

# Imposition of Community and Custodial Sentences Definitive Guideline

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Effective from 1 February 2017

# 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 1 February 2017, regardless of the date of the offence (subject to requirement(s) being applicable).

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. Pending publication of the Sentencing Council guideline *Sentencing Youths*, 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 can fulfil all of the purposes of sentencing. In particular, they can 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'.<sup>1</sup> Where an offender is being sentenced for a non-imprisonable offence, there is no power to make a community order.<sup>2</sup>

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. In particular, a Band D fine may be an appropriate alternative to a community order.

The court must ensure that the restriction on the offender's liberty is commensurate with the seriousness of the offence<sup>3</sup> and that the requirements imposed are the most suitable for the offender.<sup>4</sup>

Sentences should not necessarily escalate from one community order range to the next on each sentencing occasion. The decision as to the appropriate range of community order should be based upon the seriousness of the new offence(s) (which will take into account any previous convictions).

Save in exceptional circumstances at least one requirement must be imposed for the purpose of punishment and/or a fine imposed in addition to the community order.<sup>5</sup> It is a matter for the court to decide which requirements amount to a punishment in each case.

<sup>1</sup> s.148(1) Criminal Justice Act 2003

<sup>2</sup> s.150A Criminal Justice Act 2003 nb: s.151(2) conferring powers in other circumstances is NOT in force.

<sup>3</sup> s.148(2)(b) *ibid*

<sup>4</sup> s.148(2)(a) *ibid*

<sup>5</sup> s.177(2A) and (2B) *ibid*

**COMMUNITY ORDER LEVELS**

The seriousness of the offence should be the initial factor in determining which requirements to include in a community order. Offence-specific 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.

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 offence or the offender that would make it unjust in all the circumstances to do so.<sup>6</sup>

A full list of requirements, including those aimed at offender rehabilitation, is available at page 5.

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"> <li>Any appropriate rehabilitative requirement(s)</li> <li>40 – 80 hours of unpaid work</li> <li>Curfew requirement within the lowest range (for example up to 16 hours per day for a few weeks)</li> <li>Exclusion requirement, for a few months</li> <li>Prohibited activity requirement</li> <li>Attendance centre requirement (where available)</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>Any appropriate rehabilitative requirement(s)</li> <li>Greater number of hours of unpaid work (for example 80 – 150 hours)</li> <li>Curfew requirement within the middle range (for example up to 16 hours for 2 – 3 months)</li> <li>Exclusion requirement lasting in the region of 6 months</li> <li>Prohibited activity requirement</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>Any appropriate rehabilitative requirement(s)</li> <li>150 – 300 hours of unpaid work</li> <li>Curfew requirement up to 16 hours per day for 4 – 12 months</li> <li>Exclusion order lasting in the region of 12 months</li> </ul>
* If order does not contain a punitive requirement, suggested fine levels are indicated below:		
<b>BAND A FINE</b>	<b>BAND B FINE</b>	<b>BAND C FINE</b>

<sup>6</sup> s.177 (2A) and (2B) Criminal Justice Act 2003

## Specific considerations in determining requirements

i) Where two or more requirements are included, they must be compatible with one another and must not be excessive.

ii) Any requirement must not conflict with an offender's religious beliefs or with the requirements of any other order to which they may be subject. Interference with an offender's attendance at work or educational establishment should also be avoided.

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.

## Requirements

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

- **unpaid work requirement** (40 – 300 hours to be completed within 12 months)
- **rehabilitation activity requirement** (RAR's provide flexibility for responsible officers in managing an offender's rehabilitation post sentence. The court does not prescribe the activities to be included but will specify the maximum number of activity days the offender must complete. The 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. Sentencers should ensure the activity length of a RAR is suitable and proportionate).
- **programme requirement** (specify the number of days)
- **prohibited activity requirement** (must consult National Probation Service)
- **curfew requirement** (2 – 16 hours in any 24 hours; maximum term 12 months; must consider those likely to be affected; see note on electronic monitoring below)
- **exclusion requirement** (from a specified place/places; maximum period 2 years; may be continuous or only during specified periods; see note on electronic monitoring below)
- **residence requirement** (to reside at a place specified or as directed by the responsible officer)
- **foreign travel prohibition requirement** (not to exceed 12 months)
- **mental health treatment requirement** (may be residential/non-residential; must be by/under the direction of a registered medical practitioner or chartered psychologist. The court must be satisfied: (a) that the mental condition of the offender is such as requires and may be susceptible to treatment but is not such as to warrant the making of a hospital or guardianship order; (b) that arrangements for treatment have been made; (c) that the offender has expressed willingness to comply).
- **drug rehabilitation requirement** (the court must be satisfied that the offender is dependent on or has a propensity to misuse drugs which requires or is susceptible to treatment. The offender must consent to the order. Treatment can be residential or non-residential, and reviews must be attended by the offender (subject to application for amendment) at intervals of not less than a month (discretionary on requirements of up to 12 months, mandatory on requirements of over 12 months))
- **alcohol treatment requirement** (residential or non-residential; must have offender's consent; court must be satisfied that the offender is dependent on alcohol and that the dependency is susceptible to treatment)
- **alcohol abstinence and monitoring requirement** (where available)
- **attendance centre requirement** (12 – 36 hours. Only available for offenders under 25).

## 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 request a pre-sentence report (whether written or verbal) unless the court is of the opinion that a report is unnecessary in all the circumstances of the case. It may be helpful to indicate to the National Probation Service the court's preliminary opinion as to which of the three sentencing ranges 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 court. **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

The court must impose an electronic monitoring requirement where it makes a community order with a curfew or exclusion requirement save where:<sup>7</sup>

- there is a person (other than the offender) without whose co-operation it will not be practicable to secure the monitoring and that person does not consent;<sup>8</sup> and/or
- electronic monitoring is unavailable and/or impractical;<sup>9</sup> and/or
- in the particular circumstances of the case, it considers it inappropriate to do so.<sup>10</sup>

The court may impose electronic monitoring 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.

<sup>7</sup> s.177(3) Criminal Justice Act 2003

<sup>8</sup> s.215(2) *ibid*

<sup>9</sup> s.218(4) *ibid*

<sup>10</sup> s.177(3)(b) *ibid*

# Imposition of Custodial Sentences

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 or the combination of the offence and one or more offences associated with it was so serious that neither a fine alone nor a community sentence can be justified for the offence.
- There is no general definition of where the custody threshold lies. The circumstances of the individual offence and the factors assessed by offence-specific guidelines will determine whether an offence is so serious that neither a fine alone nor a community sentence can be justified. Where no offence specific guideline is available to determine seriousness, the harm caused by the offence, the culpability of the offender and any previous convictions will be relevant to the assessment.
- The clear intention of the threshold test is to reserve prison as a punishment for the most serious offences.

## 2) **Is it unavoidable that a sentence of imprisonment be imposed?**

- Passing the custody threshold does not mean that a custodial sentence should be deemed inevitable. Custody should not be imposed where a community order could provide sufficient restriction on an 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, imprisonment should not be imposed where there would be an impact on dependants which would make a custodial sentence disproportionate to achieving the aims of sentencing.

## 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?**

- A suspended sentence **MUST NOT** be imposed as a more severe form of community order. A suspended sentence is a custodial sentence. **Sentencers should be clear that they would impose an immediate custodial sentence if the power to suspend were not available.** If not, a non-custodial sentence should be imposed.



The following factors should be weighed in considering whether it is possible to suspend the sentence:

Factors indicating that it would <b>not</b> be appropriate to suspend a custodial sentence	Factors indicating that it may be appropriate to suspend a custodial sentence
Offender presents a risk/danger to the public	Realistic prospect of rehabilitation
Appropriate punishment can only be achieved by immediate custody	Strong personal mitigation
History of poor compliance with court orders	Immediate custody will result in significant harmful impact upon others

The imposition of a custodial sentence is both punishment and a deterrent. To ensure that the overall terms of the suspended sentence are commensurate with offence seriousness, care must be taken to ensure requirements imposed are not excessive. A court wishing to impose onerous or intensive requirements should reconsider whether a community sentence might be more appropriate.

### Pre-sentence report

Whenever the court reaches the provisional view that:

- 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, whether verbal or written, **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.

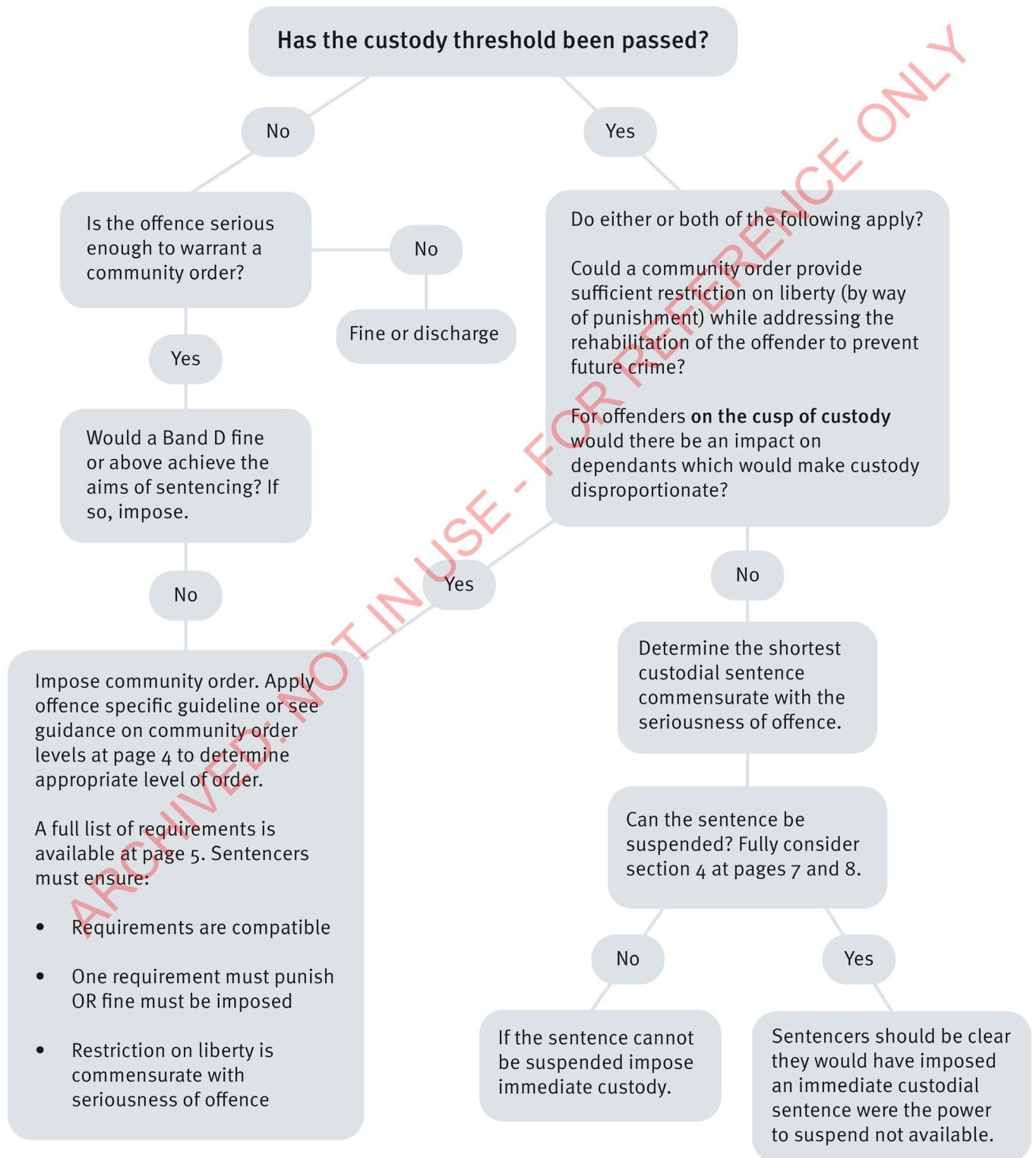
**Magistrates:** Consult your legal adviser before deciding to sentence to custody without a pre-sentence report.

# Suspended Sentences: General Guidance

- i) The guidance regarding pre-sentence reports applies if suspending custody.
- ii) If the court imposes a term of imprisonment of between 14 days and 2 years (subject to magistrates' courts sentencing powers), it may suspend the sentence for between 6 months and 2 years (the 'operational period'). 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.
- 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 (subject to magistrates' courts sentencing powers).
- 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.

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# Sentencing Decision Flowchart



# Annex:

## Fine bands

### FINE BANDS

Fine Band	Starting point <i>(applicable to all offenders)</i>	Category range <i>(applicable to all offenders)</i>
Band A	50% of relevant weekly income	25–75% of relevant weekly income
Band B	100% of relevant weekly income	75–125% of relevant weekly income
Band C	150% of relevant weekly income	125–175% of relevant weekly income
Band D	250% of relevant weekly income	200–300% of relevant weekly income
Band E	400% of relevant weekly income	300–500% of relevant weekly income
Band F	600% of relevant weekly income	500–700% of relevant weekly income

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