

COMMUNITY SENTENCES

1. The Criminal Justice Act 1991 made significant changes to the structure and range of community sentences with the aim of promoting them as realistic and demanding punishments in their own right. Community sentences restrict the offender's liberty, and the trend is to use community sentences for more serious offences. The terms used in the Act are 'community order', which refers to the individual orders that are available (a probation order or community service order), and 'community sentence' which is the punishment for a particular offence. A community sentence may consist of, or include, one or more community orders, as well as a financial penalty.

2. To avoid any implication that the court is in some way letting the offender off with a lighter punishment, none of the community sentences are described as 'instead of' or 'alternatives to' a custodial sentence. Before making a probation or community order, the court must consider them to be desirable in the interests of rehabilitating the offender, protecting the public and/or preventing the commission of further offences. The range of community orders likely to affect servicemen is as follows:

a. *Probation Order.* A Probation Order has the effect of placing the offender, with his consent, under the supervision of a probation officer for a period of not less than 6 months and not more than 3 years. Failure to comply with terms of the Probation Order may result in a fine or the offender being sentenced for the original offence. Re-offending during the period of operation of the order could result in the offender being sentenced for the original offence.

b. *Community Service Order(CSO).* A court dealing with an offender for an imprisonable offence may make a CSO. The CSO obliges the offender to perform, without pay, work of value to the community. The minimum period is 40 hours and the maximum 240. Failure to comply with the terms of a CSO could result in the court imposing a fine without altering the conditions of the CSO, or revoking the order and re-sentencing the offender for the original offence. The fundamental principle of the CSO is that it provides for work to be carried out, under the supervision of the probation service, during what would otherwise be the offender's leisure hours. Courts and probation officers are required to ensure that the terms of the CSO do not interfere with his commitments to an employer.

c. *Combination Order.* A Combination Order effectively combines a probation order and a CSO for offences punishable by imprisonment. However, the minimum period of probation is increased to 12 months (maximum 3 years) and the maximum period of community service is reduced to 100 hours (minimum 40 hours).

d. *Curfew Order.* The effect of a Curfew Order is that the offender is required to remain for the periods specified in the order at a specified place.

3. **Circumstances of Passing Sentence** . As stated above, the Act specifically states that a community sentence is not to be regarded as an alternative to custody. However, a community order will be passed in many circumstances where a sentence of imprisonment would be wrong in principle. Before passing sentence, the court must consider whether the offence is serious enough to warrant a community sentence. In considering the type of order, the court must have regard to what is suitable for the offender and any restrictions on liberty must be commensurate with the seriousness of the offence. In so doing, the court shall take account of all available information on the circumstances of the offence, information about the offender and the pre-sentence report.

4. **Service Response to Community Sentences.** The European Convention on

Human Rights, which was incorporated into domestic law on 2 Oct 00, placed a duty on magistrates to explain the reasons for their finding and for the sentence that they award. This will help greatly the Service to gauge the gravity of a community sentence, and consider its response to it. Although a CSO is usually more serious than, for example a fine, it would not be appropriate in every case to equate a community sentence to imprisonment. For instance, the imposition of a curfew order on its own would indicate an offence very much at the lower end of the scale, whereas community service or a combination order may normally indicate the court regarded the offence as more serious. Judgements must be made on a case-by-case basis taking into account the type of sentence and the factors set out in para 5 below.

5. Duties of Officer Attending Court . In addition to the tasks set out in QR 1061/QR 1062 and explained more fully in Leaflet 1302 Annex C, the officer detailed to attend court has 2 specific duties wherever a community sentence is a possible punishment:

- a. To inform the court, if asked, of any forthcoming posting, detachment or other duty which might affect the offender's availability, and thus his ability to complete a community sentence.
- b. To record carefully the court's comments on the case in general and specifically on sentencing if any are made.

If the court wishes to know what effect the award of a community sentence would have with regard to the retention of the offender in the Service, the officer attending is to follow the guidance in Leaflet 1302 Annex C para 7e(2). In addition he is to make clear to the court that a community sentence will automatically trigger consideration of the future employability of the individual. Although every effort will be made to retain the individual in the Service, the possibility of discharge will be a consideration where the community service is not compatible with further Service (see paras 6 and 7).

6. Guidance when Considering Discharge or Retention . As stated above, a community sentence is not necessarily an alternative to a custodial sentence; it is a sentence in its own right. The court's decision on sentence will rely greatly on the contents of the pre-sentence report which it is obliged to obtain, and which is not disclosed in open court. The court will usually give specific reasons for imposing the particular sentence and these may be of relevance to the decision whether retention is appropriate. This is particularly the case when passing a custodial sentence as the Criminal Justice Act 1991 provides for this. Civilian magistrates have been issued with standard sentencing guidelines for this purpose. In deciding whether an individual should be retained in the Service the following matters should be considered:

- a. The type of order and the length of community service.
- b. Whether the order includes additional requirements, eg a probation order can include a residence requirement.
- c. Any comments the court makes on the offence and sentence.
- d. The nature of the offence.
- e. The previous record and character of the offender.
- f. Any mitigating/aggravating circumstances.

7. Action if Offender is Retained in the Service

- a. *Probation*. Probation should not present any particular problems

depending on whether there are any additional requirements.

b. *A Community Service Order or Combination Order.* The intention of a CSO is that the work is carried out in the offender's leisure time. It should not, therefore, adversely affect his normal duties (including guard rosters and exercise deployments). COs have no power to override a CSO. If a conflict of interest arises, the matter must be referred back to the court for the Order to be amended or revoked. The offender's unit plays no active part in the administration of the CSO. Nevertheless, an officer, preferably the offender's flt cdr, is to be made responsible for establishing close liaison with the Probation Service Supervisor, and informing him of any likely variation in the offender's availability or working pattern. Further information on Electronic Monitoring Equipment (EME) is at Annex A and on Anti-Social Behaviour Orders (ASBOs) and Acceptable Behaviour Contracts (ABCs) is at Annex B.

c. *Curfew Order.* A Curfew Order may be used by itself, but it is more likely that such an Order will be used to support other community orders. The maximum length of a Curfew Order is 6 months.

8. **Rehabilitation of Offenders Act.** Under the Rehabilitation of Offenders Act, a conviction for which a community sentence is awarded will be considered 'spent' after 5 years.

Annexes:

A. Guidance on Electronic Monitoring Equipment.

B. A Guide to Anti-social Behaviour Orders and Acceptable Behaviour Contracts.