

Dear Judge

I am writing to all sentencers and magistrates' legal advisers regarding the definitive guideline on the Imposition of Community and Custodial Sentences came into force in February 2017. This guideline was issued in anticipation of a guideline for Breach offences which will be issued shortly. When we began work on the breach guideline, our research identified a trend. Over a ten year period between 2005-2015, we observed a substantial decline in the number of community orders imposed (from almost 203,000 in 2005 to 188,000 in 2010 to less than 108,000 in 2015) whilst the number of suspended sentence orders (SSOs) increased substantially (from less than 4,000 in 2005, to 46,000 in 2010 to over 52,000 in 2015).

Evidence suggested that part of the reason for this could be the development of a culture to impose suspended sentences as a more severe form of community order in cases where the custody threshold may not have been crossed. In such cases, if the suspended sentence order is then breached, there are two possible outcomes - neither of which is satisfactory. Either the courts must activate the custodial sentence and the offender then serve time in custody even when it may never have been intended that they do so for the original offence. Or the court could choose not to enforce the suspended sentence, thereby diminishing the deterrent power of such orders.

Before introducing the breach guideline, we decided that in the interests of effective and fair sentencing, this issue needed to be addressed. This is why the Council developed the Imposition guideline, which makes it clear that a suspended sentence is a custodial sentence and not a more severe form of community order. They can only be imposed where the court has determined first that the custody threshold has been crossed and second that custody is unavoidable. Only once these two decisions have been made following the structured exercise set out in the Imposition

guideline, can custody be imposed. At that point the court may then undertake a weighted assessment of the various factors which may lead the court to consider that it is possible to suspend the sentence.

Although the Imposition guideline has been in effect since 1st February 2017, the Council has some concerns that behaviour in respect of imposing these sentences has not changed. For the guideline to be effective, and to mitigate the risk of a high volume of activated suspended sentences upon the publication of the Breach guideline shortly, it is important that all members of the Judiciary and magistrates' courts' Legal Advisers are aware of it and ensure it is properly applied when sentencing appropriate cases.

To support effective application of the Imposition guideline, I have agreed with the Director of the National Probation Service that Probation Officers will refrain from recommending SSOs in pre sentence reports. This is because SSOs are not a standalone sentence; they are a custodial sentence and the court should only impose them having followed the structured sentencing exercise in the Imposition guideline. This does not mean the court should never suspend a custodial sentence, but this can only ever occur where the Court genuinely deems that a custodial sentence is entirely necessary and then conducts the weighted assessment as to whether suspension is possible. This in no way impacts upon judicial discretion to suspend custodial sentences: it merely seeks to reinforce good sentencing practice.

You will therefore notice that PSR reports will change in respect of the recommendations made by Probation staff and will refer only to custodial sentences or community orders, which are the only sentences available to the court. Guidance will be issued to Probation staff shortly, and will ensure sentencers are furnished with all relevant information to enable the appropriate sentence to be passed.

I would be grateful if you could share this letter with all circuit judges and recorders who sit at the Crown Court centres for which you act as Resident Judge and ensure full compliance with the Imposition guideline.

Yours faithfully,

A handwritten signature in black ink that reads "Colman Treacy". The signature is written in a cursive style and is positioned above a horizontal line that extends to the right.

LORD JUSTICE TREACY
CHAIRMAN OF THE SENTENCING COUNCIL