

SENTENCING EXPLAINED

COMMUNITY ORDERS

When might a court impose a Community Order on an offender? What requirements might be attached to the Community Order and what happens if the offender breaches the Order either by failing to comply with the requirements or by committing a further offence?

This note explains when courts in England and Wales might consider it appropriate to impose a Community Order and the number and types of requirements that might be attached to the Order. Community sentences have a long history in England and Wales and can be traced back to the creation of Probation Orders by the Probation of Offenders Act 1907, which empowered courts to suspend punishment and discharge offenders if they entered into a recognisance of between one and three years, with one condition of the order being supervision by a probation officer.

The Community Order was introduced by the Criminal Justice Act 2003 and came into existence in April 2005. The maximum duration of a Community Order is three years (there is no minimum duration) and at least one requirement must be attached to the Order. If an offender fails to comply with the terms of a Community Order, the Order can be revoked and the offender can be re-sentenced. Failure to comply with a Community Order, therefore, can result in a custodial sentence.

When can a Community Order be imposed?

A Community Order should generally be imposed in cases too serious to be dealt with by either a fine or a discharge but not serious enough to merit a custodial sentence. It can only be imposed when an offender is being sentenced for an imprisonable offence¹ and, under section 204 of the Sentencing Code, a Community Order should only be imposed where the court is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, is serious enough to warrant such a sentence. This provision ensures that Community Orders are not used for minor offences, for which a discharge or a fine are more likely to be appropriate. The Sentencing Council's Imposition of Community and Custodial Sentences guideline, which came into force on 1 February 2017, states that '[s]entencers 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.'²

¹ Section 202 of the Sentencing Code.

² Sentencing Council (2016) *Imposition of Community and Custodial Sentences Definitive Guideline*, p. 3.

What requirements can be attached to a Community Order?

At least one requirement must be attached to a Community Order. Under section 201 of the Sentencing Code the potential requirements are:

- An unpaid work requirement (this requires the undertaking of between 40 and 300 hours of unpaid work to be completed within 12 months).
- A rehabilitation activity requirement (this requires an offender to participate in activity which reduces the prospect of reoffending. The court does not specify the nature of the activity to be undertaken but must specify the maximum number of days of activity. Introduced in 2015, this requirement superseded the supervision and the specified activity requirements).
- A programme requirement (the offender is required to attend a particular programme that looks to address their offending behaviour – for example, sex offenders may be required to attend a sex offending programme).
- A prohibited activity requirement (the offender is prohibited from certain activities related to their offending – for example, attending football matches – for a period of up to three years).
- A curfew requirement (the offender must stay within a specified place – usually their own home – for certain periods, up to 16 hours per day, for up to 12 months. The curfew is electronically monitored).
- An exclusion requirement (the offender is excluded from entering a specified place or area for a period of up to two years).
- A residence requirement (the offender must reside at a specified place for a period of up to three years).
- A foreign travel prohibition requirement (the offender is prohibited from travelling abroad for up to 12 months. The prohibition can apply to named countries, to specific days or dates, can allow travel to some destinations but not others or can ban foreign travel altogether).
- A mental health treatment requirement (the offender may be required to undergo treatment for a mental health problem but must consent to doing so. The maximum duration of this requirement is three years).
- A drug rehabilitation requirement (the offender is required to have treatment to address their drug misuse and must provide samples for testing when requested. The offender must consent to the order and the duration of this requirement is between six months and three years).
- An alcohol treatment requirement (the offender must attend treatment to reduce or eliminate dependency on alcohol. The offender must consent to the order).
- In a case where the offender is aged under 25, an attendance centre requirement (the offender must attend at an attendance centre for between 12 and 36 hours and they undertake a programme of activities designed to reduce re-offending).
- Electronic compliance monitoring requirement (the offender is electronically tagged to ensure that they comply with restrictions imposed on their movements – for example, a requirement to stay away from a particular area).

- Electronic whereabouts monitoring requirement (the offender is electronically tagged so that their whereabouts can be monitored and recorded).

At least one requirement must be imposed for the purpose of punishment and/or a fine imposed in addition to the Community Order, save in exceptional circumstances. Sentencers are reminded by section 208 (12) of the Sentencing Code that when making a Community Order imposing two or more different requirements, they must consider whether the requirements are compatible with each other.

There are three different levels of Community Order, and their imposition depends on the seriousness of the offence. For low level Community Orders, defined by the Sentencing Council as for when ‘offences only just cross [the] 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’, in general, only one requirement will be appropriate and the examples given include any appropriate rehabilitative requirement(s), 40-80 hours of unpaid work, a curfew requirement within the lowest range (for example up to 16 hours per day for a few weeks), an exclusion requirement (for a few months), a prohibited activity requirement or an attendance centre requirement (where available).

Medium level Community Orders, for ‘offences that obviously fall within the Community Order band’, might include any appropriate rehabilitative requirement(s), a greater number of hours of unpaid work (for example 80-150 hours), a curfew requirement within the middle range (for example up to 16 hours per day for two to three months), an exclusion requirement lasting in the region of six months or a prohibited activity requirement.

High level Community Orders, to be imposed when ‘offences only just fall below the custody threshold or the custody threshold is crossed but a Community Order is more appropriate in the circumstances’ might require the combination of two or more requirements. The suitable requirements for high level Community Orders might include any appropriate rehabilitative requirement(s), between 150 and 300 hours of unpaid work, a curfew requirement up to 16 hours per day for between four and 12 months or an exclusion order lasting in the region of 12 months.³

What type of requirements are most commonly used?

Two requirements in particular are used much more frequently than others, with a rehabilitation activity requirement and unpaid work being by far the most commonly-used requirements. In 2018, 58.2% of Community Orders imposed had a rehabilitation activity requirement attached and 50.5% had an unpaid work requirement attached; the next most commonly-used requirement was a curfew, which was used in 14.9% of Community Orders.⁴ The vast majority of Community Orders imposed in 2018 had either one requirement (58%) or two requirements (35%) attached.⁵

³ Sentencing Council (2016) *Imposition of Community and Custodial Sentences Definitive Guideline*, p. 4. See: <https://www.sentencingcouncil.org.uk/wp-content/uploads/Imposition-definitive-guideline-Web.pdf>.

⁴ Ministry of Justice (2019) *Offender Management Statistics quarterly: October to December 2018*, Probation: 2018, Table A4.9.

⁵ Ministry of Justice (2019) *Offender Management Statistics quarterly: October to December 2018*, Probation: 2018, Table A4.7.

How frequently are Community Orders imposed?

The number of Community Orders imposed has fallen dramatically in recent years, with the total more than halving between in the decade between 2008 and 2018; there were 190,172 Community Orders imposed in 2008 and 91,419 imposed in 2018.⁶

What happens if the offender fails to comply with the requirements of a Community Order?

On the first failure without reasonable excuse to comply with any of the requirements of a Community Order, the supervising officer must give a warning that another failure to comply within the next 12 months will result in the offender being returned to court for breach of the Community Order. However, if the supervising officer considers a first breach to be serious, they have the power to refer the matter back to court. When an offender is returned to court for the breach of a Community Order, the court has the power to amend the terms of the Order so as to impose more onerous requirements, impose a fine of up to £2,500 or revoke the Order and re-sentence the offender to any sentence available to the court for the offence(s) (including imposing a custodial sentence).

When considering which approach to adopt in response to the breach of a Community Order, the court will take into account the extent to which the Order has been complied with before the breach, with the greater the degree of compliance up to the point of the breach, the less severely the court is likely to respond to it.

⁶ Ministry of Justice (2019) *Criminal Justice System statistics quarterly: December 2018*, Overview Table Q5.1.