented in 2005 and 2006. More recently, the government introduced the Transforming Rehabilitation reforms. These reforms, amongst other things, sought to open up parts of the hitherto public sector probation service to private companies, who would over time assume supervision for offenders on both community sentences and those released from prison who were assessed as low to medium risk. They were implemented in 2015.

In Scotland, the legislative structure of community sentences changed in 2010, under the Criminal Justice and Licensing (Scotland) Act 2010. In 2010/11, a new community sentence, the community payback order, was introduced, although there are other sentences served in the community which

continue to be used by courts. The Criminal Justice and Licensing (Scotland) Act 2010 also introduced a presumption against sentences of less than three months. The Act requires the court to (i) only pass a sentence of three months or less if no other appropriate disposal is available and (ii) record the reasons for this view. Lastly, although criminal justice social work, based in local authorities, have continued to be the primary community supervision agencies, there has also been some structural reform. Most notably, 8 regional community justice authorities, charged with reducing re-offending, were merged into one national agency, Community Justice Scotland, in 2017.

Our analysis shows that the rise in the use of community sentences in Scotland has primarily occurred since the introduction of community payback order in 2011/12. They have risen in use by 21% since that year and risen year on year (figure 6). As yet, there is no sign that Transforming Rehabilitation reforms have made any impact on arresting the decline in the use of community sentences in England and Wales. In fact, the decline has continued, with a decrease in 9% in the since 2014/15 (figure 6).

**Figure 6: index of community sentences, 2006/7 to 2016/17, England and Wales and Scotland<sup>16</sup> (2006/7=100) (16/17 England and Wales only), with policy changes**



### Conclusions

It seems, from our analysis, that changes in the volumes and types of cases coming to court do not explain this difference. We, tentatively, suggest that the promotion of the community payback order and the presumption against short 3 month prison sentences seem likely to explain at least some of the rise in the use of community sentences in Scotland.

Yet, we recognise that this conclusion is speculative. There are other reasons which we have not had the time or data to consider, including sentencer confidence in community sentences each side of the border, differences in the implementation and practice of community sentence supervision, differences in expenditure on community sentences and more detailed analysis of the differences in the make-up of the cohorts in front of the courts in terms of risk, criminogenic need and previous convictions.

### The relationship between community sentences and short prison sentences

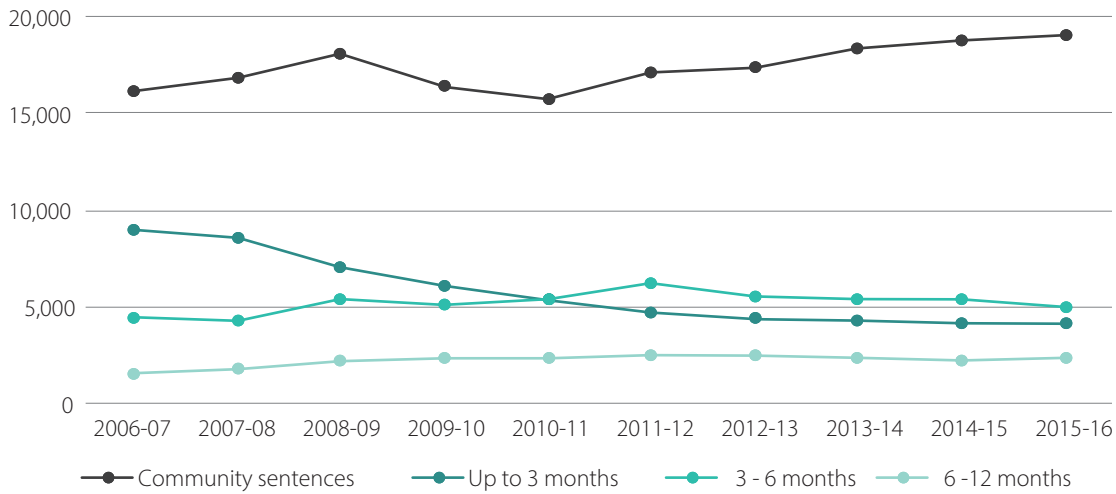
Community sentences are often cited as providing a better option than short prison sentences (sentences of less than 12 months in prison). Looking at the differences in the use of community sentences in the two jurisdictions, we looked at whether these differences had any impact on the use of short prison sentences.

Our analysis shows that the relationship between the use community sentences and short term prison sentences in Scotland differs markedly from that in England and Wales.

In Scotland, the use of short prison sentences of less than 12 months has declined over the past ten years by 23%, as figure 7 shows. Since the introduction of both the community payback order and the presumption against the use of 3 months or fewer short prison sentences in 2011, community sentences have risen, the use of short prison sentences of 3 months or fewer has continued to decline and the use of short prison sentences of 3-6 months has declined. This suggests both that there has

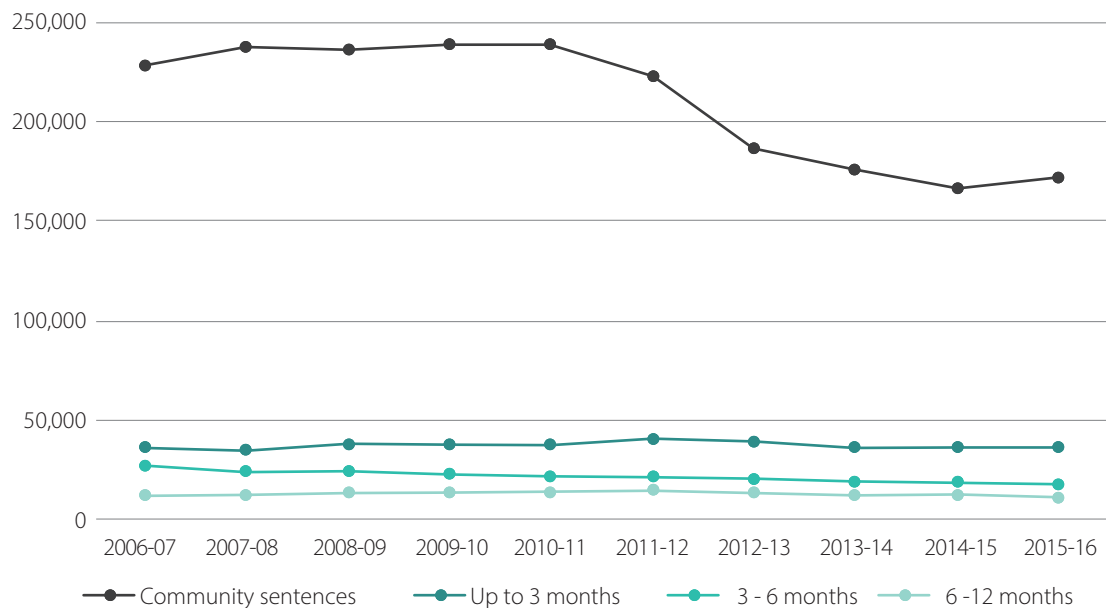
been negligible up-tariffing following the introduction of the presumption (courts giving 3-6 months prison when they would have given 3 months or fewer) and that some of the offenders who may have otherwise received a 3 month or fewer sentence are likely to have received community sentences instead.

**Figure 7: short prison sentences and community sentences, 2006/07 to 2015/16, Scotland<sup>17</sup>**



In contrast, the decline in the use of community sentences in England and Wales has not led to a rise in the use of short prison sentences, which have also declined. However, the decline in the use of community sentences has been sharper than the decline in the use of short prison sentences in England and Wales. While community sentences have fallen by 32% since 2011, short prison sentences fell by only 16% (see figure 8). Moreover, short prison sentences, while declining in number, represented 5% of all sentences in 2015/16, the same proportion as they did in 2006/7. In contrast, community sentences were 16.5% of all sentences in 2006/7 and now represent just 13% in 2015/16.

**Figure 8: short prison sentences and community sentences, 2011 to 2016, England and Wales<sup>18</sup>**



## Conclusions

This brief analysis shows that that the relationship between the use of community sentences and short prison sentences is complex. It is certainly not a straightforward relationship, where if the use of community sentences goes up, short prison sentences always go down or vice versa. In England and Wales, the sharp decline in the use of community sentences has not led to an increase in short prison sentences— in fact they too have gone down. That only further confirms research from elsewhere that the relationship between community sentences and the use of prison is sensitive to all manner of factors.<sup>19</sup>

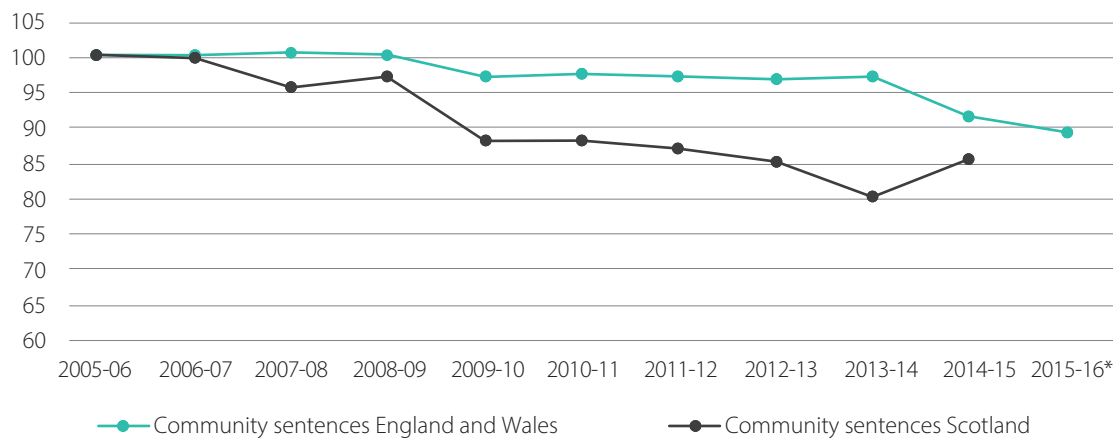
## Re-offending on community sentences

Many criminal justice interventions and sentences are judged on whether they reduce re-offending. The arguments for and against different types of policy often reference the likely impact of this or that measure on re-offending.

In looking at comparative re-offending rates for community sentences, we recognise that cross-jurisdictional comparison of re-offending rates is a vexed issue. With justice systems being different and the law, policies and practices of justice agencies in arresting, prosecuting and convicting different, these can make a material impact on re-offending rates, making straight comparison difficult. In addition, the type of offenders who get community sentences may be substantially different. Lastly, different jurisdictions calculate re-offending rates very differently.

To avoid those complications, we indexed binary re-offending rates over the last ten years for which data are available (2005/6 to 2014/15) to look at the relative rate of change over time. This gives us a measure of the relative performance of the two jurisdictions in reducing re-offending on their own terms, which we can compare. In addition, we looked at more recent data in England and Wales covering the period march 2015 to december 2015, which is the first period in which we have data on re-offending rates for offenders on community sentences, supervised under the new transforming rehabilitation reforms.

**Figure 9: relative rate of change in community sentence re-offending rates, England and Wales and Scotland, 2005-2015<sup>20</sup> (including march to december 2015 data in England and Wales)**



\*2015/16 data for England and Wales represents only 6 months cohort data, comparative data for Scotland is not currently available.

As figure 9 makes clear, there have been modest but steady declines in re-offending rates in both jurisdictions, in Scotland by 14.6%, and in England and Wales by 11.1%.

### Conclusions

Our comparative analysis shows what the evidence has long suggested— community sentences are effective at reducing re-offending. They have reduced re-offending modestly but none the less consistently over the past ten years in both jurisdictions.

There has been much discussion in criminal justice circles in England and Wales about whether transforming rehabilitation is working. Reports from the national audit office<sup>21</sup> and, as mentioned, a growing number of probation inspectorate reports indicate that the reforms have had a difficult birth. However, at present the data in this briefing is insufficient to draw any firm conclusions on whether those reforms have made a significant impact on the re-offending rates of individuals on community sentences.

## Final thoughts

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It is clear that England and Wales and Scotland are on different journeys in the use of community sentences, especially since 2011 onwards. This briefing only begins to understand why this is happening. Our analysis suggests that the differences in the use of community sentences are not attributable to changes in the volume of sentencing cases nor in the offence mix within those cases, where trends have been broadly similar in both jurisdictions. We, tentatively, suggest that in Scotland the promotion of the community payback order and the presumption against short 3 month prison sentences seem likely to explain at least some of the rise in the use of community sentences that we have witnessed there.

This briefing also makes clear that while community sentences are effective in reducing re-offending (albeit modestly), the assumption that increased use in community sentences automatically will lead to fewer prison sentences (or vice versa) is not necessarily true. At the least, a decreased use in community sentences, as we have seen in England and Wales, has not led to automatic increases in the use of short prison sentences.

Finally, if one believes, as we do, that the evidence suggests that community sentences are more effective and better value for money than short prison sentences, the decline in their use in England and Wales over the last ten years is concerning, especially when they have continued to reduce re-offending over the same period. For those of us who want to reverse that trend, looking across the border to Scotland would be good start for English and Welsh policymakers and practitioners.

## Endnote

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1. House of Commons Justice Committee (2016). *Oral evidence: The Lord Chief Justice's Annual Report 2016*, HC 801
2. Scottish Government (2015). *What Works to Reduce Reoffending: A Summary of the Evidence*
3. Ministry of Justice (2013) *Compendium of reoffending statistics and analysis 2010*, Tables 3 and 5.. Mews, Aidan et al. (2015). *The impact of short custodial sentences, community orders and suspended sentence orders on re-offending*, Ministry of Justice
4. See National Audit Office (2010) *Managing offenders on short custodial sentences*, London: The Stationery Office and Redgrave and Du Mont (2017). *Where did it all go wrong? A study into the use of community sentences in England and Wales*. Crest Advisory
5. The most recent relevant inspection reports include: Quality and Impact inspection The effectiveness of probation work in Gloucestershire (2017), An Inspection of Through the Gate Resettlement Services for Prisoners Serving 12 Months or More (2017) and Quality and Impact inspection The effectiveness of probation work in Suffolk
6. Redgrave and Du Mont (2017). *Where did it all go wrong? A study into the use of community sentences in England and Wales*. Crest Advisory
7. Scottish Government (2017) *Reconviction Rates in Scotland: 2014-15 Offender Cohort*
8. There are two main community sentences available to English and Welsh courts: the community order and the suspended sentence. While the suspended sentence is technical a custodial sentence, and those who receive it have crossed the custody threshold, the sentence is served in the community and the prison sentence only activated following an enforced breach. We include both in our analysis.
9. In 2010/11, a new community sentence, the community payback order, was introduced, although there are other sentences served in the community, such as Drug Testing and treatment Orders, which continue to be used by courts. We include all in our analysis.
10. Centre for Justice Innovation analysis drawn from Ministry of Justice 'Criminal Justice Statistics - Quarterly update to September 2016' and Scottish Government 'Criminal Proceedings in Scotland Statistical Bulletin tables 2015-16.'
11. Centre for Justice Innovation analysis drawn from Ministry of Justice 'Criminal Justice Statistics - Quarterly update to September 2016' and Scottish Government 'Criminal Proceedings in Scotland Statistical Bulletin tables 2015-16'
12. Centre for Justice Innovation analysis drawn from Ministry of Justice 'Criminal Justice Statistics - Quarterly update March 2017' and Scottish Government 'Criminal Proceedings in Scotland Statistical Bulletin tables 2015-16.'
13. In order to look at offence mixes comparatively in the two jurisdictions, we have included all offence types into three broad categories. The most serious offence category in England and Wales includes all indictable and triable either way offences in England and Wales. It includes all crimes in Scotland. The less serious non motoring offences category in England and Wales includes all summary non-motoring offences in England and Wales. It includes all non-motoring offences in Scotland. The motoring offences category in England and Wales includes all summary motoring offences in England and Wales. It includes all motoring offences in Scotland.
14. Centre for Justice Innovation analysis drawn from Ministry of Justice 'Sentencing tool' (2017)
15. Centre for Justice Innovation analysis drawn from Scottish Government 'Criminal Proceedings in Scotland Statistical Bulletin tables 2015-16.'
16. Centre for Justice Innovation analysis drawn from Ministry of Justice 'Criminal Justice Statistics - Quarterly update to September 2016' and Scottish Government 'Criminal Proceedings in Scotland Statistical Bulletin tables 2015-16.'
17. Scottish Government 'Criminal Proceedings in Scotland Statistical Bulletin tables 2015-16'
18. Ministry of Justice 'Criminal Justice Statistics - Quarterly update to September 2016'
19. Allen (2012) *Reducing the use of imprisonment. What can we learn from Europe?* Criminal Justice Alliance
20. Centre for Justice Innovation analysis drawn from Ministry of Justice 'Proven Reoffending Statistics Quarterly Bulletin, October 2015 to December 2015' and Scottish Government 'Reconviction Rates in Scotland: 2014-15 Offender Cohort.' For data reasons, this includes excluding DTTOs in Scotland.
21. NAO (2016) *Transforming Rehabilitation*.

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