

Imposition of
Community and
Custodial Sentences
Draft Guideline

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Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders aged 18 and older, who are sentenced on or after (TBC), regardless of the date of the offence.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court –

- (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

This guideline applies only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.

Imposition of Community Orders

GENERAL PRINCIPLES

Community orders fulfil all of the purposes of sentencing. In particular, they have the effect of restricting the offender's liberty while providing punishment in the community, rehabilitation for the offender, and/or ensuring that the offender engages in reparative activities.

A community order must not be imposed unless the offence is 'serious enough to warrant such a sentence'. Where an offender is being sentenced for a non-imprisonable offence, the court may not make a community order.

Sentencers must consider all available disposals at the time of sentence; even where the threshold for a community sentence has been passed, a fine or discharge may be an appropriate penalty.

The court must ensure that the restriction on the offender's liberty is commensurate with the seriousness of the offence and that the requirements imposed are the most suitable for the offender.

Sentencers must also ensure the sentence strikes the right balance between proportionality and suitability. The resulting restriction on liberty must be a proportionate response to the offence committed.

At least one requirement must be imposed for the purpose of punishment and/or a fine imposed in addition to the community order. Which requirements amount to punishment is a matter for the court to decide in each case.

COMMUNITY ORDER LEVELS

The seriousness of the offence should be the initial factor in determining which requirements to include in a community order. Offence guidelines refer to three sentencing levels within the community order band based on offence seriousness (low, medium and high). The culpability and harm present in the offence(s) should be considered to identify which of the three sentencing levels within the community order band (low, medium and high) is appropriate. See below for **non-exhaustive** examples of requirements that might be appropriate in each (the full list of available requirements is at page 5).

The examples focus on punishment in the community; **other requirements of a rehabilitative nature** may be more appropriate in some cases. To ensure the order is punitive, at least one requirement **MUST** be imposed for the purpose of punishment and/or a fine imposed in addition to the community order **unless there are exceptional circumstances which relate to the offender that would make it unjust in all the circumstances to do so**.

Low	Medium	High
Offences only just cross community order threshold, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate	Offences that obviously fall within the community order band	Offences only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> • 40 – 80 hours unpaid work • Curfew requirement within the lowest range (e.g. up to 16 hours per day for a few weeks) • Exclusion requirement, for a few months • Prohibited activity requirement • Attendance centre requirement (where available) 	Suitable requirements might include: <ul style="list-style-type: none"> • Greater number of hours of unpaid work (e.g. 80 – 150 hours) • Curfew requirement within the middle range (e.g. up to 16 hours for 2 – 3 months) • Exclusion requirement lasting in the region of 6 months • Prohibited activity requirement 	Suitable requirements might include: <ul style="list-style-type: none"> • 150 – 300 hours unpaid work • Curfew requirement up to 16 hours per day for 4 – 12 months • Exclusion order lasting in the region of 12 months
* If order does not contain a punitive requirement, suggested fine levels are indicated below:		
BAND A FINE	BAND B FINE	BAND C FINE

Requirements

Community orders consist of one or more of the following requirements:

- unpaid work requirement;
- drug rehabilitation requirement;
- alcohol treatment requirement;
- programme requirement;
- prohibited activity requirement;
- curfew requirement;
- exclusion requirement;
- residence requirement;
- foreign travel prohibition requirement;
- mental health treatment requirement;
- alcohol abstinence and monitoring requirement (where available);
- in a case where the offender is aged under 25, attendance centre requirement (where available);
- rehabilitation activity requirement (RAR).

(RARs provide flexibility for responsible officers in managing an offender's rehabilitation post sentence. When allocating a RAR the court does not prescribe the activities to be included but will specify the maximum number of activity days the offender must complete. The offender's responsible officer will decide the activities to be undertaken. Where appropriate this requirement should be made in addition to, and not in place of, other requirements listed above.)

Specific considerations in determining requirements

- i) At least one requirement must be imposed for the purpose of punishment and/or a fine imposed in addition to the community order. Which requirements amount to punishment is a matter for the court to decide in each case.
- ii) Where two or more requirements are included, they must be compatible with one another.
- iii) The particular requirements imposed must be suitable for the individual offender and will be influenced by a range of factors, including:
 - the stated purpose(s) of the sentence;
 - the risk of re-offending;
 - the ability of the offender to comply;
 - the availability of the requirements in the local area.

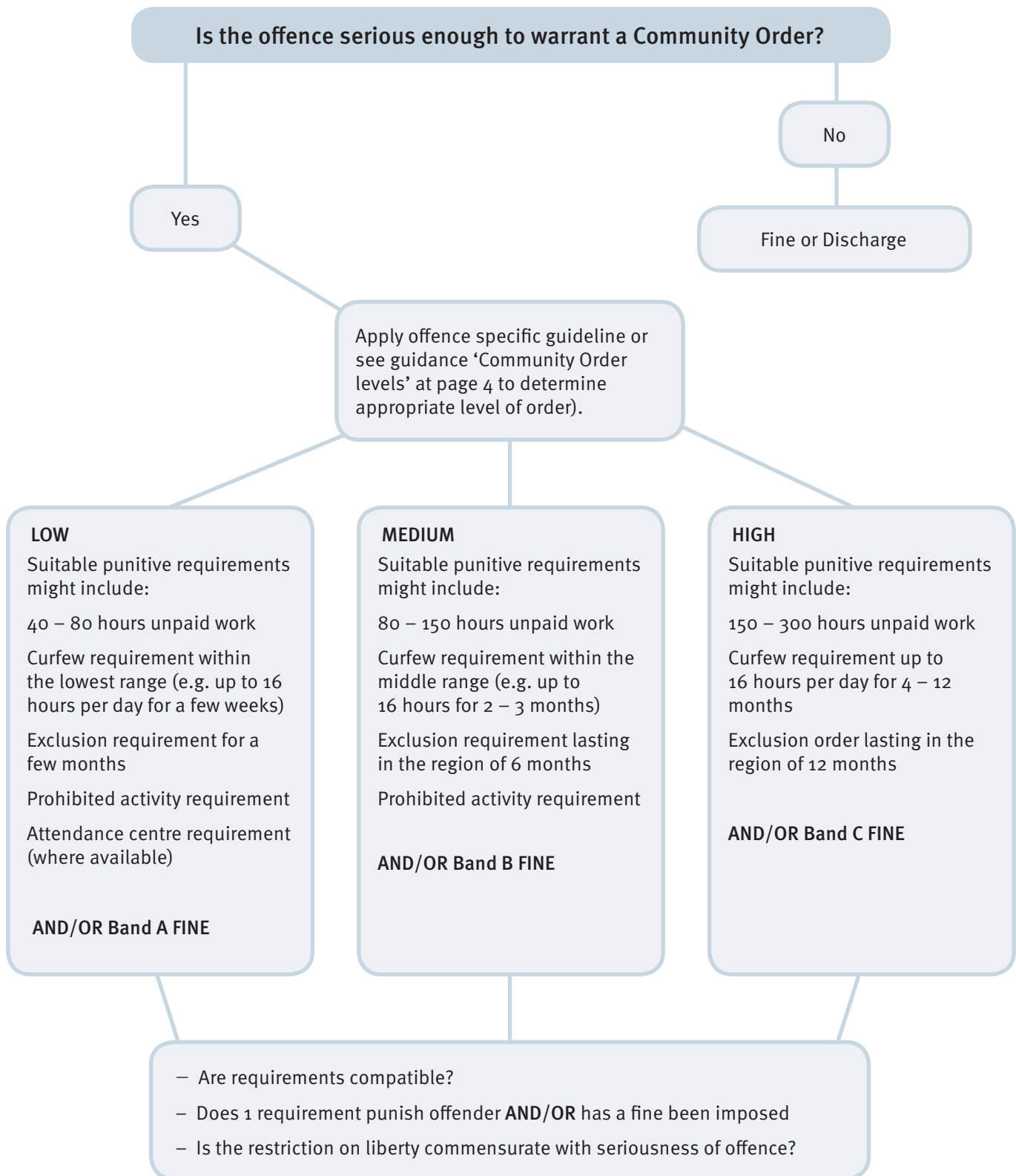
Pre-sentence reports

In many cases, a pre-sentence report will be pivotal in helping the court decide whether to impose a community order and, if so, whether particular requirements or combinations of requirements are suitable for an individual offender. Whenever the court reaches the provisional view that a community order may be appropriate, it should usually request a pre-sentence report. It may be helpful to indicate to the National Probation Service the court's preliminary opinion as to which of the three sentencing levels is relevant and the purpose(s) of sentencing that the package of requirements is expected to fulfil. Ideally a pre-sentence report should be completed on the same day to avoid adjourning the case. If an adjournment cannot be avoided, the information should be provided to the National Probation Service in written form and a copy retained on the court file for the benefit of the sentencing bench. However, the court must make clear to the offender that all sentencing options remain open including, in appropriate cases, committal for sentence to the Crown Court.

Electronic Monitoring

Subject to limited exceptions, when available the court must impose an electronic monitoring requirement where it makes a community order with a curfew or exclusion requirement, and may do so in all other cases. Electronic monitoring should be used with the primary purpose of promoting and monitoring compliance with other requirements, in circumstances where the punishment of the offender and/or the need to safeguard the public and prevent re-offending are the most important concerns.

Imposing a Community Order



Imposition of Custodial Sentences

General Principles

The approach to the imposition of a custodial sentence should be as follows:

- 1) Has the custody threshold been passed?
 - A custodial sentence must not be imposed unless the offence 'was so serious that neither a fine alone nor a community sentence can be justified for the offence'. The clear intention of the threshold test is to reserve prison as a punishment for the most serious offences.
- 2) If so, is it unavoidable that a custodial sentence be imposed?
 - Passing the custody threshold does not mean that a custodial sentence should be deemed inevitable; custody can still be avoided in light of offender mitigation or where there is a suitable intervention in the community which provides sufficient restriction on the offender's liberty (by way of punishment) while addressing the rehabilitation of the offender to prevent future crime.
 - For offenders on the cusp of custody, would imprisonment result in an impact on dependants which would make a custodial sentence disproportionate?
- 3) What is the shortest term commensurate with the seriousness of the offence?
 - In considering this the court must NOT consider any licence or post sentence supervision requirements which may subsequently be imposed upon the offender's release.
- 4) Can the sentence be suspended? See page 9.

Pre-sentence report

Before deciding whether:

- the custody threshold has been passed; and, if so
- the length of imprisonment which represents the shortest term commensurate with the seriousness of the offence;

the court should obtain a pre-sentence report, unless the court considers a report to be unnecessary. Ideally a pre-sentence report should be completed on the same day to avoid adjourning the case.

Magistrates: consult your legal adviser before deciding to sentence to custody without a pre-sentence report.

Suspending a Custodial Sentence

A suspended sentence is a sentence of imprisonment. The following questions are paramount in deciding whether to suspend a custodial sentence. A court considering whether to suspend a custodial sentence must answer the following questions in the following order:

- 1) Has the custody threshold been passed? If not, a suspended sentence **cannot** be passed.
- 2) If so, is it **unavoidable** that a custodial sentence be imposed? If not, a suspended sentence **cannot** be passed.
- 3) If so, can that sentence be suspended? Sentencers should be clear that they would have imposed an immediate custodial sentence if the power to suspend had not been available.

A suspended sentence **MUST NOT** be imposed as if it were a more severe form of Community Order.

Specific considerations

The imposition of a custodial sentence is both punishment and a deterrent. To ensure that the overall terms of any suspended sentence are commensurate with the offence seriousness, requirements imposed as part of the sentence should generally be less onerous than if a community order had been imposed. A court wishing to impose onerous or intensive requirements should reconsider whether a community sentence might be more appropriate.

Suspended Sentences: General guidance

- i) The requirement to obtain a pre-sentence report for custodial sentences applies if suspending custody.
- ii) If the court imposes a term of imprisonment between 14 days and 2 years (6 months in magistrates' courts), it may suspend the sentence for between 6 months and 2 years (the 'operational period').
- iii) Where the court imposes two or more sentences to be served consecutively, the court may suspend the sentence where the aggregate of the terms is between 14 days and 2 years. (Magistrates may only impose aggregate sentences of more than 6 months where there are two or more either way offences).
- iv) When the court suspends a sentence, it may impose one or more requirements for the offender to undertake in the community. The requirements are identical to those available for community orders on page 5.
- v) A custodial sentence that is suspended should be for the same term that would have applied if the sentence was to be served immediately.
- vi) The time for which a sentence is suspended should reflect the length of the sentence; up to 12 months might normally be appropriate for a suspended sentence of up to 6 months.
- vii) When the court imposes a suspended sentence with community requirements, it may also order that the sentence be reviewed periodically at a review hearing.

