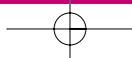
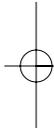
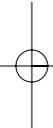
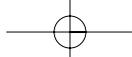
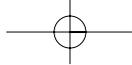


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The use and impact of the Community Order and the Suspended Sentence Order

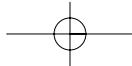
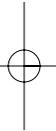
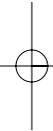
George Mair
Noel Cross
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The use and impact of the Community Order and the Suspended Sentence Order

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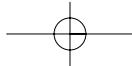
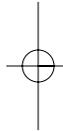
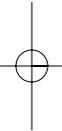
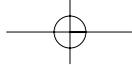
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Introduction

This is the first in a series of reports as part of the Centre for Crime and Justice Studies Community Sentences project. The project was initially established to investigate and monitor the new Community Order introduced in the Criminal Justice Act 2003 by providing good quality, objective information about the way it was used and managed during a period of great change following the creation of the National Offender Management Service (NOMS). However, as this report demonstrates, soon after the implementation of the Community Order on 4 April 2005, it became clear that the new Suspended Sentence Order, sometimes referred to as ‘custody minus’, was playing a significant role in sentencing and impacting directly on the work of the Probation Service. The project’s remit was therefore expanded to examine the Suspended Sentence Order.

These new sentences raise significant issues for the courts, the Probation Service, the wider penal system, and, of course, the offenders who are sentenced. For the courts, they represent a new approach to sentencing that involves delivering a preliminary indication of seriousness prior to the preparation of a pre-sentence report and juggling with a range of possible requirements that can make up either order. For the Probation Service, the arrival of the Community Order and the Suspended Sentence Order, although legally the latter is a custodial sentence, signals the end of operating a variety of different sentences and facing up to the challenges of a single order with a range of possible requirements. With regard to the wider criminal justice system, both sentences – and the Suspended Sentence Order in particular – are part of an attempt to narrow the custody/community divide alongside the creation of a combined prison and probation structure under the National Offender Management Service.¹ It is also worth noting that they are both intended to affect the custody rate and to address the issue of up-tariffing² highlighted by the Carter report (Carter 2003) and accepted by the government (Home Office 2004a). For offenders, there is the challenge of understanding and reacting positively to the new sentences which are made up of separate parts, and which may appear fragmented and therefore operate less effectively than they might.

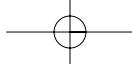
The introduction of new court sentences is always a significant event (cf. the Community Service Order, the Combination Order, the Drug Treatment and Testing Order), but the arrival of the Community Order and the Suspended Sentence Order signals a radical and profound change with considerable implications. This report begins by exploring the

The Community Order replaces all existing community sentences for adults. It consists of one or more of 12 possible requirements and could last for as short a time as a few hours or as long as three years.

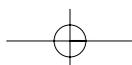
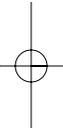
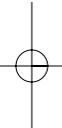
The Suspended Sentence Order (SSO) is a custodial sentence, as it should only be used where the court is minded to pass a custodial sentence of less than 12 months. It is made up of the same requirements as the Community Order, however, so in the absence of breach is served wholly in the community. It consists of an ‘operational period’ (the time for which the custodial sentence is suspended) and a ‘supervision period’ (the time during which any requirements take effect). Both may be between six months and two years and the ‘supervision period’ cannot be longer than the ‘operational period’, although it may be shorter.

1. A new ‘custody plus’ sentence to be served partly in custody and partly in the community, also introduced in the Criminal Justice Act 2003, is a key part of this development. However, its implementation, due in autumn 2006, has been deferred.

2. Uptariffing has been succinctly described by Rod Morgan: ‘Sentences have become substantially more severe, community penalties displacing financial penalties (and to a lesser extent discharges) and immediate custody displacing community penalties and suspended sentences. Furthermore, the custodial sentences being imposed are longer’ (Morgan 2003: 12).



background to the new sentences and their origins. It looks at the aims of the sentences and the possible problems that may emerge. It presents an analysis of the available sentencing data in order to examine how the sentences are being used (it should be noted that it is still early days for the new sentences) and examines probation officer views about the orders. Finally, it draws conclusions about the extent of the changes that have occurred so far as a result of the introduction of the new orders.



Chapter 1

Origins

During the years since its introduction in 1907, the Probation Order accumulated a variety of requirements that could be added for treatment and/or control purposes. These requirements were added as a result of various pieces of legislation with seemingly little account taken of what was already available and little effort to co-ordinate them. By 1992 there were a total of 14 requirements listed separately in the annual *Probation Statistics* (along with a general 'other requirements' group), and in 2002 yet another was added – the drug abstinence requirement. In 2003, half of those starting Community Rehabilitation Orders and almost half (46 per cent) of those starting Community Punishment and Rehabilitation Orders had an additional requirement added to their orders (see Home Office 2004b, Table 3.6). In addition, at least four requirements could be used to address offenders' drug problems. Clearly, something akin to a Tower of Babel had been permitted to develop without any real purpose or sense of direction.

The Probation Order – essentially involving one-to-one sessions with a probation officer – could last for a minimum of six months and a maximum of three years. In 2001, its name was changed to the Community Rehabilitation Order (CRO). Since 4 April 2005, it has been superseded by the supervision requirement of the Community Order.

The Community Service Order (CSO) was introduced in 1972. Its name was also changed in 2001 to the Community Punishment Order (CPO), which had a minimum of 40 hours and a maximum of 240 hours. Since 4 April 2005, it has become the unpaid work requirement of the Community Order, with a minimum of 40 hours and a maximum of 300.

The Combination Order (combining probation and community service) was introduced in the 1991 Criminal Justice Act, with a probation element of 12 months to three years, and community service element of 40 to 100 hours. It was renamed as the Community Punishment and Rehabilitation Order (CPRO) in 2001. Its place is now taken by the Community Order with a supervision and an unpaid work requirement.

The Drug Treatment and Testing Order (DTTO) became available nationally from October 2000 and could last between six months and three years. It has been superseded by the drug rehabilitation requirement of the Community Order.

The CRO and the CPRO could have a variety of specific requirements added to them: non-residential mental health treatment; residential mental health treatment; residence in an approved probation hostel; residence in another institution; another residential requirement; probation centre/accredited programme; report to a specified person at a specified place; participation in specified activities; refrain from specified activities; mental health treatment by/under a qualified medical person; residential drugs/alcohol treatment; non-residential drugs/alcohol treatment; drugs/alcohol treatment by/under a qualified medical person; drug abstinence requirement; extended requirements for sex offenders.

In 1988, the then Conservative government published a Green Paper, *Punishment, Custody and the Community* (Home Office 1988), which aimed to limit the numbers being imprisoned by strengthening existing community sentences. Three options were proposed for introducing a new community sentence. One of these was ‘a new order, replacing probation orders, community service orders and possibly attendance centre orders’ (Home Office 1988: 14). This proposal was based partly on the model of probation used in the United States, where various conditions (including community service) could be easily added to the Probation Order so long as they were relevant to ‘treating’ the offender. This model was seen to have the advantage of being ‘flexible’, but was also judged to have the disadvantage of possibly encouraging ‘the courts to impose too severe a penalty and make them more reluctant to use supervision a second time for an offender who had failed to complete an earlier order satisfactorily’ (Home Office 1988: 14–15). (As noted in the next chapter of this report, this concern reappeared prior to the introduction of the new Community Order in April 2005.) The Conservative government opted for a Combination Order, later renamed the Community Punishment and Rehabilitation Order, which was introduced in the 1991 Criminal Justice Act. The Combination Order had the same set of possible requirements as the Probation Order.

To complicate matters further, another new order was introduced as a result of the Crime and Disorder Act 1998 – the Drug Treatment and Testing Order. This order was piloted in a few areas before being rolled out nationally in October 2000. So, by 2002, there were four main community penalties (the Community Rehabilitation Order, the Community Punishment Order, the Community Punishment and Rehabilitation Order and the Drug Treatment and Testing Order), with 15 possible named requirements available for two of these. Curfew Orders and Attendance Centre Orders were also available (the latter only for offenders aged under 21 and not available nationally).

The Labour government’s first significant plan for criminal justice reform, *Criminal Justice: The Way Ahead* (Home Office 2001a), included the introduction of ‘a more flexible community sentence’ (p.42), which would have a menu of options that could provide punitive, reparative and crime reductive elements. Later in the year, the Halliday review of the sentencing framework, *Making Punishments Work*, was published, advocating the introduction of a ‘single, non-custodial penalty with specified ingredients’ (Home Office 2001b: 39). Halliday argued, with some justification, that the proliferation of different types of community sentences could increase the risk of inconsistency, and the number of requirements available needed simplification. He also claimed that the current range of community sentences was ‘viewed by many as insufficiently punitive or protective of communities’ (p.38). Obviously, the arguments used in the 1988 Green Paper against the idea of a single community order had been forgotten or were judged no longer to apply. The government response to Halliday, set out in the White Paper *Justice for All* (Home Office 2002), accepted the proposal for a single community sentence to replace the existing community penalties. The following year, legislation introduced the Community Order with 12 possible requirements. The Suspended Sentence Order was also introduced at this time.

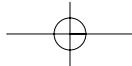
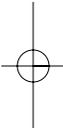
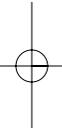
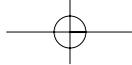
Both sentences became available to the courts on 4 April 2005 for offences committed on or after that date. Offences committed before 4 April were subject to the ‘old style’ community penalties. Two sentencing structures were therefore initially running in parallel, while the number of offenders sentenced to the ‘old’ sentences gradually decreased. A Home Office press release heralding the new sentences claimed that the Community Order would give ‘sentencers a much greater degree of flexibility in putting together tough community sentences that will be tailored to the needs of offenders and the seriousness of their offence’. And the Suspended Sentence Order would allow ‘the

- Unpaid work (40–300 hours)
- Supervision (up to 36 months; 24 months maximum for SSO)
- Accredited programme (length to be expressed as the number of sessions; must be combined with a supervision requirement)
- Drug rehabilitation (6–36 months; 24 months maximum for SSO; offender’s consent is required)
- Alcohol treatment (6–36 months; 24 months maximum for SSO; offender’s consent is required)
- Mental health treatment (up to 36 months; 24 months maximum for SSO; offender’s consent is required)
- Residence (up to 36 months; 24 months maximum for SSO)
- Specified activity (up to 60 days)
- Prohibited activity (up to 36 months; 24 months maximum for SSO)
- Exclusion (up to 24 months)
- Curfew (up to 6 months and for between 2–12 hours in any one day; if a stand-alone curfew order is made, there is no probation involvement)
- Attendance centre (12–36 hours with a maximum of 3 hours per attendance)

court to impose community requirements together with a suspended custodial sentence, which is activated [*sic*] if the offender breaches the community period’. The then Home Office minister Paul Goggins was quoted as welcoming the increased use of ‘robust, properly supervised’ community punishments that would cut offending (Home Office 2005a).

The new sentences were intended to contribute to reductions in short-term prison sentences by providing a robust alternative to custody and by tackling up-tariffing. The Sentencing Guidelines Council made these aims clear in its guidance to the courts:

‘... even where the threshold for a community sentence has been passed a financial penalty or discharge may still be an appropriate penalty... The top range would be for those offenders who have only just fallen short of a custodial sentence *and for those who have passed the threshold but for whom a community sentence is deemed appropriate.*’ (Sentencing Guidelines Council 2004: 5,8; emphasis added)



Chapter 2

Potential issues and problems

While one can discern a certain logic in trying to tidy up the various community penalties by introducing a single generic order, it is not immediately obvious that this approach will resolve the issue. Nor is it certain that the new sentences will succeed in diverting the numbers being sentenced to short custodial sentences. Previous experience of 'alternatives to custody' suggests that, at best, only about half of those sentenced to community options were diverted from a custodial sentence with the remainder being sucked up tariff (see Pease et al 1977; Mair 1988). Several potential problems can be discerned and are described in this chapter.

Confusion and tension

Published guidance on the use of the Community Order makes it quite clear that probation officers must avoid the overuse of requirements (Home Office 2005b). It also refers to one to three requirements as being normal for most Community Orders. Yet, ultimately, the question of how many requirements to include in an order is a matter for the courts. Probation officers are offered a series of model combinations to use in their sentencing proposals but they are also instructed to make no reference to such combinations in their proposals:

'Report writers should make NO reference in the wording of their sentencing proposals to model combinations or set packages of Requirements.'
(Home Office 2005b: 12, 28, 69; emphasis in original)

Model combinations might contain a base requirement, a supporting requirement and one or more optional requirements. Combinations can be grouped according to their primary function (restriction, practical support, personal change, treatment, control) and these can be mapped onto the purposes of sentencing outlined in the Act (punishment, reparation, rehabilitation, protection and the reduction of crime).

Not only are the model combination types inadequately differentiated from each other, but sentencing can also take account of several purposes. Indeed, while the Home Office guidance tries to tabulate the various requirements and the sentencing purposes for which they might be proposed (see Table 1), it also notes that although the table indicates the main purpose 'some requirements may also have other functions or purposes' (Home Office 2005b: 67), an admission that seems only too obvious.

Sentence overload

In addition to the possibilities for confusion and tension between probation officers and sentencers, another key potential problem with both of the new orders is requirement overload. Sentencers, especially magistrates, tend to believe that more is almost certainly better, and the scope for adding an excessive number of requirements to a Community Order or Suspended Sentence Order seems to be considerable. This is particularly the case with the Suspended Sentence Order which is, after all, a custodial sentence. Indeed, previous research has demonstrated that, when faced with the power to add conditions to sentences, magistrates will take the opportunity (Hedderman et al. 1999; Mortimer and

Mair 1995). Should this occur, offenders would be likely to fail to comply with their requirements and custody could result, thus contributing to the already overcrowded prison population.

Table 1: Criminal Justice Act 2003: requirements and main purposes *Source: Home Office 2005b p.67*

| Requirement | Punishment | Reparation | Rehabilitation | Protection |
|----------------------|------------|------------|----------------|------------|
| Unpaid work | + | + | + | |
| Supervision | | | + | |
| Accredited programme | | | + | |
| Drug rehabilitation | | | + | |
| Alcohol treatment | | | + | |
| Mental health | | | + | |
| Residence | | | + | + |
| Specified activity | | + | + | |
| Prohibited activity | + | | | + |
| Exclusion | + | | | + |
| Curfew | + | | | + |
| Attendance centre | + | | | |

Sentencers have less discretion than they had previously to avoid imprisonment in breach cases. In the past, when dealing with a breach, they could take no action, issue a warning, or impose a fine, and probation officers had more discretion about whether they took a breach case back to court. In the case of the new Community Order, these options are no longer available. The court can only amend a Community Order by imposing more onerous requirements or it can revoke the order and resentence – possibly with a custodial sentence, even where the original offence was not punishable by imprisonment. With regard to the Suspended Sentence Order, the court can activate the custodial sentence, impose more onerous requirements or lengthen the supervision period. In other words, a custodial sentence is not inevitable in cases of breach as stated in the Home Office press release quoted in chapter 1.

Uptariffing

Another possible problem is the ‘uptariffing’ of offenders, so that sentencing generally becomes more punitive – for example, those fined 15 years ago are now given community penalties. There is considerable evidence that this has been happening in England and Wales for some years (see Hough et al. 2003; Mair 1997; 2004; Morgan 2003) and it would seem reasonable to assume that it will continue to do so if no action is taken. By subjecting offenders to increasingly severe sentences although their offences have not become more serious, levels of punitiveness are ratcheted up, the possibility of a custodial sentence ‘next time’ is increased, and what Rod Morgan has termed ‘the silting up’ of probation caseloads with less serious offenders will continue (Morgan 2003: 15). Whether those planning the introduction of the Community Order and the Suspended Sentence Order noted Morgan’s warning about the potential for net widening if new sentences were introduced is an interesting question:

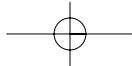
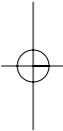
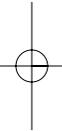
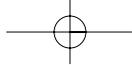
'Such proposals [to introduce new sentences] are likely to be accompanied by arguments, as they have been in the past, that the tougher orders or requirements are necessary for community penalties to be credible to sentencers: by that means alone will sentencers be willing to substitute punishment in the community for custody. This road has repeatedly been travelled before. Unless such proposals are accompanied by fundamental means to displace those low risk offenders currently subject to community penalties, the outcome is likely to be further ratcheting up of the punitive trend.'

(Morgan 2003: 17)

A dual sentencing framework

One final issue that may have an impact on use of the new orders is the presence of a dual sentencing framework. The introduction of the new sentences on 4 April 2005 did not mean the disappearance of the 'old style' sentences. Those whose offence was carried out prior to 4 April are to be sentenced using the 'old' sentences. Over time, the old system will gradually disappear, but it is possible that the presence of twin systems may have an inhibitory effect upon sentencers' use of the requirements available under the Community Order. If sentencers are familiar with a system where a Community Rehabilitation Order with an accredited programme requirement is the normal sentence, it is possible that the idea of using three or four requirements will be alien. If this is the case, one might expect that as the old sentences disappear from use – and are therefore no longer part of the everyday working practices of sentencers – the number of requirements that make up a Community Order will increase.

In the next chapter, we consider trends in the use of the new orders in order to examine how far these concerns have been realised.



Chapter 3

Trends in use

As might be expected with the gradual phasing in of the new orders, it took some months for the number of Community Orders to outstrip the number of 'old style' community sentences passed by the courts (Table 2). By December 2005, however, three times as many Community Orders as 'old style' community sentences were being made.¹ At this time, one in ten of the total of community sentences and Suspended Sentence Orders made were Suspended Sentence Orders. By July 2006, the number of offenders whose offences had been committed prior to 4 April 2005 was declining rapidly. The proportion of Community Orders had increased to 71 per cent but, more surprisingly, the proportion of Suspended Sentence Orders had increased to 22 per cent. Such use of the Suspended Sentence Order was unexpected. Home Office estimates had been at around half of that figure (Home Office 2006c). The Suspended Sentence Order is, of course, a custodial sentence; its popularity so far would suggest – other things being equal – increasing levels of punitiveness.

Table 2: Number of commencements of Community Sentences and Suspended Sentence Orders, April 2005 to July 2006, thousands (%)

| Month | 'Old' Community Sentences | Community Orders | Suspended Sentence Orders | Total |
|----------------|---------------------------|------------------|---------------------------|--------|
| April 2005 | 12,169 (93) | 907 (7) | 19 | 13,095 |
| May 2005 | 9,375 (73) | 3,263 (26) | 151 (1) | 12,789 |
| June 2005 | 8,012 (59) | 5,377 (39) | 314 (2) | 13,703 |
| July 2005 | 6,475 (50) | 6,100 (47) | 444 (3) | 13,019 |
| August 2005 | 5,416 (42) | 6,957 (53) | 606 (5) | 12,979 |
| September 2005 | 4,780 (35) | 7,979 (59) | 804 (6) | 13,563 |
| October 2005 | 4,178 (31) | 8,492 (62) | 974 (7) | 13,644 |
| November 2005 | 3,643 (25) | 9,647 (66) | 1,322 (9) | 14,612 |
| December 2005 | 2,595 (22) | 7,745 (67) | 1,236 (11) | 11,576 |
| January 2006 | 2,719 (18) | 10,193 (70) | 1,743 (12) | 14,655 |
| February 2006 | 2,202 (15) | 10,097 (71) | 2,031 (14) | 14,330 |
| March 2006 | 2,099 (14) | 10,903 (71) | 2,307 (15) | 15,309 |
| April 2006 | 1,357 (11) | 8,909 (73) | 1,986 (16) | 12,252 |
| May 2006 | 1,457 (10) | 10,432 (72) | 2,652 (18) | 14,541 |
| June 2006 | 1,215 (8) | 10,704 (72) | 2,948 (20) | 14,867 |
| July 2006 | 961 (7) | 9,803 (71) | 2,978 (22) | 13,742 |

1. All data used in this section have been taken from two Home Office reports (2006a; and 2006b) unless otherwise stated. It is important to note that the data exclude those given Community Orders with a stand-alone curfew.

Number of requirements

Tables 3 and 4 set out the use of requirements for the Community Order and the Suspended Sentence Order respectively. So far as the former is concerned, the present trend is for half of Community Orders to have only one requirement and one-third to have two. In July 2006, only 11 Community Orders were recorded as having five requirements. At present, then, there is no evidence to suggest that requirement overload is occurring with the Community Order.

Table 3: Commencements of Community Orders by number of requirements, April 2005 to July 2006 (%)

| Month | 1 | 2 | 3 | 4 | 5 | Total number |
|----------------|----|----|----|---|---|--------------|
| April 2005 | 64 | 25 | 10 | 1 | 0 | 907 |
| May 2005 | 53 | 31 | 14 | 2 | 0 | 3,263 |
| June 2005 | 51 | 32 | 15 | 2 | 0 | 5,377 |
| July 2005 | 51 | 32 | 14 | 2 | 0 | 6,100 |
| August 2005 | 50 | 33 | 14 | 2 | 0 | 6,957 |
| September 2005 | 50 | 33 | 15 | 2 | 0 | 7,979 |
| October 2005 | 48 | 36 | 15 | 2 | 0 | 8,492 |
| November 2005 | 49 | 34 | 15 | 2 | 0 | 9,647 |
| December 2005 | 49 | 35 | 14 | 2 | 0 | 7,745 |
| January 2006 | 50 | 35 | 14 | 1 | 0 | 10,193 |
| February 2006 | 48 | 36 | 14 | 2 | 0 | 10,097 |
| March 2006 | 48 | 36 | 14 | 1 | 0 | 10,903 |
| April 2006 | 50 | 35 | 13 | 1 | 0 | 8,909 |
| May 2006 | 50 | 35 | 13 | 2 | 0 | 10,432 |
| June 2006 | 49 | 36 | 13 | 1 | 0 | 10,704 |
| July 2006 | 50 | 35 | 13 | 2 | 0 | 9,803 |

With regard to the Suspended Sentence Order, the picture is rather different – and significantly so. Around one-third of Suspended Sentence Orders have only one requirement and almost half have two. As with the Community Order, only a handful of Suspended Sentence Orders (nine) had five requirements in July 2006. While 48 per cent of Community Orders had two or three requirements in July 2006, the figure for Suspended Sentence Orders was 63 per cent. The mean number of requirements for the Community Order for the 12-month period, August 2005 to July 2006, was 1.7, while for the Suspended Sentence Order it was 1.9. As Tables 3 and 4 show, the most common number of requirements for the Community Order was one, while for the Suspended Sentence Order it was two.

Table 4: Commencements of Suspended Sentence Orders by number of requirements, April 2005 to July 2006 (%)

| Month | 1 | 2 | 3 | 4 | 5 | Total number |
|----------------|----|----|----|---|---|--------------|
| April 2005 | 41 | 41 | 12 | 6 | 0 | 19 |
| May 2005 | 32 | 49 | 18 | 1 | 0 | 151 |
| June 2005 | 35 | 48 | 17 | 0 | 0 | 314 |
| July 2005 | 37 | 45 | 16 | 2 | 0 | 444 |
| August 2005 | 34 | 47 | 16 | 2 | 0 | 606 |
| September 2005 | 37 | 45 | 16 | 2 | 0 | 804 |
| October 2005 | 38 | 46 | 15 | 1 | 0 | 974 |
| November 2005 | 35 | 48 | 15 | 2 | 0 | 1,322 |
| December 2005 | 37 | 44 | 17 | 2 | 0 | 1,236 |
| January 2006 | 36 | 45 | 17 | 2 | 0 | 1,743 |
| February 2006 | 37 | 44 | 17 | 2 | 0 | 2,031 |
| March 2006 | 36 | 43 | 19 | 2 | 0 | 2,307 |
| April 2006 | 38 | 44 | 16 | 2 | 0 | 1,986 |
| May 2006 | 36 | 45 | 17 | 2 | 0 | 2,652 |
| June 2006 | 36 | 44 | 18 | 2 | 0 | 2,948 |
| July 2006 | 35 | 46 | 17 | 2 | 0 | 2,978 |

This evidence suggests that the Suspended Sentence Order is being used as a more punitive sentence than the Community Order. This situation contradicts the Sentencing Guidelines Council proposals, which state that the requirements for the Suspended Sentence Order should be:

‘... less onerous than those imposed as part of a community sentence. A court wishing to impose onerous or intensive requirements on an offender should reconsider its decision to suspend sentence and consider whether a community sentence might be more appropriate.’

(Sentencing Guidelines Council 2004: 25)

And this guidance is reinforced in Home Office Probation Circular 25/2005, where it is emphasised that the purpose of requirements for the Suspended Sentence Order is ‘not to provide further punishment, but to meet other purposes such as protection of the public or the rehabilitation of the offender... the court must have regard to the offender’s ability to comply with the requirements. The court should not impose a very onerous set of requirements which make the offender likely to breach the order’

(Home Office 2005b: 59).

Length of order

The average length of a Community Order is around 14 months (in 2004, the average length of a Community Rehabilitation Order was 16.8 months). The average for those with only one requirement is 12.4 months and where there are four requirements it is 17.6 months. Given that the Suspended Sentence Order has, on average, more requirements

than the Community Order, one might expect that its average length would be commensurately longer. However, the supervision period for a Suspended Sentence Order (the time where requirements are in operation) is a maximum of two years – unlike the Community Order where a maximum of three years is possible. This limitation could drive the length of the Suspended Sentence Order down. However, the average length of the Suspended Sentence Order is currently 16.6 months.

Type of requirements

For those 55,020 Community Orders with only one requirement made during the 12 months between August 2005 and July 2006, two-thirds (65 per cent) involved unpaid work, while almost one in three involved supervision (29 per cent). The number of unpaid work requirements (previously community service or community punishment) is not surprising given the government's emphasis on its significance:

'We think that unpaid work should be at the heart of community sentences, because it is about offenders making amends to the community for the harm they have done. It should be an option the courts consider for the majority of offenders punished in the community... We expect the number of hours of unpaid work done by offenders to rise from 5 million in 2003 to approaching 10 million in 2011.'

(Home Office 2006d: 20–21)

A further 3 per cent involved a Curfew Order, while 2 per cent involved drug treatment. It must be emphasised that the number of Curfew Orders represents a considerable underestimate because stand-alone curfews are not supervised by the Probation Service and are therefore not included in the data-set used here. The Home Office estimate for stand-alone curfew requirements (covering the Community Order and the Suspended Sentence Order) is 17,600 – a substantial number. This caveat should be borne in mind in what follows.

During the 12-month period between August 2005 and July 2006, six requirements were used fewer than 100 times to make up a Community Order with only one requirement (residential requirement: 12; alcohol treatment: 35; mental health requirement: 15; specified activity: 75; prohibited activity: 5; exclusion requirement: 11).

The majority of the 7,816 Suspended Sentence Orders made during the same period involved supervision (51 per cent), while a further 41 per cent involved unpaid work. Four per cent involved a Curfew Order, 1 per cent involved drug treatment and a further 1 per cent involved an accredited programme.

For Community Orders and Suspended Sentence Orders with two requirements the most common combinations were: supervision and accredited programmes (45 per cent of Community Orders and 50 per cent of Suspended Sentence Orders); supervision and unpaid work (21 and 22 per cent respectively); and supervision and drug treatment (15 and 10 per cent).

Where three requirements were used, the most popular for both sentences were: supervision, accredited programme and unpaid work (43 per cent of Community Orders and 41 per cent of Suspended Sentence Orders); supervision, accredited programme and drug treatment (19 and 14 per cent respectively); and supervision, accredited programme and curfew (7 and 11 per cent).

Table 5 shows that two-thirds of requirements made for both sentences were supervision and unpaid work, with a further fifth made up of an accredited programme requirement. It would appear from the data in this table and the previous paragraph that, for the most

part, the Community Order is simply the Community Rehabilitation Order, the Community Punishment Order, or the Community Punishment and Rehabilitation Order (sometimes with an additional requirement).

Table 5: Requirements made in Community Orders and Suspended Sentence Orders, August 2005 to July 2006 (%)

| Requirement | Community Order | Suspended Sentence Order |
|------------------------------|-----------------|--------------------------|
| Supervision | 37 | 43 |
| Unpaid work | 30 | 20 |
| Accredited programme | 18 | 21 |
| Drug treatment | 6 | 4 |
| Curfew | 4 | 5 |
| Specified activity | 3 | 3 |
| Alcohol treatment | 1 | 1 |
| Mental health | 0 | 0 |
| Residential | 0 | 0 |
| Exclusion | 0 | 1 |
| Prohibited activity | 0 | 0 |
| Attendance centre | 0 | 0 |
| Total number of requirements | 187,868 | 39,093 |

While it is difficult to compare the distribution of 'new' sentences with that of their predecessors, there does seem to have been a shift in the balance of unpaid work and supervision. In 2004, just over 30,000 offenders commenced Community Rehabilitation Orders with no additional requirement (Home Office 2005c: Table 3.7); for the 12-month period, August 2005 to July 2006, the comparable figure for those commencing a Community Order with only a supervision requirement was 15,700 (even if Suspended Sentence Orders with only a supervision requirement are added to this figure, the total is just under 20,000).

There is very little evidence of innovation, and some requirements have been used very rarely indeed: notably, alcohol treatment, mental health treatment, the residence requirement, the exclusion requirement, prohibited activity and the attendance centre requirement. There are a variety of possible reasons why these requirements have been so little used: they are not widely available (attendance centre, alcohol treatment); they are not traditionally part of the culture of probation (the exclusion requirement and prohibited activity); there is some confusion about duplication or overlap (the exclusion requirement and prohibited activity); the National Offender Management Service's offender assessment tool, OASys, is not picking up certain problems (mental health).

Regional variations

Regional variations have always been noted in sentencing, but they are particularly interesting for the new orders because of the number of requirements available. As noted above, around half of Community Orders have one requirement, but this overall figure masks considerable variation across probation areas (Table 6). In two areas – Norfolk and Bedfordshire – 65 and 61 per cent respectively of Community Orders had only one

requirement for the period August 2005 to July 2006. Only 1 per cent of Norfolk's Community Orders had four or more requirements, while Bedfordshire had no orders with more than three. In contrast, in nine areas, fewer than 45 per cent of Community Orders had only a single requirement: Northumbria, Wiltshire and Gwent: 44 per cent; Gloucestershire: 42 per cent; Northamptonshire, Staffordshire, West Midlands, and Avon and Somerset: 41 per cent; and North Wales: a surprising 34 per cent.

Table 6: Use of requirements by probation area, August 2005 to July 2006 (%)

| Area | One | Two | Three + | Total number |
|------------------|-----|-----|---------|--------------|
| Durham | 51 | 36 | 13 | 1,407 |
| Northumbria | 44 | 32 | 24 | 3,808 |
| Teesside | 53 | 35 | 12 | 1,921 |
| Cheshire | 45 | 38 | 18 | 1,907 |
| Cumbria | 54 | 34 | 11 | 1,356 |
| Lancashire | 52 | 37 | 12 | 3,958 |
| Manchester | 51 | 37 | 12 | 7,532 |
| Merseyside | 45 | 35 | 19 | 3,225 |
| Humberside | 48 | 32 | 20 | 1,980 |
| N.Yorkshire | 52 | 30 | 17 | 1,660 |
| S.Yorkshire | 54 | 33 | 13 | 3,379 |
| W.Yorkshire | 55 | 35 | 10 | 6,824 |
| Derbyshire | 54 | 29 | 17 | 1,861 |
| Leicestershire | 53 | 34 | 14 | 2,147 |
| Lincolnshire | 47 | 34 | 18 | 1,123 |
| Northamptonshire | 41 | 35 | 23 | 1,160 |
| Nottinghamshire | 59 | 33 | 8 | 3,181 |
| Staffordshire | 41 | 32 | 28 | 2,208 |
| Warwickshire | 51 | 34 | 15 | 914 |
| West Mercia | 52 | 34 | 14 | 1,938 |
| West Midlands | 41 | 41 | 17 | 7,828 |
| Bedfordshire | 61 | 32 | 6 | 1,046 |
| Cambridgeshire | 56 | 28 | 15 | 1,559 |
| Essex | 50 | 33 | 16 | 2,718 |
| Hertfordshire | 50 | 35 | 15 | 1,593 |
| Norfolk | 65 | 27 | 9 | 1,541 |
| Suffolk | 55 | 32 | 13 | 1,120 |
| London | 45 | 39 | 16 | 13,724 |
| Hampshire | 50 | 30 | 19 | 3,847 |

| | | | | |
|--------------------|----|----|----|-------|
| Kent | 47 | 34 | 19 | 2,600 |
| Surrey | 54 | 34 | 12 | 1,214 |
| Sussex | 53 | 36 | 11 | 2,224 |
| Thames Valley | 55 | 34 | 12 | 3,081 |
| Avon and Somerset | 41 | 39 | 21 | 1,915 |
| Devon and Cornwall | 47 | 33 | 19 | 2,371 |
| Dorset | 51 | 33 | 15 | 1,009 |
| Gloucestershire | 42 | 38 | 21 | 884 |
| Wiltshire | 44 | 36 | 20 | 958 |
| Dyfed–Powys | 53 | 35 | 11 | 970 |
| Gwent | 44 | 34 | 22 | 1,449 |
| North Wales | 34 | 35 | 32 | 1,385 |
| South Wales | 51 | 34 | 15 | 3,035 |

Those areas with relatively low percentages of Community Orders with a single requirement tended to be those where orders with three or more requirements were more common. Comparing Norfolk with North Wales is instructive. Single requirement Community Orders were almost twice as common in the former as in the latter. In North Wales 32 per cent of orders had three or more requirements, while in Norfolk the proportion was 9 per cent.

Similar variations are found for the Suspended Sentence Order. In three areas, more than 50 per cent of Suspended Sentence Orders had only one requirement, while in six other areas the figure was less than 30 per cent. These six areas were around two to three times more likely to have orders with three or more requirements than the former.

Given the variations across areas according to the number of requirements used in the Community Order and the Suspended Sentence Order, it is also worth examining the type of requirements used. Table 5 showed the use of the various requirements in total for each sentence, but there are considerable differences between areas. With regard to the Community Order, for example, an accredited programme requirement made up 9 per cent of requirements on Teesside but 21 per cent of requirements next door in Northumbria; unpaid work made up almost half of requirements (47 per cent) in Norfolk, but only 24 per cent in Staffordshire; and, finally, supervision comprised almost half of requirements in Teesside (47 per cent) but only 27 per cent in North Wales. Similar variations can be found relating to the Suspended Sentence Order.

A range of explanations might account for such variations – for example, different patterns of offending, different levels of assessed need, unequal distribution of facilities, different probation area policies, probation responses to targets, different sentencing patterns – but further work will be necessary to examine these in detail to find out which are the most significant. While variations are acceptable if they are due to different patterns of offending or different levels of assessed need, problems occur if they result from unequal access to facilities. If there is greater access to more facilities in some areas than in others, offenders cannot be dealt with fairly or consistently; and if a very small number of offenders in an area receive a specific requirement the conclusion may be that the requirement is not necessary.

Use of orders for women

Women are more likely than men to receive a Community Order with only one requirement (women: 55 per cent; men: 48 per cent). This is also the case with regard to the Suspended Sentence Order (48 per cent and 34 per cent respectively), although the Suspended Sentence Order is less likely to have only one requirement.

There is also some evidence that men's and women's orders comprise different requirements. For both the Community Order and the Suspended Sentence Order, women are more likely to have a supervision requirement and less likely to be required to carry out unpaid work than men (Table 7). This mirrors the use of the Community Rehabilitation Order and the Community Punishment Order for men and women (in 2004, 19 per cent of Community Rehabilitation Orders were made on females, while the figure for Community Punishment Orders was 12 per cent).

Supervision is more commonly a part of a Suspended Sentence Order than it is for a Community Order, while the opposite is the case for unpaid work. Men are more likely than women to be required to attend an accredited programme for both orders; and women are more likely than men to be required to undergo drug treatment. While the assessment of offenders' needs may explain these different uses of requirements, further work will be needed to confirm this assumption.²

Table 7: Distribution of requirements for males and females, Community Order and Suspended Sentence Order, August 2005 to July 2006 (%)

| Requirement | Community Order Males | Community Order Females | Suspended Sentence Males | Suspended Sentence Females |
|----------------------|-----------------------|-------------------------|--------------------------|----------------------------|
| Supervision | 36 | 44 | 42 | 51 |
| Unpaid work | 31 | 24 | 21 | 16 |
| Accredited programme | 18 | 14 | 22 | 15 |
| Drug treatment | 6 | 9 | 4 | 8 |
| Curfew | 4 | 3 | 5 | 3 |
| Specified activity | 3 | 3 | 3 | 4 |
| Alcohol treatment | 1 | 1 | 1 | 1 |
| Mental health | 0 | 0 | 0 | 0 |
| Residential | 0 | 0 | 0 | 0 |
| Exclusion | 0 | 0 | 1 | 1 |
| Prohibited activity | 0 | 0 | 0 | 0 |
| Attendance centre | 0 | 0 | 0 | 0 |
| Total number | 162,370 | 25,495 | 34,751 | 4,342 |

Seriousness and number of requirements

The relationship between the courts' view of seriousness of the offence(s) and the number of requirements in an order should be a direct one. And data for the August 2005 to July 2006 period suggest that this is indeed the case for the most part: for example, 74 per cent of offences assessed as being of low seriousness resulted in a Community Order with

2. It is intended that the project will examine the use of orders for women later in 2007.

only a single requirement, whereas this was the case in only 37 per cent of those assessed as being of high seriousness. The mean number of requirements for those assessed as low seriousness was 1.3; for high seriousness it was 1.9. However, while the numbers are small, it is worth noting that 4 per cent of low seriousness cases had three requirements for their Community Order, and 11 per cent of those assessed at medium seriousness also had three. Such use of multiple requirements requires further exploration. Is it due to the proposal made in reports prepared by the Probation Service, or is it a result of courts making decisions about the number and type of requirements?³

Breach

Breach and effective enforcement to deal with it have been major concerns for more than a decade and, as noted previously, were a particular worry prior to the introduction of the new orders. One of the key drivers behind the introduction of national standards at the end of the 1980s and beginning of the 1990s was to encourage a more consistent and rigorous approach to breach by probation officers through reducing their use of discretion in dealing with breach. This was seen as key to ensuring the confidence of sentencers and therefore encouraging the use of community penalties. The Association of Chief Officers of Probation (ACOP) reacted to increasing government pressure about enforcement by commissioning an audit of enforcement in 1999 (see Hedderman 2003; Hedderman and Hough 2004).

Getting the response to breach 'right' is crucial: too many breaches will lead to increasing use of custody; too few breaches and Community Orders and Suspended Sentence Orders will be seen as soft options. In both cases, sentencers may lose confidence in these sentences and resort to custody.

While not a great deal of evidence about breach and enforcement currently exists, internal Home Office figures show that there were more than 800 custodial receptions for breach of a Suspended Sentence Order during the eight-month period from January to August 2006, compared with 132 during the whole of 2005. Given the increasing use of the Suspended Sentence Order already noted, it is possible that this number will continue to grow – an undesirable development considering the current size of the prison population. Indeed, the Home Office admits that the number of breaches of Suspended Sentence Orders is likely to be double that assumed in current prison population projections.⁴

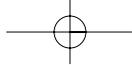
There are no data as yet relating to the breach of Community Orders, but it would not be unreasonable to assume that breach will continue to be a key issue and that numbers being sent to custody as a result of enforcement will be high. It is not unlikely that the breach rate for Suspended Sentence Orders is related to the use of requirements noted previously. The continuing political climate encouraging 'tough on crime' attitudes and resulting in stricter national standards encourages a rigorous approach to breach by probation officers. Moreover, the courts can no longer deal with breach of a Community Order by taking no action, issuing a warning, or imposing a fine and allowing the order to continue unchanged. Regarding the Suspended Sentence Order, guidance is clearer: 'The court must activate the suspended sentence unless it is of the opinion it would be unjust to do so in view of all the circumstances' (Home Office 2005b: 84).

Uptariffing and the use of custody

Part of the thinking behind the introduction of the two new orders was to divert offenders from short-term custodial sentences. One way of doing this was 'to make sure that probation services are not being swamped with less serious offenders' (Home Office 2006e: 29). Even the Home Office as recently as November 2006 has had to admit that this is not occurring:

3. This is another issue that the project intends to explore in more detail in 2007.

4. The data in this paragraph are taken from an internal Home Office report on the use of the Suspended Sentence Order (Home Office 2006c).



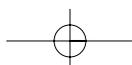
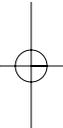
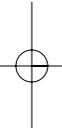
‘The evidence so far is that the courts are not using Community Orders as fully as they might. The anticipated switch to these new community sentences from short terms of imprisonment that was envisaged has not happened but is a crucial part of the package of sentencing reform we wish to achieve.’

(Home Office 2006f: 6–7)

Nor are Suspended Sentence Orders being used appropriately: ‘many of those sentenced to an SSO would have previously been sentenced to a community sentence’.

(Home Office 2006c: 1)

The population in custody on 30 November 2006 totalled 80,550, a 4 per cent increase on the previous year (Home Office 2007). For those sentenced to six months or less there was a decrease of 9 per cent (which might indicate that the new orders were beginning to have some effect), but for those sentenced to more than six but less than 12 months and for those sentenced to between 12 months and four years there were increases of 7 and 4 per cent respectively, which suggests that a general move down-tariff had not yet begun.



Chapter 4

The views of probation staff

A total of six focus groups were held with probation officers in three probation areas in the North West to examine the views and attitudes of probation staff about the Community Order and the Suspended Sentence Order (see Appendix for details). The following issues were identified.

Training

With regard to the initial implementation of the new orders, it was agreed that for the most part training had been adequate, although there were some comments concerning the complexity of the training material. One probation officer, for example, said: 'It made it all sound much more difficult than it has been in practice.' It was felt that older probation officers had found the training more problematic than younger colleagues. Mention was made of the National Probation Directorate training pack consisting of (it was claimed) 250 PowerPoint slides, which had been far too much to try to use. One reason for the relative satisfaction with training might be that probation staff were convinced that magistrates and court staff had had little or no effective training. Some confusion on the part of magistrates regarding the use of the new orders was mentioned in all focus groups.

Adequate resources

Although a few disagreed, it was generally acknowledged that the sentencing packages possible in the new orders were more flexible than the 'old style' sentences, but this did not necessarily mean that the needs of offenders were being met. A key problem was that the requirements were not always available – and alcohol treatment was mentioned specifically. Even where requirements were available, there were often waiting lists that led to severe delays and resulted in offenders dropping out: 'It's particularly a problem for sex offender programmes – there's currently an eight-month waiting list, and it would be longer except that people drop out.' Interestingly, judges have recently identified the same problems:

'We believe that there is at present 40 per cent attrition between the criminogenic "needs" identified and the provision of appropriate programs in sentence planning suggesting that, at present, appropriate programs may not be available. Even where there are programs the demand is such that it frequently cannot be met within a meaningful timescale.'

(Council of Circuit of Judges 2006: para. 12)

A more general problem about lack of resources was also identified. One respondent noted that there was little point in having more options, as without more resources offender needs could not be met any more effectively. Another stated: 'There have always been issues with resources, but the expectations of the new Community Order have made it even harder.' One very experienced officer argued that the new order did nothing to help the accommodation or employment needs of offenders and, despite the focus on specific requirements in the new orders, these were the keys to not offending as far as he was concerned. It is worth noting that the Social Exclusion Unit report, *Reducing Re-offending*

by *Ex-Prisoners*, listed nine key factors that influenced re-offending, and accommodation and employment were among these (Social Exclusion Unit 2003). Even with the potential of the new orders, some felt that the professional ability and commitment of individual probation officers remained key to helping offenders – a matter that was all too often ignored.

Requirements

With regard to the various requirements that were – in theory – available, there was some agreement that, while they all might be useful, the problem was that they were not always available. In some cases, there was uncertainty about using an exclusion requirement or prohibiting activities as these would need to be policed. Officers queried who would do this: ‘I’m sure the police would say that it wasn’t their job to monitor an exclusion requirement.’ In general, there was little difference in the work probation officers were doing with offenders in terms of requirements: ‘Really, we use the same kind of requirements as we did before; it’s just a different format.’

As noted in the previous section, the need for alcohol treatment was specifically highlighted. There was also the problem that younger offenders tended to regard an electronic tag as a ‘badge of honour’ or a ‘designer accessory’. More positively, the drug rehabilitation requirement was considered to be an improvement on the old Drug Treatment and Testing Orders as it was seen to be more flexible. All groups mentioned that there were difficulties with liaising and communicating with the companies running electronic monitoring: ‘We have liaison problems with Group 4’; ‘We don’t get information from Group 4 on breach’. This suggests that such problems are not going away (see Bottomley et al. 2004; Mair 2005), or perhaps there is still some antipathy towards the idea of electronic monitoring on the part of probation officers.

Breach

There was agreement that breach was ‘a nightmare’. The amount of work involved in processing a breach was seen to have increased, and this was exacerbated by the loss of discretion in dealing with it. While officers appeared to acknowledge that they had been able to use too much discretion in the past, they were clear that they had far too little now; there was a need for the pendulum to swing back a bit. This process may well take place given government proposals to give probation officers quasi-judicial powers to deal with some cases of breach (Home Office 2006f).

To make matters worse, officers agreed that there were more breaches than previously. Official figures confirm this trend, showing that in 2004 there were 51,270 breaches of Community Punishment Orders, Community Rehabilitation Orders, Community Punishment and Rehabilitation Orders, and Drug Treatment and Testing Orders compared to 31,151 in 1999 and 19,122 in 1994 (Home Office 2005c: Table 5.4).¹ Officers also said that there was intense pressure to speed up the breach process – and this was alongside the need to struggle to achieve a myriad of other targets. Owing to prison overcrowding, there was a feeling that magistrates were under pressure not to send breach cases to custody, so they usually just added extra hours of unpaid work. This simply led to an increased risk of breach, as the offender had probably found it difficult to cope with his or her requirements in the first place. The fact that courts could no longer take no action, issue a warning or impose a fine meant that breach had become much more of a problem for probation.

1. It is worth noting that there are no breach data included in the 2005 Offender Management Caseload Statistics (Home Office 2006g).

The Suspended Sentence Order

There was no doubt that the Suspended Sentence Order was being used a great deal. One probation officer likened it to magistrates 'playing with a new toy', but there was some uncertainty about whether there was adequate differentiation between the Suspended Sentence Order and the Community Order: 'There is blurring between high-level Community Orders and SSOs.' Several officers suggested that limits should be set on the use of the Suspended Sentence Order – perhaps reserving it for the Crown Court. It was certainly not always used as an alternative to a custodial sentence; indeed in some Crown Courts it was thought to be displacing the Community Order.² The familiar probation complaint of 'setting them up to fail' was used several times to describe Suspended Sentence Orders with too many requirements. Interestingly, several staff claimed that the only reason that all breaches did not end up in custody was that magistrates were only too aware of the political sensitivities around prison overcrowding and were reluctant to revoke and imprison breaches.

Changes in practice

Despite the preceding discussion, there was very little evidence that the existence of the new orders had led to any profound changes in practice. The presence of the new orders contributed to the exacerbation of trends that were already underway in probation officers' work practices. These trends include: the move towards being 'just case managers' (a development that had been evident since the creation of a National Probation Directorate in 2001); the complaint that 'I spend a lot more time on administration now' (heard from all who work in criminal justice agencies); and the faster enforcement of breaches (a development that, as has already been noted, had been underway since the introduction of national standards). All of these developments had been happening for some time, so there was, in fact, no dramatic change in working with offenders.

The move to using unpaid work more often was noted, as were the increasingly blurred boundaries with other agencies. One probation officer pointed out that offenders always used the 'old' terminology in any case; another stated that it remained community service as far as offenders were concerned, for courts it was unpaid work, and in his area he worked in a community punishment team.

Alternative to custody?

There was no agreement about whether either of the new orders was being used as an alternative to custody. Suspended Sentence Orders were perceived as rather more likely to be used in this way – and this was very much part of a probation officer's job. However, this was by no means always the case, and examples were given of breaches of Suspended Sentence Orders where custody did not result. A few respondents thought that the Community Order was used as an alternative to custody, but others thought not. Suspended Sentence Orders were used 'too much' and only delayed the inevitable as far as one probation officer was concerned. Some considered that there were differences in use between district judges and magistrates – with the latter group being 'scared' to imprison offenders.

Sentencers' views

In discussing how sentencers viewed the new orders, probation staff thought that both orders were perceived very positively. However, there was some agreement that the Suspended Sentence Order was used more appropriately in the Crown Court because judges were much more experienced and better trained than magistrates. There was a

2. In a response to the *Making Sentencing Clearer* (Home Office 2006f) consultation paper, the Criminal Justice Committee of the Court of Appeal notes: 'If there is evidence that the new Suspended Sentence Order may be being used rather more than before, it should not be assumed that in such cases a Community Order would have been appropriate. It may very well be that judges, conscious of the strains on prison places, may be deciding that although a prison sentence would be appropriate for the offender or his offence, it is just possible to avoid making an immediately effective custodial order' (Criminal Justice Committee of the Court of Appeal 2006).

tendency on the part of magistrates to adopt a 'pick 'n mix' approach to requirements, although there were said to be variations from bench to bench and from court clerk to court clerk. District judges were considered to be quite strict sentencers who liked to change report proposals to 'put their own stamp on the sentence'.

On the whole, discussion of sentencers' views seemed to focus on how far sentencers were prepared to follow pre-sentence report proposals or not. Several respondents felt there was a mismatch between probation views about seriousness as expressed in the court report (and therefore the number and type of requirements proposed) and the views of magistrates. The argument here, of course, is that probation officer views are the 'correct' ones and if followed lead to appropriate sentencing; where magistrates or district judges add a requirement to those proposed in the report, there is a greater likelihood of breach. One respondent questioned how far the relationship between the types and number of requirements in orders and seriousness were fully understood – either by probation officers or even more so by magistrates.

Benefits and drawbacks

It was agreed that the good points of the Community Order were: its flexibility and its potential; the fact that some of the requirements, such as the curfew requirement, did not demand the involvement of a probation officer; that it offered a standardised sentence; that it fitted in well with the National Offender Management Service assessment tool, OASys, and its focus on risk/needs; and that it was easy to explain to offenders. With regard to the Suspended Sentence Order, its advantages were seen to lie in the fact that it offered increased credibility (especially in the Crown Court) for probation staff, as it could be used for high-risk cases where the custody threshold had been crossed.

The downside of Community Orders, as we have already highlighted, was the fact that all requirements were not available in all areas. Rigorous enforcement was needed to give the Community Order credibility and this was not always forthcoming. At times, the Community Order was the entry level for sentencing – financial penalties were ignored. The only drawback of the Suspended Sentence Order was that it was being used inappropriately and with too many requirements. General points were also made, such as the perennial complaint about lack of resources and poor knowledge of available services in some areas.

Interestingly, there was little evidence of strongly felt positive or negative attitudes towards the Community Order or the Suspended Sentence Order, which might suggest that the new orders have led to little real change for probation staff. The focus groups were convened at a time when government proposals to introduce contestability into probation work had recently been introduced (Home Office 2006h). It is possible perhaps that the relative lack of strong feelings about the new orders was due to rather more pressing concerns.

Conclusions

It must be emphasised that the two new orders have been available for nearly two years. At the time of publication, data were available only for the 16 months following their introduction at the beginning of April 2005. Thus, any apparent trends should be interpreted with some caution. However, by early 2007, it is likely that the number of 'old style' community penalties being passed by the courts will have dwindled to zero. We have argued that the changes in sentences introduced by the Criminal Justice Act 2003 were radical and potentially profound. While the work of probation officers does not appear to have changed dramatically, this report has uncovered some significant issues: the use of the Suspended Sentence Order; questions about the availability of resources and differential use of requirements between probation areas, which have serious implications for justice; and some potentially worrying signs with regard to breach. As a result, the problems of uptariffing and the use of custody remain unchanged.

The key findings of the research are:

- Community Order requirements show no signs of overloading, although it would be worth examining in further detail the relatively few orders which have been defined as being of low seriousness but have three requirements.
- In practical terms thus far there has been little innovation with the Community Order appearing to mirror the old community sentences.
- The Suspended Sentence Order has proved more popular than expected yet, contrary to Sentencing Guidelines Council guidance, it tends to have more requirements than the Community Order.
- Unpaid work is becoming increasingly popular.
- The number of requirements used for the Suspended Sentence Order differs from the number used for the Community Order. The type of requirements used for each order also tends to be different.
- While 12 requirements are theoretically available for both new orders, half have not been used or have been used very rarely.
- There are some male/female variations in the use of requirements that require further study.
- There is wide variation between probation areas with regard to the number and type of requirements used in orders.
- The breach rate, particularly for Suspended Sentence Orders, requires close monitoring.
- There is no evidence to suggest that the new orders are either diverting offenders from custody or having an impact on uptariffing. Indeed, use of the Suspended Sentence Order suggests that this may be contributing to the problem.
- The use of stand-alone curfew requirements remains unclear.
- Probation officers appear to be reasonably satisfied with the new orders which they see as more flexible than their predecessors.
- They are, however, worried about the lack of availability of some requirements, and the rise in the use of unpaid work.
- Suspended Sentence Orders are considered to be overused.

- Communication/liaison with companies operating electronic monitoring schemes remains problematic.
- While on the whole practice with offenders has not changed dramatically, breach has become a serious issue.

It is, of course, possible that the new sentences will settle down and the issues noted above will prove to be teething problems. But it is equally possible that, as the memory of the 'old style' sentences fades, sentencers will begin to use more requirements for the new orders, overloading them, which will lead to failure and breach. This would be especially worrying in the case of the Suspended Sentence Order, which already tends to carry more requirements than the Community Order and where breaches seem to be frequent and more likely to lead to custody.¹ More data on the age of offenders and ethnic groups and the requirements they receive are needed, as are data on the number of requirements and their relationship to breach.² Also, there is a lack of published data on stand-alone curfews, which is a telling point given what might be expected from a fully integrated National Offender Management Service.

The prison population continues to rise, so there is no sign as yet of the new orders contributing to a drop in the numbers in custody – an important rationale for their introduction. It is possible that probation officers are not being creative enough in their proposals for requirements to persuade courts to use Community Orders or Suspended Sentence Orders in place of custody. Or would the use of more requirements – four, five or even six – impact on the numbers of offenders sent to custody? How might the introduction of contestability impact upon the use of requirements? And how will government proposals for a National Enforcement Service (Home Office 2006e) and for offender managers to deal with some instances of breach without going back to court (Home Office 2006f) affect the breach rate?

This is very much an interim report and must be treated as such. With the febrile atmosphere surrounding criminal justice policy likely to continue, the prison population showing no signs of declining and further major changes to how probation officers operate under consideration, it would not be surprising to see significant developments in the use of the two new orders over the next few years. However, important issues have emerged from this research. While it is early days for the new orders, these findings should not be disregarded or overlooked.

1. The previous history of the suspended sentence illustrates that this can easily happen (Ashworth 2000; Cavadino and Dignan 2002).

2. We have deliberately chosen not to discuss the data on the use of the two orders with regard to ethnic group owing to the still relatively high number of cases where ethnic group has not been recorded or stated – around 5 per cent. There appear to be some disparities in use across ethnic groups and it will be important to monitor these.

Appendix

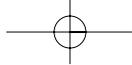
The focus groups

In all, 29 probation staff were involved in the focus groups; most were probation officers, while the remainder were senior probation officers. Their length of service ranged from less than a year to more than 20 years, and most were generic case managers although some had more specialist jobs (for example, working with drug users or on enforcement). Male and female officers were equally represented. Focus group meetings took on average two hours and a loosely structured series of questions was used.

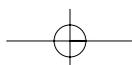
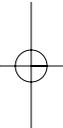
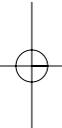
It was originally intended to carry out focus group discussions in different areas of England and Wales, but owing to difficulties in trying to set these up at relatively short notice, this proved impossible. The sample is small and we make no claims for any statistical significance, but the discussions provide the first published material concerning probation officer views of the new orders.

Focus group topics

1. How would you sum up in a brief sentence your views about the new Community Order now it has been running for 18 months?
2. Thinking back to its beginning in April 2005, how well do you think you were prepared for it? (Training? Could implementation have been handled better? What about the effect of having two sentencing structures running together at the same time?)
3. Would you say that the Community Order meets the needs of offenders?
4. What about the various requirements that make up the Community Order? Do you think they are all useful? Why? Have you used them all? Which have been used most? Why? Could you use too many? Are they all available? Any problems with specific requirements? (e.g. those tagged and only dealt with by private companies) What is the relationship between requirements and seriousness?
5. What about breach and enforcement? How is that working? What are the key problems here?
6. Thinking specifically about the Suspended Sentence Order – how is it being used? Any competition with the Community Order? What are the key problems associated with it?
7. Has the existence of the Community Order and the Suspended Sentence Order changed the way in which you work? Explain. Is the Community Order a substantial change from the previous system of CROs, CPOs, CPROs and DTTOs? Is it being used in the same way?
8. Is the Community Order being used as an alternative to custody? To what extent? What about the Suspended Sentence Order?
9. Do you have any initial sense that the Community Order is being used differently for different kinds of offenders – in particular women and young adults?
10. How do you think sentencers (magistrates/judges) see the Community Order? How do they see the Suspended Sentence Order?



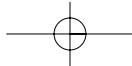
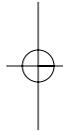
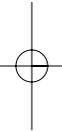
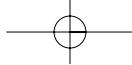
11. What would you say were the good points of the Community Order? Of the Suspended Sentence Order?
12. And what about the bad points of the Community Order? Of the Suspended Sentence Order?
13. Anything else you want to add about either of the two sentences?

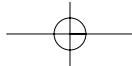
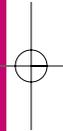
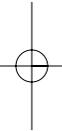
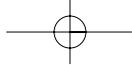


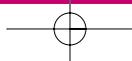
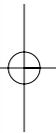
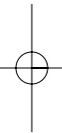
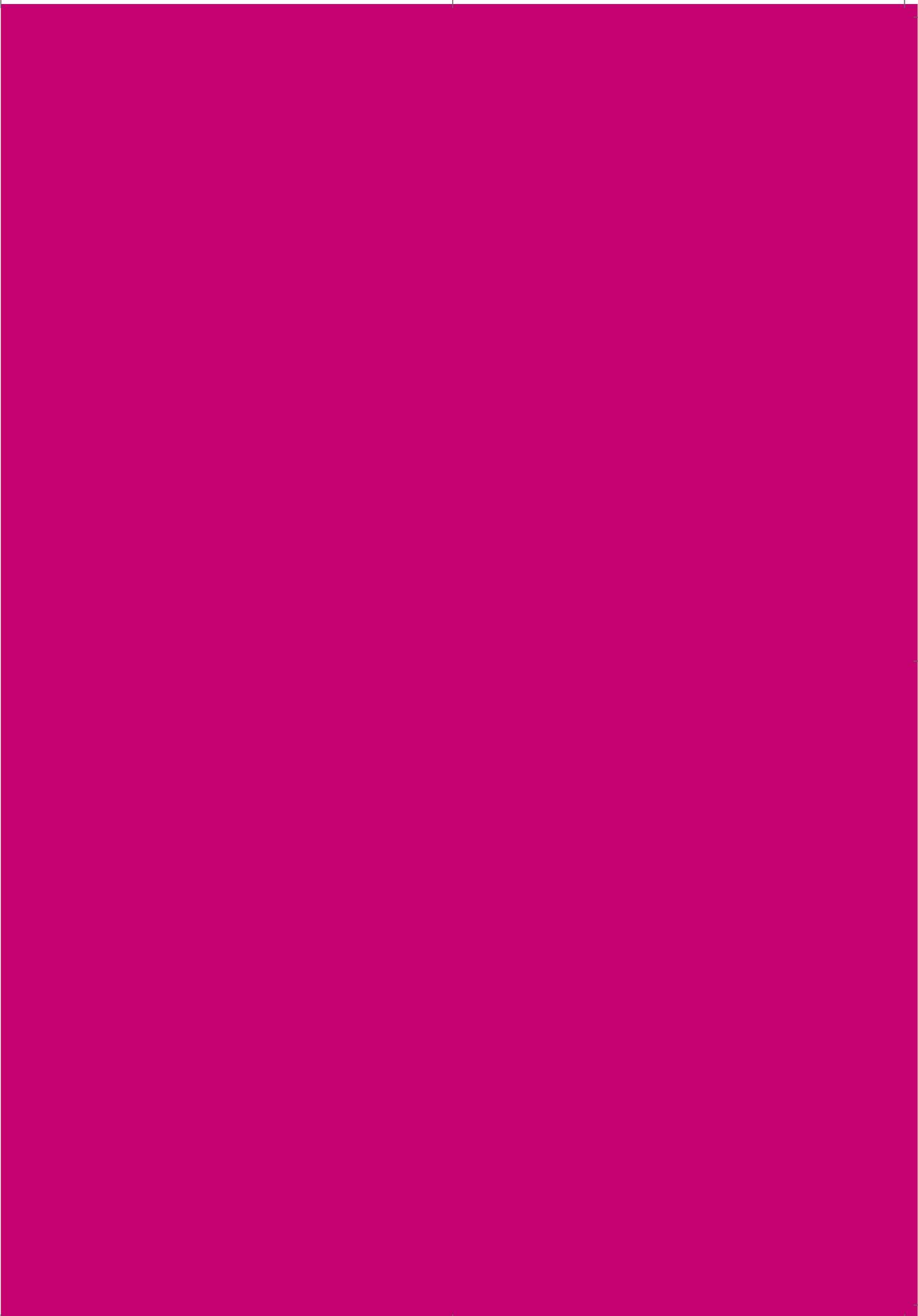
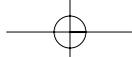
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The Community Sentences project of the Centre for Crime and Justice Studies investigates and monitors the new Community Order and Suspended Sentence Order introduced in the Criminal Justice Act 2003. It offers rigorous, objective information and critical analysis about the way the sentences are used during a period of great change in probation practice. This report, one in a series of publications, looks at the views of probation officers and provides the first independent assessment of the new sentences.

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