

Banks on Sentence

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IMPOSITION OF COMMUNITY AND CUSTODIAL SENTENCES DEFINITIVE GUIDELINE

In force 1 Feb 2017.

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The key provisions are:

COMMUNITY ORDERS

Determining which level to impose

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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.¹

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

CUSTODIAL SENTENCES

Determining their imposition

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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.

Factors

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

Factors indicating that it would not 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

Determining whether to impose

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

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- 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.

1. Criminal Justice Act 2003 s 177(2A) and (2B)

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