

# Payback with a Purpose

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The Centre for Justice Innovation aims to improve the implementation, evaluation, and dissemination of new ideas and new practices throughout the criminal justice system in the United Kingdom.

The Centre for Justice Innovation is a project of the Center for Court Innovation, a New York-based non-profit organisation that has helped to create dozens of demonstration projects, including the award-winning Red Hook Community Justice Center.

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## Background

In England and Wales, courts can order offenders to carry out reparative, unpaid work in their communities called ‘Community Payback’<sup>1</sup>. Community payback is designed to demonstrate that those who have caused harm to a community are visibly repaying their debt. Latest data show that courts made over 65,000 work orders in 2011<sup>2</sup>. On average, participants were required to work 110 hours while on their community order<sup>3</sup>.

In the last four years, Probation Trusts in England and Wales have been committed to improving the way community payback is delivered. Following Louise Casey’s review of community payback<sup>4</sup>, the work offenders do is often identified by a plaque and the offenders themselves are required to wear high visibility jackets. Probation Trusts have increasingly encouraged citizens to nominate community payback projects. In terms of outputs, compliance rates over the last three years have remained well above 70 percent and improved year on year<sup>5</sup>. The result is that offenders work nearly nine million hours every year in their communities across England and Wales, attempting to make up for the harm they have caused<sup>5</sup>.

Responsibility for community payback has traditionally been the preserve of public sector

Probation Trusts. That, however, has changed – on 13th July 2012, the private security company, Serco, in partnership with London Probation Trust, won the contract to deliver community payback across London. The thinking behind opening provision out to other providers is to encourage better services at less cost. The then-Prisons Minister, Crispin Blunt, described the London contract as “...a real game-changer; making the payback real, driving innovation and value through the criminal justice system.”

The contract for London is the first of many, according to the Ministry of Justice. Not everyone is convinced this is the right approach. Harry Fletcher of the National Association of Probation Officers said: “This marks the beginning of the privatisation and fragmentation of the probation service... the level of supervision will deteriorate and the breach rate will escalate.” Frances Crook, director of the Howard League for Penal Reform, fears that handing the management of potentially dangerous people to a private company would put the public at risk<sup>7</sup>. The Probation Chiefs Association and Probation Association, in a joint statement, worried less about who provided payback but how it was commissioned: “Retaining commissioning (for payback) at a national level will unnecessarily complicate the landscape, lead to the silo delivery of services and hinder the development of innovative local solutions to reduce crime.”<sup>8</sup>

While it is too soon to assess the impact of the London contract, it is clear that community payback in England and Wales is at an important crossroads. While much of the recent debate has focused on how community payback is paid for and who does the purchasing, there are other questions which are just as vital: how can community payback address meaningful local problems rather than simply serving as a ‘make work’ punishment? How do practitioners engage residents and community organisations at a

neighbourhood level? What can be done to ensure the highest compliance rates? The experience of New York City offers some potential answers to these and other questions.

## The New York Community Payback Experience

### Background to change

Historically, the vast majority of community payback orders in New York City were supervised by the Department of Probation or the District Attorney’s Office. There were a number of problems with this arrangement. Firstly, community payback was not central to the mission of either Probation or the District Attorneys; they had competing priorities to tackle. Second was the problem of accountability: the only requirement communicated to many offenders at court was that they had to return to court two months later to report on their progress in completing the mandated work. This did little to communicate that the system took community payback seriously. Another problem was information: the courts were frustrated that when offenders previously sentenced to payback appeared in court on another charge, it was often unclear whether the offender had completed the original community payback order. Lastly, payback happened in a vacuum. Across New York City, the New York Police Department and other authorities were tackling disorder hotspots. Payback crews seldom were used to contribute. The projects that payback crews worked on were not driven by neighborhood priorities but the convenience of the supervising agencies.

### Developing a new vision of community payback

In 2006, the New York authorities decided to look to outside providers to change the way this community payback provision was delivered. The move to rethink community payback began some years earlier with the establishment of the Midtown Community Court (in 1993) and the Red Hook Community Justice Center (in 2000). At these experimental community courts, payback was delivered differently. This community court vision of payback evolved over time. By 2006, the exchange of views and information between the City authorities and the community court developers had helped shape a vision of payback that both fit with New York City's particular needs and drew from the community resources available. This vision operated around some key principles:

#### **1. Prevent people from failing at the start by courtroom escorting and next day appointments.**

City authorities were aware that many offenders coming through the courthouses never got a work placement to start with. Over half of all offenders facing a year or less of prison coming through New York City courts plead guilty during their first appearance before a judge, which generally takes place around 24 hours after their arrest. Many simply left after sentence not realizing they needed to appear at the community payback office. This was especially the case for offenders who received a small number of days to complete. In contrast, the community court projects work to ensure that offenders are immediately escorted from the court to their intake interview. They emphasize that the gap between the court appearance and the first day of payback must be as short as possible. The community court intake teams schedule offenders' first day of payback either the day after or within a week of sentencing.

#### **2. Use the initial intake to demystify the court process.**

At intake, offenders are encouraged to ask questions. The intake staff explains what happened in the court process and engage offenders in making decisions about when and where they do their community payback. This is intended to ensure offenders see the process in as fair a way as possible. Evaluations of problem solving courts suggest that increased perceptions of the fairness can lead to improved compliance<sup>9</sup>.

#### **3. Exploit the 'crisis point' at initial intake to help offenders take advantage of the opportunity to change<sup>10</sup>.**

At the intake interview, the offenders are interviewed by a court-based intake coordinator. Given that offenders who are handed down short community sentences often have high levels of social need<sup>11</sup>, the intake interview includes a basic needs analysis. Those clients with complex problems such as drug use or mental health problems can then be referred to a social worker who has a chance to work with them when they are most likely to want to change their lives.

### **An offender takes a chance on change in the Bronx**

In 2008, Bronx Community Solutions Case Manager Monica Garcia described the how the new community payback provision helped an offender access drug treatment. "An intake specialist called me to say that a client had been screened following a community payback sentence and was in need of drug treatment services. We were talking about a case that involved decades of crack cocaine and alcohol abuse.... I sat and spoke with a gentleman who had decided to take step one of what would become a long road to recovery. That day was a long day and required many hours of work—individual counseling and phone calls to various treatment centers and family members—before the client was eventually picked up and admitted to a treatment center upstate. As I walked the client out to the van for pick-up he thanked me profusely.... While I will not be there every step of the way, at least for one fleeting moment, I was able to extend a hand."

**4. Make the offender clear that it is their responsibility to complete the mandate with signed contracts.**

Offenders receive a contract with all appointments detailed. They are required to sign it to assert they understood when and where they are supposed to be. The offenders are told that they are responsible for their own attendance and that failure to attend will result in a warrant for their arrest.

**5. Support offenders throughout their sentence.**

Following intake, the court teams make their best efforts to support offenders to discharge their responsibility. The offenders are reminded via phone calls the day before their appointments. Recognizing that offenders may have serious social service needs such as a drug addiction or mental health problem that may influence their ability to complete their mandate, community court crew supervisors are equipped to refer offenders to the social service team.

### **New York City prosecutors see community payback improvement**

In 2010, key district attorney staff were interviewed about changes to Criminal Court community payback inspired by the community court approach. One assistant district attorney reported that community payback was now “meaningful, not just a punitive service. They actually have the highest retention rate (79 percent) of all providers.” Another said, “they think about how... we can work together to give offenders a good community service experience while also benefitting the community... It wasn’t just about providing a site for people to clean, but about what they can do to better the community.” Another assistant district attorney commented, “The staff also worked with us to think about alternatives for individuals who cannot complete community service associated with physical labor... They work with us collaboratively instead of just sending us our compliance forms and that being the end of the story.”

**6. Hold offenders accountable to the courts.**

Crew supervisors take a rigorous approach to attendance. At the completion of the day’s work, attendance is reported back to the intake staff. They input these attendance records the following day. If someone has failed to attend twice, the team initiates breach proceedings, with the court issuing arrest warrants for the New York Police Department to enforce. The data on attendance helps inform the courts of the compliance record of its clients should they appear there on another charge.

**7. Encourage offenders to appreciate their civic responsibilities.**

Crew supervisors encourage offenders to reflect on the community that they harmed and their civic responsibility to put it right. It can be an important first step for some offenders in making the journey away from a life of crime. Recent work on an offender’s desistance from crime suggests that these changes in perception could be crucial in helping offenders form a new, positive identity for themselves and help them reduce the harm they cause<sup>12</sup>.

### **Involving young people in delivering payback projects**

One of the Red Hook Community Justice Center’s primary goals is for youth to see themselves as positive, contributing members of their community. In 2012, the Justice Center sought to involve young people in community payback in a novel way. Each participant talked about what change they would make to their favorite public space in the neighborhood. Participants came up with ideas like better lighting at outdoor basketball courts so they could be used safely at night and more trash cans in parks so that litter wouldn’t accumulate. Following the discussion, the participants were engaged to tackle piles of trash and debris in the parks and a local cycle path.

**8. Develop positive relationships with local agencies and community organisations to ensure reparation is performed quickly in hard-hit neighbourhoods.**

Offenders are placed into work placements in the neighbourhoods most impacted by crime. Community payback crews are used to respond to the identified disorder hotspots as quickly as possible, in line with ‘broken windows’ theory of crime prevention<sup>13</sup>. This often happens within 24 hours of the report being filed by a member of the public or an agency, allowing the ‘system’ to respond quickly to, for example, graffiti tags which may be marking gang territory or fly-tipping hotspots in the yards of foreclosed buildings.

**9. Improve the visibility and utility of work placements.**

The project managers and their outreach teams attend community meetings and conduct neighbourhood outreach work (including knocking door to door) to hear what local residents and local non-governmental organisations want from community payback crews. This helps ensure that crews make a difference to a community. Community leaders are invited to see and participate in the work and consistently report significant satisfaction that offenders are contributing to their communities.

**Waterfront development in Greenpoint, Brooklyn**

City and local leaders were working to redevelop the Greenpoint waterfront, a formerly industrial area consisting of warehouses. Partnering with Council member Steven Levin, community payback crews worked with the Department of Sanitation to provide extensive additional trash cleanup along the Greenpoint waterfront over a period of several months. Then, partnering with government agencies, community groups, a volunteer artist and local residents, community court practitioners organized a day-long event to enhance one particular block of Java Street next to the East River which was severely overgrown with weeds, covered with trash and dumping and marred by graffiti. Volunteers and clients cleared weeds, removed trash, turned the heavily compacted soil, spread wood chips, painted over graffiti, and installed a mural based on the outlines of each of the five boroughs.

**Delivering the principles**

Having developed these principles over time with New York City officials, the question was whether these small, neighbourhood-based efforts could be taken to scale across a whole borough. The Red Hook Community Justice Center, for example, only supervised around three to four hundred offenders on payback a year.

Bronx Community Solutions was opened in 2006, and took over the responsibility for the thousands of offenders sentenced to payback in the Bronx, a borough with over one million residents. The City of New York helped to underwrite the project, and while signed up to community court payback principles, they established demanding performance outcomes. Bronx Community Solutions had to report on the unit cost for each individual referred to service and for each completion. Bronx Community Solutions also had to report on the volume of offenders passing through the project, the total number of days performed and, most crucially, the compliance rate.

By 2011, compliance had increased from around 50 percent to 79 percent<sup>14</sup>. More than 90,000 hours of community payback were completed by Bronx clients that year, for an estimated contribution of \$664,875 worth of labour to the city. The number of offenders receiving community payback doubled. In turn, the use of short term jail was reduced. The Metropolitan Transit Authority in the Bronx benefitted as community payback crews cleaned up the public transport system<sup>15</sup>. The Department for Sanitation reported similar benefits.

The officials in the City of New York who had commissioned Bronx Community Solutions also wanted evidence of a qualitative impact. Bronx Community Solutions regularly provided case studies of meaningful community reparation, invited commissioners and policymakers to events where payback crews

had restored a community space or building. They conducted interviews with clients who had taken the chance to change through the social services provided. They took ‘before’ and ‘after’ photos of project sites to document the streets that had been cleaned, the walls that had been scrubbed and the gardens that had been restored. In short, Bronx Community Solutions team knew that the numbers could only ever ‘build the case’ so far: qualitative evidence was just as important in demonstrating that the principles were being delivered.

Based on the successes in the Bronx, this new approach has spread. A new community court across the Hudson in Newark, New Jersey has adopted the same principles. This new method now serves all offenders who pass through the Brooklyn Criminal Courthouse. Since 2006, there is further evidence that the new approach is working. Short-term jail sentences in New York City have decreased by 11 percent since 2006, while the use of payback orders has risen<sup>16</sup>. Recent research has also indicated positive results with the offenders themselves. Those offenders who had been on community payback run by the district attorney’s office and has subsequently been on payback under the new approach reported increased levels of engagement and had a more positive experience. 63 percent felt that the new version of community payback had helped them feel part of the community they worked in<sup>17</sup>. Perhaps most importantly, from a policymaker and commissioner standpoint, prosecutors in New York City report that the changes in payback are giving them what they had always wanted: purposeful community payback opportunities that are tailored to local community needs<sup>18</sup>.

## Conclusion

New York City has seen considerable reform and improvement in the way community payback is delivered. But can the New York experience tell us anything about how community payback ought to be commissioned in England and Wales? It is, for example, notoriously difficult to draw international comparisons between different systems. It is certainly true also that the improvements in New York have, in part, been because the delivery under the old District Attorney system has been so neglected. This paper is not an attempt to tell the UK to do it the American way. The key principles outlined in the paper are ones that those interested in community payback in the UK will no doubt recognise, many of which are being delivered.

What the New York City experience suggests is that, first and foremost, providers and commissioners need to work closely together to develop the community payback service they want. The New York experience was iterative and experimental. It did not happen overnight.

Secondly, the content of community payback is what really matters. At the heart of any change in ‘how’ and ‘who’ commissions payback, there should be a commitment to ensuring that ‘what’ community payback is, and what it ought to be, does not get lost. In short, both commissioner and provider should be committed to a particular vision of what payback can be: visible reparation by offenders that demonstrates that the justice system responds to specific, local community concerns. The results that have been delivered in New York have occurred because there has been long-term commitment to a vision that has been tested and evaluated.

Thirdly, measuring the value that community payback provides neighbourhoods can be an

inexact science. Annual quantitative performance measurement and unit costings, while vital, will only ever tell a partial story. The New York experience suggests that trying to get an understanding of the qualitative differences can be just as important for purchasers as hard numbers.

These conclusions, if considered by policymakers and commissioners in England and Wales, should help avoid the risk that new community payback providers will place offenders on perfunctory and meaningless placements that do not help local neighbourhoods in order to deliver lower costs. The New York experience suggests that payback with a purpose is in fact possible.

## Endnotes

- 1 In the US, community payback is often called community service. Legally in England and Wales, community payback is ordered by a court as an Unpaid Work Requirement of either a community order or a suspended sentence order. This paper uses community payback to cover the range of such court mandates.
- 2 'Offender Management Statistics Quarterly', Ministry of Justice, 2012.
- 3 Casey L, 'Engaging Communities in Criminal Justice,' Cabinet Office, 2009
- 4 Casey L, *supra* note 3.
- 5 'National Offender Management Service Annual Report 2011/12: Management Information Addendum', Ministry of Justice, <http://www.justice.gov.uk/downloads/statistics/hmps/prison-probation-performance-stats/noms-annual-report-2011-12-addendum.pdf>, 2012.
- 6 *Supra* note 5.
- 7 'Serco wins first private probation contract,' Guardian, <http://www.guardian.co.uk/society/2012/jul/13/serco-first-private-probation-contract>
- 8 'Probation leaders call for "responsible competition" as Serco and London Probation Trust win bid to run community payback in capital', Probation Association, <http://www.probationassociation.co.uk>, 2012.
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- 11 Bryn Herrschaft, 'New York City Community Cleanup: The Impact of a Program for Low-Level Offenders,' Center for Court Innovation, 2012.
- 12 McNeill F and Whyte B, 'Reducing Reoffending: Social work and community justice in Scotland,' 2007.
- 13 George Kelling and Catherine Coles, 'Fixing Broken Windows: Restoring Order and Reducing Crime in Our

Communities,' 1996.

14 Internal data on community service programs held by Center for Court Innovation, 2012.

15 'LIRR Partnering With 'NYC Community Cleanup' to Remove Graffiti from Railroad Property,' Metropolitan Transit Authority, <http://www.mta.info/supplemental/lirr/CommunityCleanup.htm>, 2009.

16 'DOC Statistics', Department of Corrections, City of New York, [http://www.nyc.gov/html/doc/html/stats/doc\\_stats.shtml](http://www.nyc.gov/html/doc/html/stats/doc_stats.shtml), accessed October 2012.

17 Herrschaft, *supra* note 10.

18 Herrschaft, *supra* note 10.

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