

THE MAGISTRATES' ASSOCIATION
SENTENCING POLICY & PRACTICE COMMITTEE

Community Sentences – Policy Paper

Community sentences are a critical component of magistrates' sentencing options and are acknowledged to be the most effective disposal to achieve a reduction of reoffending. In addition, drug treatment and alcohol treatment requirements within community orders are extremely cost-effective with an estimated 9.5:1 and 5:1 payback to the public purse respectively. (*National Treatment Agency Annual Report, March 2008; Alcohol Treatment Tactical Strategy for England 2004*).

Community Orders represent nearly 40 per cent of all magistrates' courts disposals for non-summary offences – they have no minimum length, but may last for up to a maximum of three years. They must carry at least one requirement – often unpaid work, a curfew, attendance at a drug rehabilitation or alcohol treatment programme, drink impaired driving course, intervention to address domestic violence issues or ongoing supervision by the probation service. Community orders are normally imposed following a report on the offender prepared by the Probation Service, and only when the court is of the opinion that the offence is serious enough to warrant such a sentence.

Uniquely, the umbrella of a community order affords sentencers the ability to meet all of the purposes of sentencing:

- Punishment
- Reparation
- Rehabilitation
- Public protection

Magistrates have a high degree of confidence in community sentences – witnessed by the large numbers of such sentences imposed and by the high level of agreement with community order proposals put forward in pre-sentence reports by the Probation Service. As well as by, for example, the 15 per cent reduction in the number of offenders sent to prison by magistrates for non-summary offences in 2007-2009 (*MoJ Sentencing Statistics Brief*).

The SPCC has, however, identified a number of issues surrounding the delivery of community orders. We feel it is important for the criminal justice system to address the following:

Resources

We are acutely aware of the need for magistrates to consider alternatives to short custodial sentences – particularly in view of hitherto minimal rehabilitation programmes for short-term prisoners. We are also aware of the pressure on probation resources – in common with other areas of public expenditure. Much of the excellent work showcased at the recent NOMS Annual Conference can clearly produce effective outcomes, but is demonstrably resource intensive. If sentencers' confidence in the efficacy of community sentences is not to be

eroded it is important they are assured that probation is sufficiently resourced to meet growing demand in a period of austerity. We applaud the determination of probation services to protect frontline services but already one major unit has had to restrict unpaid work placements and ask sentencers to consider alternatives. Though a temporary measure, this is clearly an unsatisfactory limitation of sentencing options. The inability of some areas to effectively carry out supervision orders is also a cause for concern.

The wider debate on justice reinvestment carries, we believe, a related threat that magistrates' sentencing options could be narrowed before resources are allocated to fund alternative community-based programmes. (*House of Commons Justice Committee Report – Cutting Crime; the case for justice reinvestment. 1 Dec 2009*).

Availability

In a number of areas delays in offenders commencing community programmes have been reported. Magistrates adhere to the principle “Justice delayed is justice denied” so such delays are clearly unacceptable and a cause for concern. The Committee has expressed unease about the lack of resources for requirements within community sentences to be carried out. If a requirement within a community order cannot be satisfied due to a lack of resources then the intention of the sentencing bench is not being fulfilled and this has a serious implication for the criminal justice system as a whole.

Similarly, there needs to be consistency of sentencing throughout the year not just at the start of the financial year when there is more money in probation budgets for orders to be carried out. If a requirement is not available due to budget constraints at the end of a financial year when it was available earlier in that year, then that would amount to treating defendants differently and would not be just.

NOMS must ensure that offenders start promptly on work programmes and actually do the work they have been ordered to. MA policy is that the maximum length of time between sentence and start of rehabilitative or punitive work on a Community Order should be one month. (*AGM resolution November 2009*).

Inconsistency

It is noticeable that some disposals – notably unpaid work (33 per cent of all requirements) – are routinely proposed within pre-sentence reports as the punitive element in a community order, while others, in particular curfew orders (7 per cent) and attendance centres (0 per cent) are employed sparingly. Why this should be so, is unclear, but there is obviously a danger that the opportunities afforded by such disposals will be missed. Currently there is no guidance and little agreement on what constitutes a “high end” curfew order punishment.

In addition, it is clear that the community penalties put forward in many PSRs are prepared with insufficient regard to magistrates' sentencing guidelines and we would hope this situation could be rectified.

For our part, when ordering the preparation of a report, it is desirable for sentencing benches to give a clear preliminary indication of sentence to probation staff, based on the seriousness of the offence.

Breach of an Order

The powers granted to the courts to make a community order more onerous were welcomed in general by magistrates, but it is not appropriate in every case and much has been lost by denying courts the power to fine and allow the order to continue. A large number of community orders are made upon offenders who have problems and lead chaotic lifestyles. Legislation should not restrict sentencers' discretion and should make allowance for the offender who may want to comply, but relapses on the way to rehabilitation.

Communication

In (insert) the requirement for probation to liaise formally with sentencers was removed. Probation Liaison Committees were disbanded in many areas and sentencer engagement with teams delivering community sentences was impaired.

Following guidance from the Senior Presiding Judge that situation has been reversed and probation training for sentencers and ongoing communications at all levels has improved immeasurably.

It remains the case, however, that many magistrates are unaware of the full range of sentencing options. Moreover, sentencers are seldom cognisant of the impact of community sentences at either the local or national level.

Equally, the Committee believes it is vital that existing outreach to improve public awareness of the effectiveness of community sentences compared to short prison sentences is extended. That said, magistrates currently have mixed views regarding offenders undertaking Unpaid Work being more visible by having to wear a coloured tabard.

The SPPC is also of the opinion that making unpaid work more intensive (increasing the required minimum number of hours each week) will not suit all sentenced offenders, especially those who currently have paid full-time employment and who undertake Community Payback during the week-end. Some may even be a carer for their children on one of those days. Imposing too intensive an order may cause problems and possible re-offending.

Recommendations

- Community sentence requirements *must* be adequately and consistently resourced.
- NOMS should ensure greater consideration of the breadth of sentences available to magistrates and clarify probation's approach to Electronic Monitoring proposals.
- The committee should continue to encourage greater consistency from sentencing benches in the guidance they give probation when ordering PSRs.
- The obligation to pass more onerous sentences on breach of a community order should be removed and magistrates' discretion to take into account the circumstances of individual cases should be restored.
- The committee should encourage branches to work alongside probation staff to improve public understanding of community programmes.

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