

cjm

update

Una Padel and Chris Eades describe the new Community Order.

New Community Orders Now In Use

The new Community Order, introduced under the *Criminal Justice Act 2003* to replace the range of existing community sentences, became available to the courts from April for people over the age of 16. The Community Order is a single sentence which can be made up of one or more of a number of requirements. These are:

The Unpaid Work Requirement

- This unpaid work is like the old Community Service and may be up to 300 hours in length and must be completed within 12 months.

The Activity Requirement

- The offender is ordered to attend at a particular place and take part in certain activities on certain days (not exceeding 60 days).

The Programme Requirement

- The offender is ordered to participate in a 'programme' approved by the government and recommended to the court by the Probation Service or Youth Offending Team (YOT).

The Prohibited Activity Requirement

- The offender is ordered to refrain from doing certain activities on certain days or for a specified period of time, something like the civil Anti-Social Behaviour Order (ASBO).

The Curfew Requirement

- The offender may be ordered to stay in a particular place (usually their home) for not less than two hours and not more than 12 hours in any day.
- The court must consider information on the place in which the offender is to stay, including the views of others likely to be affected (such as the parents of a young offender).

The Exclusion Requirement

- The court may order the offender not to enter a certain place for a certain period of time not longer than two years.

The Residence Requirement

- The offender may be ordered to live at a specified address or addresses.
- The court can only order an offender to stay in a hostel (or other institution) if recommended by the Probation Service.

The Mental Health Treatment Requirement

- The court may order that the offender receive mental health treatment.
- The court must be satisfied by the evidence of a doctor that the offender's mental condition requires, and will be helped by, treatment.

The Drug Rehabilitation Requirement

- The court may order the offender to undergo drug treatment and testing for not less than a six month period.
- This must be recommended by the Probation Service or YOT and the offender must consent to it since drug and alcohol treatments are rarely successful without a commitment to change from the patient.
- The court may order reviews at not less than one month intervals to check on the offender's progress.

The Alcohol Treatment Requirement

- An alcohol-dependent offender may be required to undergo treatment by a qualified person, but only if the offender consents.

The Supervision Requirement

- The offender may be ordered to attend meetings with their Probation Officer or another nominated person.

The Attendance Centre Requirement

- Offenders under 25 may be ordered to go to an Attendance Centre for a maximum of 3 hours a day and not less than 12 or more than 36 hours in total.

The Electronic Monitoring ('Tagging') Requirement

- Generally imposed to monitor compliance with other requirements.
- Must be imposed on a Curfew or Exclusion Requirement.

The new sentence provides scope for courts to tailor sentences very closely to the circumstances of each case, but there is a danger that providing sentencers with this 'cafeteria' of options will result in offenders being overloaded with requirements which, if breached, could lead to a custodial sentence. If an offender does breach the order the court must either increase the severity of the existing sentence or revoke the order and proceed as though sentencing for the original offence. The maximum penalty for breaching an order imposed for an offence which is not in itself imprisonable is 51 weeks imprisonment.

The Sentencing Guidelines Council has issued a guideline on the use of the new order. It emphasises the need for the court to be satisfied that the restriction on liberty entailed by the requirements selected is commensurate with the seriousness of the offence, that requirements chosen are the most suitable for the offender, and that where two or more requirements are chosen they are compatible with one another. The SGC sets out three sentencing ranges to take account of different levels of offence seriousness or the persistence of offending, and the banding (low medium or high) of the sentence together with details of the requirements will be recorded so that at any subsequent court appearance the sentencer can consider the likely impact of another community order with the same or different requirements.