Exploring and Explaining Non-Compliance with Community Supervision.

Beth Weaver, Laura Piacentini, Kristina Moodie, Monica Barry.

Abstract

Despite a developed theoretical and empirical body of research into the dynamics of compliance with community supervision, the phenomenon of non-compliance has received surprisingly less attention. This article explores the perspectives and experiences of 93 people in Scotland who were breached or recalled for non-compliance with the community sentences or post-release licences they were subject to. Drawing on this analysis, we advance an integrated, theoretically explanatory and empirically-informed model demonstrating the contributions of, and interplay between, three key elements we identified as shaping non-compliance: motivational postures and attitudinal stances, and their underlying mechanisms; various systemic, structural and social influences that bind the exercise of agency and shape situations of actions; and the impacts and effects of people's interactions with authorities.

Key words: Breach, Non-Compliance, Procedural Justice, Motivational Postures, Community Supervision.

INTRODUCTION

Community supervision, the term used here to refer to community sentences and post-release licences, is necessarily reliant on service users' compliance (Robinson 2013; Ugwudike 2013). The last two decades have given rise to increasing research, policy and practice interest in this subject (e.g. Ugwudike and Raynor, 2013; Boone and Maguire, 2017) reflecting the growing use and expansion of forms of community sanctions across Europe (Decoene and Beyens, 2013), and internationally (Phelps and Curry, 2018; McNeill, 2019), alongside concerns surrounding rising revocation and recall rates and consequent impacts on global prison populations (Boone and Maguire, 2017; Lin, 2010; Phelps, 2018; Weaver et al., 2012). While an important theoretical and empirical body of research has developed on why people comply, somewhat surprisingly the phenomenon of non-compliance from the perspective of those subject to community supervision has been comparatively neglected (Hucklesby, 2017), despite Farrall's (2002:275) assertion, nearly two decades ago, that the need for such research 'cannot be over-stated' if we are to minimise its occurrence.

Before summarising the findings of the limited research addressing non-compliance with community supervision, in the absence of an explanatory theory of non-compliance with community supervision, we build on Robinson and McNeill's (2008) theory of compliance, by critically engaging with Braithwaite's (2013) analysis of motivational postures and non-compliant actions in relation to tax authorities. While situating this study alongside research into compliance, we also refer to the more voluminous, related corpus of work into procedural justice and legitimacy, as an additional lens through which to theorise non-compliance. Thereafter, we present our analysis of findings from a large-scale empirical study into the regulation and dynamics of non-/compliance with community supervision in Scotland. This article seeks to build on, and extend the 'compliance literature' by synthesising and augmenting these evidence strands to advance a theoretically explanatory and empirically informed model of the dynamics of *non-compliance*, which incorporates, and captures the interplay between, three key elements shaping non-compliance: motivational postures and attitudinal stances, and their underlying mechanisms; various systemic, structural and social influences that bind the exercise of agency and shape situations of actions; and the impacts and effects of people's experiences of community supervision.

RESEARCH CONTEXT

The most established theories for analysing compliance with community supervision are those developed by Bottoms (2001) and Robinson and McNeill (2008). Robinson and McNeill's (2008) model

of compliance incorporates Bottoms' (2001) differentiation of the mechanisms underlying compliant behaviour through an examination of the motivational postures that accompany different forms of compliance, including non-compliance; formal compliance (with the rules and requirements of an order or licence); substantive compliance (active engagement and cooperation with the requirements and purposes of the order, underpinned by an acceptance of the legitimacy of authority); and longer term, legal compliance (or desistance). They draw on Braithwaite's (2003) typology of five motivational postures, comprising 'composite narratives made up of attitudes, beliefs, emotions, expectations and norms' (2013:96) to characterise the way people position themselves in relation to those regulating their compliance. Based on a series of large-scale structured surveys, Braithwaite (2003, 2013) statistically tested Australian citizens' motivational postures towards tax authorities, their behaviours in relation to different forms of non-/compliance with individual tax returns, and the relationships between self-reported postures and behaviours. She identified two distinct motivational postures associated with compliant (or 'accommodative') behaviours: 'commitment' (positive belief in and active support for authority) and 'capitulation' (passive acquiescence to authority). In contrast to postures of accommodation, postures of defiance are 'signals that individuals express towards an authority…that communicates unwillingness to follow the authority's prescribed path without question or protest' (Braithwaite, 2013:97).

Defiance takes two forms: 'resistance', and 'dismissiveness'. Resistance is an active 'expression of dislike for or hostility towards an authority while accepting that the authority has legitimate power that may be used to coerce cooperation…The source of discontent lies with power being used inappropriately and poor decisions made' (ibid.). Two postures are associated with dismissive defiance: 'disengagement' and tactical 'game playing' (Braithwaite, 2013). Disengagement and game-playing reflect a lack of acceptance of authority manifesting, in the former, in a disregard for the requirements of the order, which Braithwaite (2013:97) suggests could be characterised by the stance: 'the authority will do what it will do and I am not going to lose any sleep over it'. Game-playing manifests in the appearance of formal compliance, while finding creative ways to circumnavigate regulatory requirements; it 'has a combative agenda of beating the authority at its own game' (ibid). Although postures of defiance might appear to relate most readily to non-compliant behaviours, as Robinson and McNeill (2008:440) reason, 'non-compliant offenders might, nonetheless, possess underlying postures of deference (capitulation or commitment), but lack the means to actually behave compliantly'. This assertion is worthy of further exploration, not least because it hints at one of the limitations of measuring attitudes through the use of structured surveys. Such methods can measure and illuminate how people think, feel and act, but they are limited in their capacity to explain why

they think, feel or act in a certain way, or illuminate the various contextual or situational influences shaping people's attitudes and behaviours. Even Braithwaite (2003:17) supposed that 'circumstances may provide opportunities for non-compliance that tempt us to do things we would not normally do…or circumstances may present barriers to compliance that make us give up trying to do what is expected'. This is particularly pertinent in justice contexts because the demands and dynamics of interactions with those regulating community supervision are different in frequency and intensity compared to citizens' interactions with tax authorities, with the latter being more infrequent, distant and depersonalised. Nonetheless, we agree with Robinson and McNeill (2008) that this typology of motivational postures is a useful theoretical lens through which the motivational or attitudinal dynamics of non-/compliance with community supervision might be analysed, although our analysis of the existing literature on non-compliance with community supervision suggests that people's socio-structural contexts are also important influences on action.

Despite a developed literature on compliance, few empirical studies have explored compliance dynamics from the perspective of those subject to community supervision (Hucklesby, 2017) and even less the dynamics of non-compliance. Scholarly attention tends to be trained on why people comply, how compliance might be encouraged, and the nature and effects of enforcement practices (Robinson and Ugwudike, 2012; Boone and Maguire, 2017). It seems to us, however, that a fully formed understanding of compliance dynamics requires an equally detailed appreciation of the dynamics of non-compliance. Indeed, unless we bring into view people's experiences of, and explanations for, non-compliance, our efforts to minimise and address it are likely to be frustrated and, in turn, the objectives of community supervision undermined.

The limited research addressing non-compliance with community supervision which includes the perspectives of non-compliers, identifies various practical, structural and supervisory influences on non-attendance (Ugwudike, 2010, 2013), long-term absences (Farrall 2002), and professional responses to it (Farrall, 2002, Ugwudike, 2010, 2013). Practical problems include transport difficulties, employment and childcare commitments, and other 'lifestyle related obstacles such as substance use' (Ugwudike, 2013:170); structural challenges include unsuitable or unstable accommodation (Ugwudike 2013, Farrall, 2002), financial problems (Farrall, 2002), lack of community ties (Hucklesby, 2009) and unemployment and literacy issues (Ugwudike, 2013). Both Ugwudike (2013) and Farrall (2002) identified that those who did comply did so for instrumental reasons, because they wanted practical help to address these difficulties; unsurprisingly, perceptions that supervision offered little was associated with non-compliance (Farrall, 2002). Hucklesby (2009:262) further identified that

perceptions of unfair treatment and negative interactions with professionals also made participants 'less inclined to comply'. While these studies illustrate what kinds of factors affect non-compliance, an in-depth exploration as to how these 'factors' interact and are experienced by those subject to community supervision and thus how and why they affect compliance, has yet to be developed[1]. Moreover, while both theoretical and empirical studies have explored service users' motivations to comply, beyond Robinson and McNeill's (2008) theoretical elaboration of Braithwaite's motivational postures, empirical studies have not yet investigated the kinds of attitudes underpinning non-compliance with community supervision, or the processes shaping them. Conversely, people's experiences of community supervision, have received substantially more empirical attention, both within and outwith the compliance literature.

Notably, there is a vast body of work into the relationship between procedural justice, penal legitimacy and its effects on compliance. Essentially, theories of procedural justice contend that when people are treated fairly by authority figures, compliance is more likely (Tyler and Fagan 2008; Tyler and Jackson, 2014). It is reasoned that people's perceptions of procedural justice are important contributors to their satisfaction with outcomes, independent of the perceived favourability or fairness of the outcome and are a key component in the legitimacy accorded the relevant authorities, and cooperation with them (Leventhal, 1980; Lind and Tyler, 1988; Tyler and Huo, 2002). Conversely, perceptions of procedural injustices can threaten legitimacy and undermine compliance.

Research into procedural justice in criminal justice contexts has, however, principally focused on courts and police-citizen encounters. Based largely, on hypothetical or discrete encounters with legal authorities, and dominated by quantitative methodologies, results tend to capture participants' perceptions abstractly (Blasko and Taxman 2018), and thus lack explanatory power in terms of elaborating the relationship between perceptions, experience, and behaviours (Scrase, 2020). Few studies have systematically examined the concepts and realities of procedural justice in carceral contexts (though see Beijersbergen et al, 2015, Henderson et al., 2010; Jenness and Calavita, 2018; Reisig and Mesko, 2009), and rarely in the context of community supervision (Blasko and Taxman,

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[1] Hucklesby (2009:260) noted that while various factors 'impact upon and interact with each other', she treated 'influences on [non-/compliance]…as distinct entities in the discussion'. Farrall's (2002:263) analysis of long term absence from probation, drew principally on probation officers perspectives and 'to a lesser extent some of the probationers who did not maintain contact'. Drawing on data from a larger scale study of desistance, Farrall used four key variables to model absence by way of bivariate cross tabulations, drawing further on case study, qualitative data. Although Ugwudike (2013) focused on the views of front-line practitioners, the wider study, reported on in 2010, drew on case records, observations, interviews and informal discussions with 25 probationers. Like Hucklesby, while identifying the practical, relational and structural 'contradictions' to compliance, her focus was on exploring compliance dynamics to inform effective strategies for encouraging compliance.

2018[2]). Thus, we know little about how people evaluate fairness after more sustained involvements with authorities or how these experiences influence compliance behaviours, or the extent to which these perspectives, experiences and behaviours are influenced by individuals' socio-structural circumstances and subject positions.

Indeed, recent studies suggest that the effects of procedural justice may be contingent on specific penal and institutional contexts (Biejersbergen et al., 2015; Jenness and Calavita, 2018), individual social circumstances (Beijersbergen et al., 2015, Hefner et al., 2018), subjective perspectives and situated positions (Berrey et al, 2012), which shape perceptions of justice. The concept of situated justice holds that what is perceived to be fair and just is subjectively and situationally conditional, a dynamic often overlooked by theories of procedural justice. Berrey et al's (2012:30) research, drawing on 100 in-depth interviews with various actors involved in employment discrimination lawsuits, shows that people often do not distinguish between how a decision is arrived at and what that decision is, 'complicating the distinction between process and outcome that is a mainstay of the procedural justice literature'. Briefly, social contexts and circumstances and situated positions shape attributions of fairness, justice and attributions of legitimacy: '[a] procedure that consistently produces unfair outcomes will eventually be viewed as unfair itself' (Epp et al., 2014:6). This suggests that theories of procedural justice fail to account for the subject positions that people identify with (Guzik, 2008) and the social contexts that characterize people's lives which shape perceptions of fairness and justice (Hefner et al, 2018, Berrey et al., 2012). Thus substantive justice, (the extent to which we perceive the outcomes of justice processes as fair), also matters in justice contexts (see Felson and Pare, 2007; Jenness and Calavita, 2018) but so does distributive justice (how we perceive we are treated relative to similarly situated others) (see Hickman and Simpson, 2003). If all three dimensions of justice shape people's responses, they need to be considered in a theory of the dynamics of non-compliance.

METHODS

The research on which dataset this article draws explored how 125 criminal justice professionals, and 250 people subject to various measures of community supervision in three Scottish locations interpret non-/compliance; what factors affect compliance; and how policy and practice can be enhanced to maximise compliance. Of the 250 service users interviewed, 93 (37%) were categorised as non-compliant by virtue of having been formally breached or recalled. It is on these 93 interviews that this paper draws. Interviews averaged an hour in length and were audio-recorded with consent.

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[2] Blasko and Taxman's (2018) research sought to develop and refine a measure of procedural fairness for use in community settings, using structured interviews, drawing on items informed by both the literature and an expert panel, tested on parolees and others subject to community supervision in two distinct time periods.

Recognising that non-compliance is differently conceptualised and operationalised in different jurisdictions (Boone and Maguire, 2017), we outline the regulatory context in which our study is situated prior to discussing the research methods.

The Scottish National Outcomes and Standards (NOS) (Scottish Government, 2010) delineate the framework for the regulation of the Community Payback Order (CPO), the primary community order in Scotland. They explicitly state that 'managing compliance effectively is … critical to the achievement of the purposes of the order'. What counts as compliance or non-compliance with community supervision in Scotland is, however, generally rule-based, rather than outcomes-focused, in terms of relating to 'formal compliance' with the various conditions of the order or licence even if the overarching purpose of the order or licence seeks to engender substantive compliance. Non-compliance includes repeated failure to attend as directed or to comply with requirements attached to the order; disciplinary action involves the issuance of two formal warnings, before enforcement action is considered, unless the nature of non-compliance is such that issues of safety or public protection necessitate a swifter response. The NOS (Scottish Government, 2010) however, allows for professional discretion, and suggests that determining whether the cause of non-compliance is 'reasonable' should be informed by assessments of both motivation and capability–whether the person won't comply, or can't comply. What people are expected to comply with varies by order, and there are different purposes, regulatory practices and expectations for different types of orders or licences. The regulations pertaining to non/parole licences (Scottish Government, 2004) have not altered in Scotland for many years. Non-compliance with the various post-release licences/orders takes two forms: failure to comply with any requirement stated on the licence/order, and participation in further offending.

Three case study areas[3] were chosen to illustrate a range of urban/rural areas, high/low levels of breach and compliance and responses to breach by social work and the courts in the period 2013-14[4]. Following ethical approval by the University's Ethics Committee, we analysed demographic data for the three Community Justice Authority (CJA) case study areas from electronic records held by Social Work Departments, the Scottish Government and the Parole Board for Scotland and, using purposive sampling methods, we identified a sub-sample of people for interview. Limitedly, administrative data does not capture the kaleidoscope of non-compliant behaviours; enforcement practices allow for

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[3] Each case study area comprised a Community Justice Authority. Eight CJAs were established across Scotland by the Management of Offenders Act (2005), and comprised partnerships between geographically proximate Local Authorities, including CJSW alongside SPS, police, courts, prosecutors, the NHS and third-sector providers (Audit Scotland, 2012). The CJAs were subsequently dissolved by the 2016 Community Justice (Scotland) Act.
[4] Unlike the Probation Order, a conviction of a further offence does not constitute a breach of a community order. Otherwise, there have been no changes to enforcement policies in Scotland since.

discretion, and not all incidences of non-compliance result in breach, and not all breaches are acted on or recorded. Therefore, by focusing on formal proceedings, our sample does not include those who may have received isolated warnings for non-compliance or who may have escaped detection.

Of the 250 service users interviewed, 181 were subject to community orders including Community Payback Orders (CPO) (n=144), the previous but then 'live' Probation and Community Service Orders (n=15), Drug Treatment and Testing Orders (n=22). 69 people were subject to post-release measures of community supervision, including Parole (n=17), Non-Parole (n=17), Extended Sentence (n=22) and Life licences (n=11). Our ratio of post-release orders to community-based orders is higher than the national figures for Scotland in 2013-14 (Scottish Government, 2020), because we intentionally over-sampled people subject to post-release measures, and similarly purposively sampled those who did not comply with both measures.

Of this broader sample, our gender profile of those subject to community based sentences reflects national statistics; 84% of our sample of those subject to community-based sentences were male, 16% female; in 2013-14 and 2017-18, 85% of those subject to CPO were male, 15% female (Scottish Government, 2020). None of our post-release sample were female, however, and national statistics for those subject to post-release measures are not disaggregated by gender, or age. However, a Justice Committee Inquiry in 2012 into *Throughcare for Female Prisoners* identified that most women released from prison tend to engage on a voluntary basis, which implies that very few women are subject to statutory post-release measures. Indeed, there were only 17 female receptions, nationally, in 2013-14 where the woman received a parole eligible sentence of four years of more (including life sentences) (Scottish Government, 2015).

The sample of 93 on whose experiences of non-compliance we draw here comprised 54 people subject to community-based measures and 39 people subject to post-release measures. Of these, 87 were male, and 6 were female, precluding a gendered analysis, a further limitation of our data. The table below provides a breakdown of the age range across this sample, and types of orders to which they were subject.

Age	No.	Order	No.
16-20	11	Probation/Community Service	3
21-25	20	Community Payback Order	41
26-30	18	Drug Treatment and Testing Order	10
31-35	15	Parole	8

36-40	9	**Non-Parole**	10
41-45	9	**Extended Sentence**	13
46-50	5	**Life Sentence**	5
50+	6	**Short Term Sex Offender Licence**	3

Table 1: Overview of non-compliant sample demographics by age and order

We used NVivo to organise our data and employed an inductive, thematic approach to analysis (Braun and Clarke 2006), identifying key themes through a process of repeated reading of the data and generating initial codes. The codes were generated according to thematic areas of inquiry broadly outlined in our interview schedules, informed by the extant literature, and clustered in accordance with those that were common to the majority of respondents while also identifying outliers and differences between respondents. Thereafter, similar categories of data were collated in a master list of major codes, further sorting the codes into themes and sub-themes, and assembling relevant coded data-extracts into the identified themes. From our analysis of explanations for and experiences of non-compliance, in dialogue with the literature, we identified three broad, often interacting, elements shaping non-compliance with community supervision: internal dynamics: attitudinal stances and motivational postures; structural dynamics: socio-structural deprivations and systemic constraints; interactional effects: perceived injustices and legitimacy deficits. Of course, as we illustrate, there is considerable interaction between these components, but in the following thematic sections we train attention on each of the three elements identified as contributing to non-compliance, noting the inter-relationships between the elements as they occur.

FINDINGS

1. **Internal Dynamics: attitudinal stances and motivational postures**

We drew on Braithwaite's (2003, 2013) typology of motivational postures as an analytic lens through which to explore participants' attitudes towards community supervision, and compliance. We also identified broader attitudinal stances, specifically in relation to 'disengagement', which we define differently to motivational postures inasmuch as they are not necessarily shaped directly by perceptions of, specific beliefs about, or feelings towards authority. Rather, they tend to be shaped by wider spheres of influence, which nonetheless influence perceptions of the legitimacy, relevance or relative significance of the order or licence itself and manifest in similar 'postures'. Moreover, by exploring participants' explanations as to the processes that shape expressed motivational postures, or attitudinal stances, we identified some variation *within* Braithwaite's typology.

The attitudes and motivational postures discussed here are shaped by factors *earlier* (prior to), or independent of, interactions with supervisory authorities. While motivational postures can and are shaped *by* experiences of interactions with authorities, and the effects of individual social circumstances and structural conditions, here we focus on attitudinal stances and motivational postures that people *bring to* the order and their encounter with authorities, illustrating how they influence compliance. Under the third theme, 'Interactional Effects', we explore how experiences of supervision affect perceptions of justice and legitimacy, and how they directly and *consequently* influence motivational postures and undermine compliance.

While representing the most infrequently expressed motivational posture underpinning explanations for non-compliance, we identified three sources or expressions of resistance, influenced by a) the legitimacy or perceived fairness of the imposition of the order b) the legitimacy or perceived fairness of the terms of community supervision c) attitudes towards *being* supervised. Only one participant expressed resistance to the imposition of the order; most thought the sentence they received was fair, although as discussed later, perceptions of procedural, substantive and distributive injustices were more common in relation to both process and outcome of breach and recall processes. While an isolated example, this highlights that how one perceives one is treated at an earlier stage in the system can affect perceptions of justice in subsequent stages and non-compliance, referred to as the 'spillover effect' (Baker et al., 2014).

> 'I just didn't go. I went the very first day, then I breached it just because I thought I was doing it for something I should never have got taken to court in the first place for' (CB_B_AreaA_No48).

Others expressed postures of resistance towards supervision because they considered their licence conditions unacceptable, or attributed professionals' decisions to initiate breach or recall proceedings to the oppositional attitudes they seemingly exhibited or brought to the supervisory process.

> 'I said I'm not sticking to it … I even said it before I got out, I'm not sticking to anything you want me to do…because I don't like the conditions they set for me' (PR_B_AreaB_No.68).

> 'My [social worker] put in a [breach] report…but that's because I just used to argue with [her]' (CB_B_AreaC_No.33).

''They said I couldn't be managed in the community…I was asking too many questions' (PR_B_AreaB_No.67).

Braithwaite (2013) depicts 'game-playing' as tactical and combative, and implies creatively circumnavigating the regulatory requirements of an order while giving the impression of formal compliance (Robinson and McNeill 2008). Our analysis of participants' explanations, coded against Braithwaite's (2013) description of 'game-playing', identified two types of game-playing: active and reactive. We attributed postures of active game-playing to participants' explanations which indicated their intention to subvert, or manipulate the system, for example, by giving the appearance of compliance, and complying with some aspects of the supervisory process, while intentionally not complying with those requirements they disagreed with (reflecting Braithwaite's definition). Across our sample, examples of active game-playing, brought to the supervisory process, were more common among those subject to post-release supervision.

'Some of them [licence conditions] I agreed on, some restrictions I disagreed on…[ultimately] I was in the wrong place at the wrong time and I tried to lie my way through where I was … but somebody…seen me' (PR_B_AreaB_No.63).

Examples of 'game-playing' were more commonly described by people convicted of sex offences and indeed, 'game-playing', in its idiomatic sense, is how such behaviours are often perceived by professionals (Ugwudike, 2012). While not negating an element of 'game-playing', rather than 'looking for easy ways to subvert the system' (Robinson and McNeill, 2008:442), these participants explained their behaviour as an effect of their distrust towards authorities and a *reaction* to interactional dynamics, and specifically to a risk averse professional culture that effectively discouraged open communication (Weaver and Barry, 2014), rather than an active intention to subvert the system for their own ends.

More commonly among those serving community orders, participants recognised that non-compliance was rooted in their disengagement. Our analysis revealed two types of disengagement: active and passive. We coded responses indicating a lack of acceptance of authority manifest in an explicit disregard for, or indifference towards, the requirements of the order and any consequences of non-compliance, reflecting Braithwaite's (2013) definition, as active disengagement.

'I only [agreed to] the orders to get an extra few weeks out the jail' (CB_B_AreaB_No2).

'I wasn't complying…I wasn't doing what I was told. I wasn't really caring, I was just not interested. I was like, Oh, I'll just miss it today and I'll maybe go in next week' (CB_B_AreaA_No45).

'I was really only going on my own terms. I wasn't going when they wanted me to go, may be a day later, when I could be bothered I was going…I could have done it if I really wanted to' (CB_B_AreaB_No.12).

Attitudinal stances indicating a perception of the irrelevance of authority because of other priorities or preferences, we coded as passive disengagement. This form of 'disengagement' is shaped by factors prior to, or independent of, interactions with authorities, but which nonetheless manifest as 'disengagement'. Here, non-compliance is an outcome of 'disengagement' shaped by the pull of other concerns, by what matters most to people at a given time, such as association with friends or the influence of socio-structural conditions on agency and action, which undermine the salience of the order, and which, in the moment, over-ride concerns with the consequences of non-compliance. For many, postures of passive disengagement were closely related to and affected by developmental stage and maturity, peer affiliations and the relative presence or absence of family support.

'I wanted to muck about with my pals instead. I know it's only like one day a week but you get quite bored…I wasn't thinking…[young people] don't really care what's gonna happen to them (CB_B_AreaC_No.35).

'I missed a lot of my life, I tried to make up for it every time I went out [of prison] and everybody had moved on with their lives and had kids and got jobs…I'm just wanting to go out and party and stuff' (PR_B_AreaB_No70).

For others, as elaborated below, non-compliance was not related to postures of defiance but, irrespective of people's motivations and attitudes towards authority, to the complex social and situational context of their lives, which overwhelmed intentions to comply. Below, the participant illustrates that despite her willingness to comply (associated with postures of accommodation) her lack of engagement, manifest in postures of (passive) disengagement, illustrates Braithwaite's (2013) assertion that postures are not mutually exclusive, but what it further highlights is the effects of various socio-structural factors on non-compliance, and thus the socially situated constraints or

bounds on agency, which affect and are affected by people's subjectivities, priorities and perceptions of what is realistically achievable, or worth pursuing, in given circumstances.

> 'The intentions were there cos I was desperate to try …[but then I'd be] back on drugs …no employment… [or] support, there was no hope in my life. [The Order] that's the last thing you are focusing on…if you've got nothing to lose, then you're not gonna care about breaching an order… It's not that I didn't want to complete the order – I wasn't able to. I was completely disabled' (CB_B_AreaA_No.40).

2. Structural Constraints: socio-structural deprivations and systemic constraints.

Braithwaite (2013) recognises limitations in the generalisability of her research to different contexts. Indeed, as noted previously, the proximity, demands and intensity of interactions between convicted persons and the justice system is entirely distinct from citizens' encounters with tax authorities. Moreover, while Braithwaite (2013) identifies, but leaves unexplored, the potential influence of 'circumstances' on compliance, it is well established that levels of deprivation and disadvantage are more concentrated in the offending population. For many participants, intentions to comply were overwhelmed by situational dynamics, social circumstances, lack of resources, and the influence and impact of socio-structural conditions, which together 'bound agency' (Evans, 2007). The concept of bounded agency refers to the impact of such causal mechanisms in constraining choice and limiting perceptions of achievable alternatives and, thus, circumscribing, even inhibiting, the expression of agency. Conceptualising agency as socially situated and bounded is particularly salient to explanations of non-compliance because, as our data demonstrates, we need to connect analyses of non-compliance to not only motivational and attitudinal aspects, but also the wider socio-structural and systemic conditions that enable and constrain the exercise of responsibility, choice and agency. Here we show how socio-structural disadvantages and deprivations and systemic constraints can impose significant challenges and competing obligations, which may manifest in non-compliance and be interpreted as 'postures of defiance' (Braithwaite, 2013), where those challenges are not understood or recognised. Understanding these dynamics of non-compliance through the lens of bounded agency allows that someone may be willing to comply but lacks the resources and (usually interrelated) opportunities to achieve compliance; equally, as the foregoing analysis demonstrated, a person might be fully capable of complying but choose not to.

Many serving community-based sentences felt that the order was not itself difficult to comply with but the interaction between addiction, mental ill-health, inadequate or precarious housing, poverty

and a chaotic lifestyle, rendered compliance unachievable. Addictions, and their effects on physical and mental health or wellbeing, not only undermined intentions, endeavours and/or abilities to comply, but could be construed as the pursuit of a prior and essential concern, over-riding intentions to comply.

> 'If you're addicted to drugs, and your lifestyle is revolving round drugs, that comes first and foremost - but the drugs affect your mental health… your memory gets bad…and your life's all over the place. [Complying] while you've got an addiction is a very, very hard thing to do…not cos they don't want to do it, it's cos they're forced into a position with their addiction or the lifestyle that they can't…I had all the intentions under the sun… but it's impossible… and that's why I was consistently breaching' (CB_B_AreaA_No40).

> 'It was trying to balance everything, making sure I had drugs to come out so I wasn't withdrawing…to feel normal…and the last thing on my mind is, Oh, I've got community service…the first thing on my mind is scoring' (CB_B_AreaB_No16).

Substance abuse can engender significant deprivations, resulting in impoverished physical health, insufficient nourishment and inadequate shelter; in some cases addiction and/or homelessness can be life-limiting, and increase exposure to violence or vulnerability to self-harm. Deprivations in these areas necessarily exert limits on the exercise of agency and represent opportunity constraints on compliance. For example, experiencing poor physical health, perhaps due to substance use, can place a constraint on opportunities to achieve compliance by limiting mobility or negatively affecting mental wellbeing.

> 'I was sleeping on my pal's floor for a few months and I've got mental health problems. I had a drink and I took loads of co-codamol plus my anti-depressants on top and I flipped. So I got done for a breach of the peace and I got four months for it because I had a knife, not threatening anybody, threatening myself (PR_B_AreaC_No85).

Addictions, homelessness, poverty, trauma and histories of offending and imprisonment can also affect people's sense of social connectedness and human dignity. Social relations and human relatedness are essential components of 'a good life' (Nussbaum, 1992), and desistance (Weaver, 2015) but for some, ''going straight' can be painful and lead to limited lives' (Nugent and Schinkel, 2016:569), characterised by isolation and loneliness, sometimes compounded by or underpinning

recourse to substance use, among other social issues. Substance misuse can, however, be the means that people have to experience a sense of comfort or pleasure, to have affiliations with others; it can be a means of escape from the realities of their lives, and, as indicated, the means through which they might function, even at the expense of other preferred courses of actions or aspirations (Mcnaughton-Nicholls, 2010). Just as relational attachments can motivate or encourage compliance (Bottoms, 2001), they can also influence choices or participation in behaviours, which can contribute to the conditions that threaten compliance or render compliance unachievable.

> 'When I first got out I would sit in the bedroom all day. I made that my own wee cell…' (PR_B_AreaA_No.92).

> 'I was sitting in the house and I said, bugger it, I'm going for a pint, went for a pint, and that was it…I never answered my phone [to social worker]' (CB_B_AreaB_No.6)

> [It is difficult to disassociate from friends] 'cos when you've not had a family or you've not got one or you've lost them or whatever, it feels like you become part of a group and they become your family'(CB_B_AreaB_No18)

Addictions and/or mental ill-health can limit the planning of one's life or the capacity to realise that plan and even fracture (Archer, 2012), the exercise of reflexivity. Many described living day to day, attending to pressing and proximate issues and needs, influenced by situational immediacies, and unable to engage in critical reflection about the direction of their life. Necessarily, people's responses to various situational and social circumstances differ, accounting for both variability and regularity in the actions taken by those similarly situated (Archer, 2012). For some, their response to such stressors resulted in a fatalistic outlook, a sense of being unable to exert agency, and manifested in avoidant coping behaviours, which undermined their ability to achieve compliance, often manifesting in postures of passive disengagement.

> 'I fell into a depression…I suffer from post-traumatic stress syndrome, depression and anxiety…I should have went to my doctor and got a line but I was thinking, I'll be alright by next week…I wasn't…I just stuck my head in the sand' (CB_B_AreaC_No25).

> 'I never opened my mail…I was always expecting bad news…I'd just given up on my life [and thought] so what's the point' (CB_B_AreaA_No 40).

'If I end up going on a downer...I just fuck everything. Just like I'll not do nothing, not comply with anything, just not do nothing' (CB_B_AreaB_No.2)

The myriad social problems people face as a consequence of imprisonment or involvement in the justice system can also cause people to feel that they have limited control over how they live their life, or their ability to live differently. Goal-directed action is an expression of agency but it also reflects a perception that one has the ability to achieve the desired outcome (Crockett, 2002). Perceptions of apparently insurmountable obstacles to the realisation of a valued goal can be influential in whether one even pursues those goals.

'If you're starting from nowhere, from nothing, how do you get to a certain point if you don't know how to? People are placed on [an] order, facing the same issues, same troubles, same emptiness, and lack of opportunity in their lives ...they don't have a sense of who they are and their addiction is a lifestyle, a sense of belonging to a group that they feel they blend in with...They feel worthless and...useless and...their belief in themselves to change is almost non-existent' (CB_B_AreaA_No40).

'I was scared to leave my house...I spent 10 years of my life in an institution...when I came out...things started to go wrong in the space of a month, I got laid off... I couldn't afford to pay my digs...so I was homeless...and I just didn't know what to do. (PR_B_AreaC_No.75).

'Cos of my offending...it's hard to find a job and nobody wants to take anybody on, so you're just sitting in the house, boredom, so I end up back down the same track' (PR_B_AreaB_No62).

Many serving post-release licences felt that transitional arrangements following release were inadequate (Werth, 2011). People frequently referred to the effects of sub-standard housing provisions, the pressures of conditional welfare arrangements, social isolation, and insufficient economic resources as constraints on compliance.

'[After 15 years in prison]...they stuck me in a house with absolutely nothing, a bed, a small fridge and a microwave - that was it...It took them four and a half weeks to put carpets in for me...I waited five weeks to get any money... I was signing on...'We want 6 [job applications] off you a week'... and I couldn't use a computer... Eventually, I just lost it...I just thought, what's

the point of this, sitting in a fucking empty house with nothing…I actually phoned the police and said that I wanted to come back inside…and they couldn't do nothing…I said 'well what if I was to murder somebody'…so they came and lifted us…[social work] just don't realise the pressures that you're under'(PB_B_AreaA_No90).

'I got let out with nothing…I've been out for four weeks and I've had no money at all…what was I supposed to do?' (PR_B_AreaC_No.78).

Ultimately, 'deprivation and disgrace can so corrode one's self-worth that aspiration can be distorted, initiative undercut and preferences deformed' (Hopper, 2007:10). People's perceptions of what they can do or realistically achieve can, then, also be significantly affected by their interactions with various institutions, exerting a powerful effect on compliance.

3. **Interactional Effects: perceived injustices and legitimacy deficits.**

Tyler and Huo (2002:20) emphasise the significance of procedural fairness over outcomes for perceptions and attributions of legitimacy, suggesting that 'a fair process leads to an acceptable outcome' even if a different outcome is preferred. The procedural justice principles they identify are voice: an opportunity to explain one's case or to tell one's story; neutrality: making decisions on consistently applied principles and facts with transparency and openness about how decisions are made which fosters belief in the neutrality of decision-making processes; respect: feeling that the interactions one has are respectful rather than demeaning or dismissive; trust: influenced by people's perceptions of the intentions of authorities and the extent to which they feel heard, recognised and understood. In contrast to much procedural justice research, rather than testing or measuring perceptions of justice to abstract ideals of fairness, our analysis relies on people's narrative accounts of their experiences. Across our sample, many who did not comply also thought they had been unjustly treated, which engendered legitimacy deficits and which they considered contributed to non-compliance. Perceptions of procedural injustices seemed to occur most frequently a) in circumstances where brief encounters were the norm, resulting in inadequate levels of support, and b) as an outcome of risk-centric decision-making. In both instances, interactional dynamics seemed to be characterised by the inverse or absence of these four core features of procedurally just treatment. However, responses to risk-centric decision-making further resulted in perceptions of both substantive and distributive injustice.

Brief Encounters and Inadequate Support

Perceptions of injustice were compounded where supervision was experienced as superficial and meaningless, with insufficient recognition of and support to address the myriad socio-structural deprivations and systemic challenges they faced. Yet, what is considered procedurally just is influenced by situational context; if people need help with problems, fairness is evaluated against whether the authority made 'good faith effort to help them' (Tyler 2003:298). Absent such help, supervision is rendered both ineffective and worthless (Farrall, 2002), and the issues that challenge compliance remain unaddressed; unsurprisingly such interactions can engender postures of resistance and postures of (active) disengagement. Indeed, many participants described brief encounters with practitioners, limiting opportunities for participation, or voice, and undermining trust by conveying a sense of being processed with little concern for them as people, in turn, signalling disregard, if not disrespect.

> 'They don't actually do anything…all you need to do is go in and say 'I'm fine, I'll see you later'. You're only in there for two seconds…my life doesn't change because I need to go over there for five minutes' (CB_B_AreaA_No.44).

> 'I went in and I sat for ages after the appointment was due, got called through into one of the interview rooms and then it was 'Everything alright?', 'Aye', 'Alright – see you in a month's time'. And that was it. Not even five minutes' (PR_B_AreaA_No.92).

> 'They search the house, they go through my mobile phone…they go through everything every month and you just think, surely at least one month you could just sit down, ask me how I'm getting on, see where I am' (PR_B_AreaB_No.69).

Others experienced what they expressed in terms of hostile or demeaning interactions, or inconsiderate and unfair treatment, aggravating their perceptions of the futility of engaging in what they experienced as pointless interactions and which, for some, underpinned postures of (active) disengagement.

> 'Quite a lot she would cancel or change [appointments] but the one time that I couldn't make it…she gave me a warning…and it was snowing…its 2 and a half miles…by the time I got in, I was soaking wet all up my legs with big lorries and things going by me…and when I got in, she sat and talked to me for two minutes' (PR_B_AreaB_No73).

> 'I felt she disliked me…I was dreading going in…at the end, I wasn't interested…I just gave up' (CB_B_AreaB_No.17).

'He would just look at me like I was shit on his shoe, not even giving a shit…not willing to work around me…help me or anything' (CB_B_AreaC_No.34).

Moreover, when people's social circumstances impeded compliance, where these circumstances were misunderstood, misrecognised or disregarded in terms of the provision of support or practitioners' decision-making around breach and recall, this too bred a sense of injustice. Particularly, it brought questions of trustworthiness and of the perceived fairness about what might reasonably be expected from them to the fore, undermining perceptions of neutrality.

Risk-Centric Decision-Making

There is considerable literature on the governance and regulation of risk (e.g. Garland, 2001; Robinson 2008; Rose, 2000). It is beyond the scope of this article to venture into these debates but it is noteworthy that a number of parolees referred to a pervasive sense of surveillance, monitoring of conduct and compliance with conditions of release, but without a concomitant commitment to providing support and assistance (Werth, 2011). Moreover, some people found the conditions of release unreasonable or incomprehensible (Weaver and Barry, 2014); for many, life on licence was itself a risky, precarious and uncertain situation, with some expressing their relief on recall to prison.

'[I got] pulled over by the police…'we'll be watching you…we know what you're all about'…they do that to all the long-term prisoners that just get out' (PR_B_AreaB_No.66).

'A lot of weight came off my shoulder when I walked in [prison] again…[its] stressful cos you might get recalled, stressful cos you've got no control…its literally like being in the prison on the outside, you're told where to go, where you can go, who you can see' (PR_B_AreaC_No.84).

Beyond perceptions of procedural justice, substantive justice matters in 'correctional' contexts (Felson and Pare, 2007; Jenness and Calavita, 2018). While the majority of participants felt the sentence they received was fair, where they didn't, it rarely affected compliance. If people felt that they had been unjustly recalled, however, this bred resistance and threatened future cooperation (Digard, 2010). Many referred to being recalled for allegations or charges, for which they were not ultimately convicted, and that would not have warranted imprisonment had they not been on licence, engendering perceptions of distributive injustice among those on Parole.

'People are getting recalled like for stupid wee things like a breach of the peace and you're kept in for like 5,6,7 years…when they get out, they're getting no help' (PR_B_AreaC_No.78).

'I don't think you should be getting recalled until you've been found guilty of an offence…be on remand, absolutely…but you should not be punished for something you've been found not guilty' (PR_B_AreaC_No.81).

'If I hadn't been a lifer, I probably would have got a fine, instead of 18 months, for nothing' (PR_B_AreaC_No.88).

Unsurprisingly, this bred perceptions of injustice and resentment, and threatened attributions of legitimacy. Unlike Werth's (2011:336) participants, described in similar contexts as 'displaying the 'right' attitude to agents' and thus 'mask[ing] practices of defiance or resistance', for many, this did not result in compliance (however creative). Moreover, rather than expressing postures of disengagement (Braithwaite, 2013), or what we have termed 'active' game-playing, people's reluctance to share their feelings and experiences with their supervising officer was more commonly underpinned by fear, anxiety and distrust and was, in this sense, coded as 'reactive game-playing'. This was particularly acute for those on post-release licences, who feared re-imprisonment as the default response to any disclosure of difficulties, rather than the provision of support and, as such, a reaction to a risk averse culture that they felt positioned them as risky subjects, and effectively discouraged open communication, generating mutual distrust and anxiety.

I wasn't really coping…that time I said I couldn't cope, she [social worker] sorta, 'What do you mean you can't cope?' and it's the way she said it and I thought, if I say the wrong thing …I might end up getting recalled…I just started telling her what she wanted to hear…I was scared to tell her the truth' (PB_B_AreaA_No90).

'I was too scared to speak to her and tell her cos I thought if I went to my supervising officer, I'm feeling suicidal, I'm drinking, I've started drugs, she'd just throw me back in jail…It was just when I tried to kill myself that actually she intervened…I just didn't know what to do' (PR_B_AreaC_No. 75).

'If you go in and you say too much, you get recalled…if you go in and don't say enough and something happens, you get recalled…It takes a lot for me to trust somebody and I don't trust them (PR_B_AreaA_No92).

This was not everyone's experience and, understandably, perceptions of supervision from the perspectives of those who have been breached or recalled for non-compliance tend to be negatively weighted. Nonetheless, we also found evidence of positive experiences of supervision among non-compliers. The concept of situated justice is particularly relevant here (Berrey et al., 2012) insofar as what is considered fair and just is subjective and reformulated through particular experiences of the

justice system, in the context of their situated positions, embeddedness in institutional contexts, and the nature and quality of their interactions with those regulating their compliance. Thus, the dynamics of supervisory relations matter; the ways practitioners relate to service users can reflect and communicate practitioners' perceptions of them, sending signals which can affect compliance. Additionally, the extent to which service users feel supported to address the issues that matter to, and affect them, influences their experience of supervision and where decision-making variously accommodates or elides these issues, it also affects perceptions of penal legitimacy and both procedural and substantive justice. This implies that legitimacy resides in the quality, outcomes and effects of interactions, and in the manner in which authority is exercised even if it does not translate straightforwardly into compliance.

CONCLUDING DISCUSSION

Realizing the objectives of community supervision necessarily depends on service users' cooperation with those regulating their compliance. Yet, the phenomenon of non-compliance from the perspective of those subject to community supervision has received limited attention, and has not yet progressed beyond the identification of generic contributing factors. Given the rising use and expansion of forms of community sanctions and proliferation of early release measures internationally, understanding the dynamics of non-compliance is increasingly significant, if we are to meaningfully address it.

As a *starting point*, this paper advances a theoretically explanatory and empirically informed model of the dynamics of non-compliance. This model, in fig.1, does not convey causal mechanisms; rather it incorporates and captures the interplay between the three core elements we identified as shaping non-compliance, namely: internal dynamics, comprising the motivational postures and attitudinal stances participants brought to community supervision, and the underpinning mechanisms; structural dynamics, including the socio-structural and systemic constraints that bound the exercise of agency by shaping people's situations of action, curtailing aspirations, constraining choice and limiting achievable alternatives; and interactional effects, incorporating the impacts and effects of participants' experience of community supervision, drawing on an analysis of the relevant core dimensions of justice.

Insert Fig. 1. A dynamic model of non-compliance with community supervision[5]

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[5] ID: refers to 'Internal dynamics'; SC: refers to 'Socio-structural and systemic constraints; IE: refers to Interactional effects; and NC: refers to 'Non-compliance'.

In relation to 'Internal Dynamics' (ID), we applied Braithwaite's (2013) typology of motivational postures as an analytic lens to explore the attitudes and postures that were distinctly shaped by influences or factors earlier to, or independent of, direct interactions with those regulating their compliance. Applying Braithwaite's typology in this distinct context, we identified some variation within Braithwaite's postures, as well as broader attitudinal stances, reflecting our analysis of the underlying mechanisms, which Braithwaite's methods were unable to capture. Applied to the above model, motivational postures of defiance and related attitudinal stances can directly (and differently) influence non-compliance, irrespective of people's interactions with those overseeing their supervision (ID-NC). However, we also identified that, more infrequently, some people brought postures of resistance to interactions with supervisors, which ultimately led to the initiation of breach or recall proceedings where such attitudes were thought to undermine effective community supervision (ID-IE-NC).

While prior research has identified some of the practical and structural factors influencing non-compliance, explanations as to how these factors interact and why they result in non-compliance from the perspective of those affected is largely absent. Applying concepts of 'bounded agency' (Evans, 2007), we showed how socio-structural disadvantages and deprivations and systemic constraints (SC) imposed significant challenges and competing obligations or priorities, which directly resulted in non-compliance (SC-NC), irrespective of people's intentions. Importantly, where these challenges to compliance went unrecognized or disregarded, this generated legitimacy deficits (SC-IE-NC) and risked cultivating postures of defiance (SC-IE-ID-NC).

In the final thematic section, 'Interactional Effects' (IE), participants highlighted the effects of brief interactions, the inadequacy of support and perceptions of injustices occurring as an outcome of risk-centric decision-making, undermining legitimacy, and ultimately compliance. Perceptions of procedural injustice were compounded where supervision was experienced as ineffective, superficial, and meaningless with insufficient recognition of and support to address their myriad socio-structural and systemic problems, particularly if, when people failed to comply, this was disregarded in professional decision-making. This was compounded where such deprivations were generated or aggravated by participation in the justice system (IE-SC-NC).

Negative perceptions of interactions were characterized in terms of disrespectful, demeaning or inconsiderate treatment or a pervasive sense of monitoring and surveillance. With regard to the former, such interactional dynamics were further aggravated by their perceptions of the futility of engaging in what they experienced as pointless interactions, and which for some, underpinned disengagement from supervision (IE-NC). Where people were recalled on allegations or charges for

which they were neither convicted or would not otherwise be imprisoned, this engendered perceptions of not only procedural but distributive injustice. Moreover, risk-centric cultures create the very conditions in which people become reluctant to cooperate, engendering mutual distrust and anxiety, exacerbating risk by breeding postures of defiance, ultimately leading to non-compliance (IE-ID-NC). Supervisory relationships and approaches, then, have significant implications for service users, in terms of how they engage and the outcomes they seek to support and can, however inadvertently, undermine people's willingness, or fail to appreciate constraints on people's abilities to comply. Fearful of risk averse reactions, service users can be discouraged from disclosing issues that are critical to compliance, public protection and wider processes of change. Rather than interpreting challenges with particular service users as resistant, defiant or unwilling, it may be that a lack of communication or engagement might signal fear or distrust, and/or a state of being overwhelmed.

The aim of community supervision is, ultimately, the promotion of compliance and desistance; this requires efforts to alter attitudes, enhance agency, support access to resources, and develop realistic opportunities through changes in people's material and social conditions, which can encourage perceptions of legitimacy and cooperative attitudes. We argue that the regulation of compliance with community supervision requires an individualized, situationally responsive and relationally-informed approach which takes into account what an individual is able to do and be, and which recognises that motivational postures, agency and wellbeing are interconnected and in so doing, focuses (albeit not exclusively) on enhancing resources and ameliorating deprivations.

While overcoming some of the socio-structural and systemic constraints is beyond the capacities of individual practitioners to effect, at least, given the significance attached to meaningful interactions, and practical help, what these findings imply is the improved resourcing of statutory justice services, which in many jurisdictions are woefully under-resourced and over-stretched (HMIP, 2019; Porporino, 2018; SWS, 2019). Indeed, Porporino (2018: 76) observed that 'what modern probation practice is 'able' to do in many jurisdictions does not match with what it 'should' do'. There is a critical need for investment in statutory justice services if professionals are to spend time working collaboratively with service users to identify their priorities and concerns, what they value and what they can feasibly achieve, and to explore how both agency and opportunity might be cultivated. Relatedly, there is a need to ensure that regulatory practices do not undermine the very responses they seek to elicit. Not everyone is capable of or confident in articulating what they value, need or want; people need opportunities to voice their experiences and they need to feel safe in doing so. While some disclosures may necessitate unwelcome professional responses, our data underlines the value in feeling heard, receiving practical and proactive support, and being helped to understand why certain courses of

action must be taken. Indeed, participatory supervisory processes and approaches are more likely to encourage compliance, even among high risk groups (Weaver and Barry, 2014), but this requires services to be adequately resourced to allow practitioners to invest time in the cultivation of cooperative relationships, oriented to building capabilities, and to recognise and respond to the issues that service users perceive as barriers, not just to compliance but to a life with dignity.

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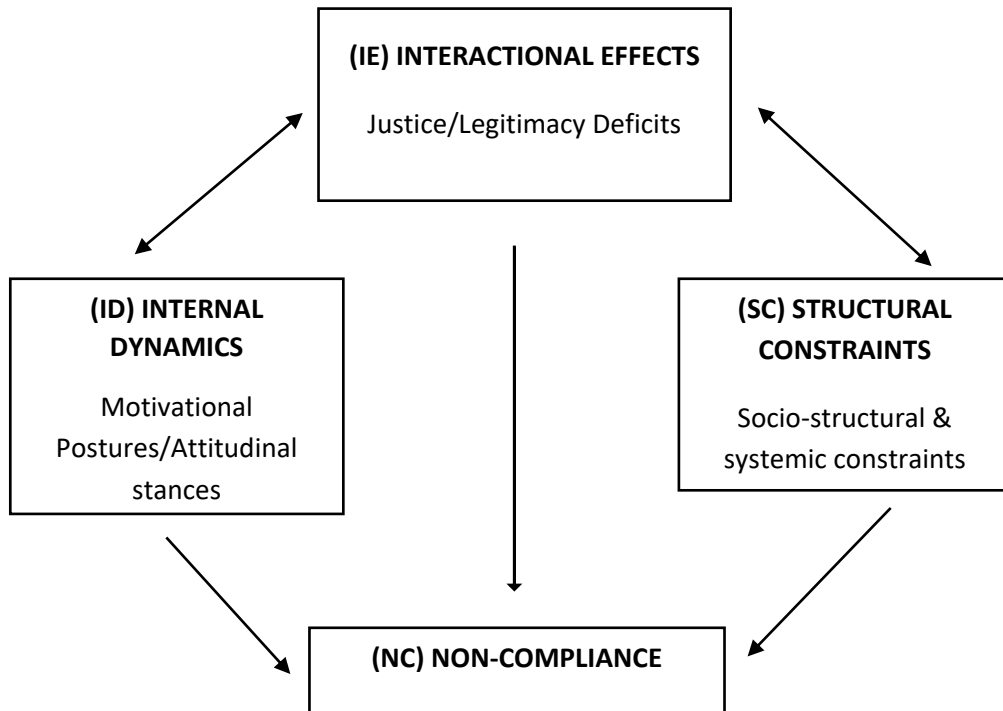
Fig. 1. A dynamic model of non-compliance with community supervision