

## **CUSTODIAL SENTENCES OF LESS THAN 12 MONTHS**

### **THE PANEL'S ADVICE TO THE SENTENCING GUIDELINES COUNCIL**

#### **FOREWORD BY THE CHAIRMAN**

In this advice the Sentencing Advisory Panel proposes guidelines for the new "custody plus" sentence, which is currently scheduled for implementation in the autumn of 2006; this will replace the existing provisions relating to custodial sentences of less than 12 months. The advice covers the circumstances in which the new sentence should be used and the way in which individual sentences should be structured.

The custody plus order is radically different from the short custodial sentence it replaces and the Panel has considered where it sits within the rest of the new sentencing framework introduced by the Criminal Justice Act 2003. Last year we submitted advice to the Council on other provisions that have already been introduced – custodial sentences of 12 months and above, community orders, suspended sentence orders and intermittent custody orders – and the Council published definitive guidelines - *New Sentences: Criminal Justice Act 2003* - in December 2004. The custody plus order, taken together with the new allocation provisions and the increased sentencing powers for magistrates (which are also expected to be implemented next autumn and on which we are submitting advice separately) completes the new sentencing framework.

We decided that it would be prudent, therefore, to review our earlier advice to the Council and to consider whether the introduction of the new custody plus order would impact on that advice in any way. We have concluded that no amendment is necessary but it has been an extremely useful exercise to consider how the various sentencing options fit together and we have included in our advice the circumstances in which we consider the various options to be appropriate.

We have made various recommendations relating to the structure of a custody plus order i.e. the relationship between the duration of the custodial and licence elements of the sentence and the nature and severity of the requirements that may be imposed during the licence period.

We have declined to suggest any form of correlation between a custody plus order and a sentence of less than 12 months under the existing framework, on the grounds that the two sentences are so radically different that any sort of formulaic approach is impossible. However, in light of the fact that an offender is subject to licence conditions on release from the custodial element of a custody plus order and that the obligation to comply with specific requirements may run until the very end of the sentence, we have concluded that a custody plus order imposes a greater restriction on liberty and is more onerous than the sentence it replaces. Bearing in mind that the minimum length of a custody plus order is 28 weeks, it is going to be important to stress that such an order should only be imposed where the offence is so serious that only a custodial sentence is appropriate and where neither a fine alone nor a community order is justified.

In view of the greater opportunities to supervise and rehabilitate an offender on licence following release from custody, we consider that the nature of the sentence should be partly guided by the purposes of sentencing the court is seeking to achieve but, in all cases, the sentencer must still ensure that the length and severity of the sentence and its component parts are commensurate with the seriousness of the offence.

Our advice also addresses the various issues that arise when imposing two or more sentences (either consecutively or concurrently), when making allowance for time spent on remand and when applying the Council guidelines on reduction for a guilty plea. Finally, bearing in mind that a magistrates' court will retain the power to impose a determinate sentence of 12 months' custody, we have suggested the circumstances in which this sentence might be a more appropriate disposal than a custody plus order.

Professor Martin Wasik  
Chairman of the Sentencing Advisory Panel

# CUSTODIAL SENTENCES OF LESS THAN 12 MONTHS

## ADVICE TO THE SENTENCING GUIDELINES COUNCIL

### INTRODUCTION

1. The Sentencing Guidelines Council asked the Sentencing Advisory Panel to produce advice on the implications of the following provisions in the Criminal Justice Act 2003:

(i) the 'custody plus order'<sup>1</sup> – a radical change in the nature of custodial sentences of less than 12 months; and

(ii) the increase to 12 months of the maximum length of a custodial sentence able to be imposed for a single offence in a magistrates' court.<sup>2</sup>

It is anticipated that these provisions will be implemented in the autumn of 2006 along with the new allocation provisions, on which we are submitting separate advice.

2. Ideally, the definitive guidelines on these issues should be published in time to inform the training that needs to be provided for sentencers before the new legislative provisions are implemented. With this timeframe in mind, the Panel decided not to follow its normal consultation procedure. Instead, we have consulted primarily through a series of seminars at which the issues were discussed with a range of key stakeholders from across the criminal justice system. A list of those who attended the seminars is at Annex B.

3. We are satisfied that all those who wished to contribute their views have been given the opportunity to do so. 96 delegates took part in eight discussion groups on the custody plus order; delegates were also invited to submit written comments during the week following the seminars. Copies of the discussion paper were sent to all of the Panel's regular consultees, whether or not they had been able to take part in the seminars, with an invitation to submit written responses by the same deadline; in this way we believe that we have been able to assimilate the views of all the major stakeholders. The discussion paper was also published on the Panel's website. We have received 9 written responses (see Annex B).

4. As the custody plus order is radically different from the sentence it replaces, we did not consider it in isolation, but looked at its relationship with the other sentencing options that are available to the courts. Our purpose was to determine how best to guide the courts on the circumstances in which the custody plus order should be used, how it fits in with the rest of the sentencing framework and how it should be structured.

5. Key issues covered in the Panel's discussion paper were:

- the relationship between seriousness, restriction on liberty and the new sentence
- any impact on the custody threshold

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<sup>1</sup> Criminal Justice Act 2003, ss.181-182

<sup>2</sup> *ibid.* s.282

- how, if at all, to match sentence lengths under the existing framework with those under the new framework
- how to match the nature and extent of the licence conditions to the seriousness of the offence
- the choice between a custody plus order of 51 weeks and a custodial sentence of 12 months
- the impact on the suspended sentence order
- the approach for multiple offences
- the response to breaches of licence conditions

6. The Panel's considerations have been underpinned by reference to the Council's definitive guidelines *Overarching Principles: Seriousness*<sup>3</sup> and *New Sentences: Criminal Justice Act 2003*.<sup>4</sup> A summary of the Panel's recommendations is at Annex A.

## THE NEW LAW

7. The custody plus order<sup>5</sup> introduces a major change to the character of short prison sentences. Under the existing framework, a person sentenced to 12 months imprisonment or less will be released no later than half way through the sentence, with little or no supervision or support during the remaining part of the sentence. The minimum custodial sentence is for 5 days; as release is provided for after half the sentence is served, in effect this will result in a maximum of 2 days in custody.

8. *The custody plus order can be used as a sentence for all offenders aged 18 or over. It will consist of a "custodial period" and a "licence period".<sup>6</sup> In summary, the statute provides for:*

- *an overall term of between 28 and 51 weeks;*
- *a custodial period of between 2 and 13 weeks; and*
- *a licence period of at least 26 weeks.*

9. *The term of the sentence must be expressed in weeks,<sup>7</sup> with the minimum term being 28 weeks.<sup>8</sup> The maximum term is 51 weeks for a single offence<sup>9</sup> and 65 weeks where two or more terms are imposed consecutively.<sup>10</sup> This is subject to the maximum provided for the offence,<sup>11</sup> although it is anticipated that all summary offences that allow for a custodial sentence will enable this sentence to be imposed in full.<sup>12</sup>*

10. *The custodial period must be for at least 2 weeks.<sup>13</sup> It must not exceed 13 weeks for a single offence<sup>14</sup> or 26 weeks where two or more terms are imposed consecutively.<sup>15</sup>*

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<sup>3</sup> published December 2004; [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>4</sup> *ibid*

<sup>5</sup> Criminal Justice Act 2003, ss. 181 and 182

<sup>6</sup> *ibid.* s.181(3)

<sup>7</sup> *ibid.* s.181(2)

<sup>8</sup> *ibid.*

<sup>9</sup> *ibid.*

<sup>10</sup> *ibid.* s.181(7)(a)

<sup>11</sup> *ibid.* s.181(2)(d)

<sup>12</sup> *ibid.*, ss.280-282

<sup>13</sup> *ibid.* s.181(5)

<sup>14</sup> *ibid.*

<sup>15</sup> *ibid.* s.181(7)(b)

11. *The licence period must be at least 26 weeks in length.<sup>16</sup> The combined total of the custodial period and the licence period must not exceed the maximum term available.*

12. When imposing a custody plus order, the court must specify both the custodial period and the *terms* of the licence.<sup>17</sup> The offender will be released on licence on completion of the whole of the custodial period set by the court unless qualifying for early release in accordance with the provisions of section 246 of the Criminal Justice Act 2003.

13. The licence period will be subject to conditions set by the court. The court may determine whether the conditions are to be complied with throughout the licence period or only for a specified part of it.<sup>18</sup> Thus, the conditions of the licence (i.e. the number and onerousness of requirements and the period for which the offender is required to comply with them) can be adjusted so as to be commensurate with the seriousness of the offence; in the least serious of cases, the restriction on liberty may be minimal. In addition, “standard conditions” prescribed by the Secretary of State<sup>19</sup> will also be imposed during the licence period by the executive; these cover the offender’s obligations in relation to the instructions of the ‘responsible officer’ and general behaviour.

14. Subject to what is said in paragraph 15 below, the requirements that may be imposed are the same as those available under a community order<sup>20</sup> or a suspended sentence order<sup>21</sup> and are subject to similar restrictions to those imposed under a community order.<sup>22</sup> In particular, there is an obligation to impose electronic monitoring in most cases where a curfew or exclusion requirement is included and a power to do so for all other requirements.

15. Four requirements that can be included within a community order or suspended sentence order are excluded from a custody plus order. These are

- (i) a residence requirement;*
- (ii) a mental health treatment requirement;*
- (iii) a drug rehabilitation requirement; and*
- (iv) an alcohol treatment requirement.*

As residence is the subject of one of the standard licence conditions, the Panel has been told that it was considered that there was no need to include the residence requirement within a custody plus order.

16. The treatment requirements cannot be imposed without the consent of the offender. The Panel has been told that legal advice obtained by the Home Office when the legislation was drafted suggested that such requirements should not be imposed by the court in circumstances where failure to comply would result in immediate executive recall to prison.<sup>23</sup> This is because consent must be genuine and a prisoner who is required to consent to treatment in order to be released from custody, or so as to avoid being recalled to custody, is likely to be regarded as not having given genuine consent;

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<sup>16</sup> Criminal Justice act 2003, s.181(6)

<sup>17</sup> *ibid.* s.181(3)

<sup>18</sup> *ibid.* s.181(3)(b)

<sup>19</sup> *ibid.* s.250(1), (2)(a)(ii) and Criminal Justice (Sentencing Licence Conditions) Order, S.I. 2005 / 648

<sup>20</sup> *ibid.* ss.182(1) and 177(1)

<sup>21</sup> *ibid.* s.190

<sup>22</sup> *ibid.* s.182(2)-(5)

<sup>23</sup> Criminal Justice Act 2003, ss.244-258

threats such as loss of remission of sentence for refusing consent or using such matters to induce consent would be likely to be regarded as coercion. Further, a licence requirement to undergo treatment would be likely to be regarded as a disproportionate interference with an individual's right to a private life as enshrined in article 8 of the European Convention on Human Rights.

17. The court may revoke or amend the conditions attached to a custody plus order if, at any time while a custody plus order is in force, it appears on the application of the offender or the responsible officer that, having regard to circumstances which have arisen since the order was made, it would be in the interests of justice to do so. This power does not affect the custodial term of the order.<sup>24</sup>

18. The custody plus order completes the new framework of sentencing options for offences that may attract custodial sentences.<sup>25</sup> Once the court has decided to impose a custody plus order, it can order that the sentence be suspended<sup>26</sup> or, with the agreement of the offender, that it should be served intermittently.<sup>27</sup>

19. The Panel takes the view that the introduction of the custody plus order has to be considered within the context of the Government's expressed policy that "prison sentences should be reserved for serious, dangerous, and seriously persistent offenders. For other less serious offenders, tough community-based sentences offer a much better alternative than short custodial sentences which can be ineffective in preventing re-offending".<sup>28</sup>

### **The general approach**

20. Until such time as definitive sentencing guidelines are available for all criminal offences, courts will continue to be guided by case law based on the previous sentencing framework. With this in mind, we have considered the fundamental question of whether it is possible or desirable to seek to establish a methodology for comparing a custody plus order with a fixed term custodial sentence under the existing sentencing framework.

21. It is, perhaps, inevitable that sentencers will be tempted to compare the two sentences for an interim period, especially whilst they are still sentencing "old" cases under the previous legislation. It is arguable that a custody plus order imposes a greater restriction on liberty than a fixed custodial term of less than 12 months under the existing sentencing framework. Currently, an offender is entitled to be released when half the sentence has been served; the offender is not subject to supervision or licence conditions on release but is at risk of being recalled to custody until the end of the sentence. An offender sentenced to a custody plus order under the new framework will be subject to licence conditions set by the court which will have to be complied with on release from custody. Failure to comply with any condition will be likely to lead to recall to custody without further consideration by a court.

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<sup>24</sup> Criminal Justice Act 2003, schedule 10, paras. 3 to 5

<sup>25</sup> The power in the Magistrates' Courts Act 1980, s.135 to impose one day's detention remains in force.

<sup>26</sup> *ibid.* schedule 12, para.9

<sup>27</sup> *ibid.* s.183

<sup>28</sup> Written answer (Paul Goggins – Parliamentary Under Secretary of State for Crime, Security and Communities) 7 March 2005 to Parliamentary Question 219708 (Mrs Claire Curtis-Thomas (Crosby))

22. The Council guideline on the new sentencing framework<sup>29</sup> recognised the potentially more demanding nature of custodial sentences of 12 months and longer imposed under the new framework introduced by the Criminal Justice Act 2003. It concluded that a reduction in sentence length in the region of 15% properly reflected the increased period over which an offender may be subject to conditions and liable to recall to prison to serve part or all of the remaining term of the sentence.

23. There are similar, but more complex, issues for the custody plus order. Any attempt to calculate a balance would need to take into account the comparative onerousness and restriction on liberty of each type of sentence – an exercise fraught with difficulty in view of the very flexible structure of the custody plus order. Attempting to compare the custodial element of each sentence does not seem to be possible given the enormous variations possible within a custody plus order. Any comparison is further complicated by the fact that, although an offender may spend a shorter period of time in custody under a custody plus order, he or she will be required to comply with licence conditions on release from custody and may be required to comply with specific requirements until the end of the sentence; the length of the licence period and the nature of the conditions with which the offender will be required to comply, will also be extremely variable.

24. A further complication arises from the provisions relating to early release from custody. Offenders given a custodial sentence of less than 12 months under the existing framework may be eligible for early release at some point before the halfway stage of their sentence but they will not be automatically subject to supervision. Offenders released early may be subject to a Home Detention Curfew (HDC); this may be accompanied by electronic monitoring arrangements (tagging), but the degree of supervision in such circumstances is limited.

25. Section 246 of the Criminal Justice Act 2003 provides that, where the custodial part of a custody plus order is at least 6 weeks, the offender may be released on licence (mainly on HDC) earlier than the end of the full term provided the offender has served at least 4 weeks of the sentence and at least one half of the requisite custodial period; on release the offender would be subject to the licence requirements imposed by the sentencing court. Decisions on early release are governed by executive policy and the point at which an individual offender may be released under either sentencing framework is variable.

26. Without any agreed correlation between the two types of sentence it is not possible to create any sort of rational calculation of comparative sentence severity and the Panel takes the view that it is impossible to identify such a correlation. The custody plus order is manifestly different from the sentence it replaces and it heralds a radical change in sentencing for less serious offences. The Panel considers that the flexible nature of the custody plus order was designed to enable the courts to tailor sentences to the individual offender and any attempt to restrict the use of those provisions would undermine the clear intentions of Parliament.

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<sup>29</sup> *New Sentences; Criminal Justice Act 2003*, page 17, published December 2004; [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

## **Recommendation 1**

***It is not appropriate for sentencing guidelines to include a formulaic methodology for comparing custody plus orders with custodial sentences of less than 12 months under existing legislation.***

27. Consistency of sentencing *approach* will be vital if the new sentencing framework is to be effective and respected, but variation in sentencing *outcomes* will be a consequence of the greater flexibility accorded to the courts. Some general, but flexible, guidelines that establish the principles of sentencing for less serious offences is essential in order to guide the courts from the date of implementation of the custody plus provisions and to ensure consistency in the decision making process. These general principles, designed to steer the courts through the range of sentencing options now available, will create the basic framework against which future definitive offence-specific guidelines can be developed.

## **Recommendation 2**

***Sentencing guidelines on the custody plus order must establish the general principles to be applied when considering whether a custody plus order is the most appropriate disposal.***

### **The custody threshold**

28. A custodial sentence may be imposed only where a court forms the view that the offence (or the combination of the offence and one or more offences associated with it) was so serious that neither a fine alone nor a community sentence can be justified.<sup>30</sup> Once the threshold has been passed, a court may still select a non-custodial sentence; a prolific offender, for example, might more appropriately receive a suitable community order.<sup>31</sup> Where the court decides on a custodial sentence of less than 12 months (a custody plus order), it must consider whether that sentence can be suspended, whether it can be served intermittently or whether it must be served in full immediately.<sup>32</sup> Where the court imposes a custodial sentence, it must be for the “shortest term” that “in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it”.<sup>33</sup>

29. Under the previous sentencing framework the custody threshold was defined by the requirement that, in order to merit a custodial sentence, the offence<sup>34</sup> had to be so serious that only a custodial sentence could be justified.<sup>35</sup> The threshold under the new framework requires a court to make an assessment more overtly linked to the other sentences available and the test has to be interpreted in the light of such sentences.

30. Given this revised wording and the present structure of community orders, which have the potential to be much more demanding than under the previous framework, it has become more difficult to justify imposing a custodial sentence. We believe that this

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<sup>30</sup> Criminal Justice Act 2003, s.152(2)

<sup>31</sup> *ibid.* s.166(2); *Overarching Principles: Seriousness*, page 8, published December 2004; [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>32</sup> *New Sentences: Criminal Justice Act 2003*, pages 20-31, published December 2004; [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>33</sup> Criminal Justice Act 2003, s.153 (2)

<sup>34</sup> or the combination of the offence and one or more offences associated with it; Powers of Criminal Courts (Sentencing) Act 2000, s.79(2)

<sup>35</sup> Powers of Criminal Courts (Sentencing) Act 2000, s.79

position is reinforced by the custody plus order which has the potential to impose a greater restriction on liberty than short custodial sentences under the existing framework.

31. The custody plus order is designed to make short custodial sentences more effective in reducing re-offending than short custodial sentences under the existing framework. A risk arises, however, that a custody plus order might be imposed where a community order would have been the sentence of choice under the existing legislative provisions. A custody plus order provides the opportunity for a 'short, sharp shock' through a brief spell in custody (thereby minimising the risk of severance of community ties - one of the factors most likely to affect the incidence of re-offending) whilst providing many of the options that are available under a community order. Some seminar delegates expressed concern that offences which would have attracted a community order under the existing legislation might be sentenced more severely once the custody plus order is implemented.

32. Imposing a custody plus order where a community order is the most appropriate sentence would, in effect, lower the custody threshold contrary to the Sentencing Guidelines Council's guideline.<sup>36</sup> The Panel takes the view that sentencing drift must be avoided and that it would be sensible for the Council guidelines to emphasise this point. It is also worth remembering that a fine can be imposed in conjunction with a community order where this would result in a sentence that more adequately reflects the seriousness of an offence.<sup>37</sup>

### **Recommendation 3**

***The Council guideline should stress that a custody plus order is relatively more onerous than a custodial sentence of less than 12 months under existing legislation and that a custodial sentence must be imposed only when an offence is so serious that neither a fine alone nor a community sentence can be justified.***

### **The decision to impose a custody plus order**

33. The Panel has considered whether it is possible to identify clearly the circumstances in which a custody plus order should be imposed, including whether it is possible to state that a custody plus order should not be imposed where a custodial sentence of less than a particular period would have been imposed under the existing framework. Attempting to rationalise a link between the new sentencing framework and the old in this way does not sit well with our conclusion that it is inappropriate to seek to compare the two sentences. Cross-referencing of any kind would risk perpetuating existing sentencing practice and would hinder the courts from fully embracing the new sentencing framework.

34. The Panel also considers that, in advance of definitive guidelines on sentencing for specific offences, it would not be appropriate to propose specific variants of the custody plus order for particular offences. There is an argument that a custody plus order should generally be suspended for first time offenders, particularly those who plead guilty or show remorse. This reflects the view that custody should be reserved for

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<sup>36</sup> *Overarching Principles: Seriousness*, page 8, published December 2004, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>37</sup> Powers of Criminal Courts (Sentencing) Act 2000, s.127

those who are dangerous or commit serious crimes (which would merit a sentence of 12 months or more) or for those who are persistent offenders. This approach was rejected by seminar delegates and respondents, who thought that immediate short custodial sentences could be appropriate for first time offenders convicted of, for example, assaulting a police officer or domestic violence. The Panel accepts that first time offenders can and do commit offences that are so serious that only a custodial sentence is justified. We do not think it would be appropriate for guidelines to send the message, even in general terms, that anything other than the seriousness of the offence should inform the initial sentencing decision.

35. Once the court has decided that neither a fine alone nor a community sentence can be justified, and assuming that the offence is not so serious as to merit a sentence of 12 months or more, the appropriate sentence will be a custody plus order. However, before imposing that order the court must consider whether, even though the offence has crossed the custody threshold, the most appropriate sentence in all the circumstances would be a fine or community order.<sup>38</sup> If the court decides that a custody plus order is the appropriate sentence, it must then consider whether the order should be suspended. If the court concludes that the sentence must be served immediately, it must then consider whether, subject to the necessary provisions being available locally, the sentence could be served intermittently. If not, the custody plus order sentence must be imposed immediately and the custodial and licence elements of the custody plus order must be decided.

36. The Panel has considered the relationship between these various sentencing options, including the degree to which each disposal can achieve the purposes of punishment, reparation and rehabilitation of the offender. It has done so with reference to the Council's definitive guidelines on community orders, suspended sentence orders and intermittent custody.<sup>39</sup>

## **Community orders**

37. The most obvious difference, of course, is that the custody plus order includes a period spent in custody, which is the greatest restriction on liberty that can be imposed. A custody plus order, therefore, will be the appropriate disposal where the court considers that a custodial sentence is necessary to mark the seriousness of an offence. A community order may be imposed where an offence has crossed the custody threshold but where there are some personal mitigating features and a community order appears to the court to be more appropriate in all the circumstances.<sup>40</sup> The Panel has considered the differences between a custody plus order and a community order that the courts will need to take into account when deciding which is the most appropriate disposal.

38. The court is required to decide the requirements that are to be imposed within a community order and also within the licence period of a custody plus order but the response to breach is different. If a requirement is not complied with during a community order, enforcement proceedings will be brought before a court. The court will proceed on the basis that the primary purpose when sentencing for breach is to ensure future compliance; the ultimate sanction is a custodial sentence.<sup>41</sup> Breach of requirements within a custody plus order may result in immediate (executive) recall to

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<sup>38</sup> Criminal Justice Act, s.166

<sup>39</sup> *New Sentences: Criminal Justice Act 2003*, published December 2004; [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>40</sup> Criminal Justice Act 2003, s.166(2); *New Sentences: Criminal Justice Act 2003*, page 10, published December 2004; [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>41</sup> *New Sentences: Criminal Justice Act 2003*, page 13, published December 2004; [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

custody without recourse to a court. The date of release following that recall will be decided by the Parole Board rather than the court. It could thus be argued that the courts have more control over the management of an offender's sentence if he or she is subject to a community order rather than a custody plus order and some seminar delegates put this forward as a reason for preferring to impose a community order. However, it should be noted that the requirements within a suspended sentence order are enforced in the same way as for a community order.

39. Other key differences between the two sentences are the length of the overall terms and the range of requirements that can be imposed within them, which will inevitably have an impact on what the courts reasonably can expect to be achieved from the sentence. The maximum term of a custody plus order imposed for a single offence is 51 weeks, of which a maximum of 49 weeks can be spent subject to licence requirements, whereas a community order can run for up to 3 years<sup>42</sup> and the offender can be subject to requirements for that whole period. This significantly longer time frame allows for an offender to be required to comply with some of the more intense treatment requirements (e.g. domestic violence programme, sex offender treatment programme) that are not available within a custody plus order, thus maximising the opportunities for rehabilitation.

40. This could be seen to suggest that punishment and reparation are the drivers behind the term and content of custody plus orders whereas community orders are the most likely vehicle for effective rehabilitation. The position is not that straightforward as all requirements, whether primarily punitive or rehabilitative, restrict an offender's liberty and can be regarded as a punishment. Similarly, a number of short programmes (see Annex C) will be available within the licence period of a custody plus order which, with the exception of the sex offender treatment programmes, can normally be completed within 26 weeks. These programmes can be used to help an offender deal with the underlying problems that are likely to lead to re-offending and it is this element of the sentence that is expected to make a custody plus order more effective than the short custodial sentence it replaces.

41. The Government's intention when introducing the custody plus order was to increase the effectiveness of short custodial sentences and to improve the level of rehabilitation of offenders; it follows that a court may wish to use custody plus orders not only to punish an offender but also to achieve rehabilitation whenever possible.

42. Nevertheless, the fact that a community order can run for a much longer period of time than the licence period of a custody plus order, during which time intensive programmes are available, must inevitably mean that a community order can place greater demands on an offender whilst also offering a greater opportunity for rehabilitation. Where an offender is most likely to be discouraged from re-offending through rehabilitation and he or she has specific longer-term treatment needs, the community order will generally be the most appropriate disposal.

#### **Recommendation 4**

***When deciding whether to impose a community order or a custody plus order, the court's decision will be guided primarily by the seriousness of the offence. However, the purposes of sentencing identified by the court and the degree to***

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<sup>42</sup> Criminal Justice Act 2003, s.177(5)

*which an individual offender is likely to benefit from longer rehabilitative requirements will be very important considerations and might suggest that a community order would be the most appropriate sentence in all the circumstances.*

## **Suspended sentence orders**

43. The Panel has also considered the circumstances in which the court should consider imposing a suspended sentence order rather than a custody plus order. A custody plus order can be suspended for between 6 months and 2 years (the operational period),<sup>43</sup> subject to the offender complying with requirements specified by the court. The period during which the offender must comply with requirements (the supervision period) may be shorter than (but must not be longer than) the operational period.<sup>44</sup> Thus the period of time during which an offender may be required to comply with requirements could potentially be significantly longer than the maximum 49 week period available for a single custody plus order. When imposing a suspended sentence order, the court will set the overall term and the custodial period of the custody plus order that is being suspended but will not determine the requirements to be completed during the licence period should that sentence be implemented. However, the court will set the requirements to be complied with during the supervision period of the suspended sentence order and these can be quite onerous (see paragraph 45).

44. A suspended sentence order marks the seriousness of an offence by making it clear that a custodial sentence has been imposed. The presumption where the requirements of a suspended sentence order are breached, or where any other offence (whether or not punishable with a sentence of imprisonment) is committed, is that the sentence will be activated (either with its original term and/or custodial period or with a lesser term and/or custodial period<sup>45</sup>) unless the court considers that would be unjust. A number of seminar delegates argued that a suspended sentence order should not be seen as a lesser sentence than the custody plus order that it suspends and, consequently, the circumstances in which it is imposed are going to be guided not by the seriousness of an offence but by considerations relating to the likelihood of re-offending and the particular circumstances of the offender.

45. As the range of requirements that can be imposed as part of a suspended sentence order is the same as that available within a community order (and includes the treatment options that are not available within a custody plus order), a suspended sentence order could be seen as an attractive option when the court has the purpose of rehabilitation of the offender as its primary purpose. The Council guideline<sup>46</sup> emphasises that the custodial term within a suspended sentence should be for the same period as would have been imposed if the offender was being sentenced to immediate custody.

46. Seminar delegates and respondents to our discussion paper put forward a number of suggestions about the circumstances in which the court might decide to suspend sentence. The fact that the court can review an offender's progress<sup>47</sup> and is responsible for managing breach was cited as one reason why a sentencer might prefer to suspend sentence. The ability to impose a wider range of requirements, as discussed

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<sup>43</sup> Criminal Justice Act 2003, s. 189(3)

<sup>44</sup> *ibid.*, s.189 (1)(a) and 189(4)

<sup>45</sup> *ibid.* Schedule 12, Part 2, paragraph 8(2)

<sup>46</sup> *New Sentences: Criminal Justice Act 2003*, page 25, published December 2004; [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>47</sup> Criminal Justice Act 2003, ss.191-192

above, was also suggested. However, the Panel considers that the most acceptable justification for suspending sentence will be that, although the court considers that a custodial sentence must be imposed to mark the seriousness of an offence, the offender represents a low risk of harm to others through re-offending and the interests of society are likely to be better served through reparation and rehabilitation of the offender. For example, an alcohol treatment requirement imposed as part of a suspended sentence order may well be a more appropriate sentence than a short custodial term when imposing sentence for low level dishonesty offences involving an abuse of trust.

47. The fact that an offender's liberty is at risk for the whole of the operational period can be a powerful deterrent. Where the offender is the principal wage earner or sole carer in a family, custody might be more disruptive than can be justified and, particularly for first time offenders, might do more harm than good. A custodial sentence can also be counter-productive when the court wishes to impose an ancillary order such as compensation, which is reliant upon the offender remaining at liberty and continuing to receive wages or state benefits.

### **Recommendation 5**

***A court should impose a suspended sentence order only where it is satisfied that a custodial sentence is necessary to mark the seriousness of an offence and that the sentence cannot be brought down to a community order by personal mitigation. Having decided that a custody plus order is the most appropriate sentence, consideration as to whether that sentence should be suspended should be guided by the extent to which the purposes of sentencing could be achieved more effectively through reparation and rehabilitation in the community and by the risk of re-offending.***

### **Intermittent custody**

48. Although an intermittent custody order can be imposed only with the consent of the offender and is available in only a few pilot areas, the Panel has considered whether any additional guidance, over and above that already set out in the Council guidelines,<sup>48</sup> is needed on the circumstances in which a custody plus order might be ordered to be served intermittently.

49. If a custody plus order is imposed intermittently<sup>49</sup> the periods in custody are interspersed with periods when the offender is on temporary licence in the community, subject to requirements specified by the court at the point of sentence. The requirements available are the same as those available under a custody plus order<sup>50</sup> with the treatment requirements being excluded as an option in both sentences. The number of custodial days is no less than 14 (as with a custody plus order) and no more than 90 (approximately the same as the maximum 13 weeks in custody as part of a custody plus order).

50. An intermittent custody order is more flexible than a custody plus order in that the term of imprisonment may be served in small sections, which may enable an offender to maintain employment or caring responsibilities. The Council guideline states that,

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<sup>48</sup> *New Sentences: Criminal Justice Act 2003*, published December 2004; [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>49</sup> Criminal Justice Act 2003, s.183

<sup>50</sup> *ibid.* s.183(1)(b)(ii)

because of the demands on the offender, the term of a sentence should be reduced when it is to be served intermittently.<sup>51</sup> It also states that, having determined that a custodial sentence is unavoidable, the decision whether to impose an intermittent custody order is to be guided by public safety, offender suitability and availability of the appropriate facilities.

*51. Since the intermittent custody order will not change significantly as a result of the implementation of the custody plus provisions, the Panel can see no reason for the Council to reconsider this advice.*

### **The structure of a custody plus order**

*52. The primary aims when imposing a custody plus order must be to impose a sentence that, as a whole, restricts liberty to a degree that is proportionate to the seriousness of the offence committed, meets the purposes of sentencing directed by the court and imposes requirements on the offender that are realistic and achievable.*

53. A custody plus order is a custodial sentence. However, the requirements imposed during the licence period widen the scope of the sentence to include reparation and rehabilitation and the degree to which these two parts complement each other is likely to be guided by a balance between offence seriousness and offender profile. Statute prescribes the minimum and maximum terms of a custody plus order; it also prescribes the minimum and maximum lengths of the custodial period and the minimum and maximum length of the licence period. However, it does not prescribe the correlation between the three except in relation to the minimum sentence of 28 weeks and the court can select from a range of licence requirements when imposing sentence. Thus the courts will be able to exercise a wide range of discretion.

54. Key questions in the Panel's discussion paper related to which part of the sentence the courts should calculate first – the overall term of the sentence or the two constituent parts – and what the relationship between those two parts should be. Responses were divided. Some thought that the courts should decide the overall term according to the seriousness of the offence and then, having considered all of the particular circumstances of the case, create a balance between the two parts, taking into account the nature and length of the licence requirements that are required.

55. Others felt that determining the overall term of the sentence would tie sentencers' hands too early in the process and would not allow for adjustment to include particular licence requirements to suit offender need. They felt that the length of the custodial period should be determined first, using the principle that the custodial term must be for the shortest period commensurate with the seriousness of an offence.<sup>52</sup> Next the courts should consider the most appropriate licence conditions and the length of time for which they should be imposed. Finally the two parts should be brought together, assessed and adjusted as necessary to produce an overall term that can be justified as proportionate to the seriousness of the offence.

56. These divergent views may have been driven by the fact that some respondents, on the basis that a custody plus order is a custodial sentence, considered that the order should be seen as a coherent whole, whilst others felt that it was important to see the

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<sup>51</sup> *New Sentences: Criminal Justice Act 2003*, page 31, published December 2004; [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>52</sup> Criminal Justice Act 2003, s.153(2)

two parts of the whole as having different objectives so that sentences can be tailored for the individual offender.

57. The Panel considers that there is a danger in deciding the two separate parts of the sentence before deciding on the overall term in that courts may be tempted to impose a longer period in custody than is justified without allowing for the fact that the licence period will also restrict the offender's liberty. Considerations relating to suitable licence requirements and the length of time for which they should be imposed would also influence the length of the overall term and there would be a real risk not only of imposing very different overall terms for similar offending but also of increasing average sentence lengths in general.

58. The Panel takes the view that, whilst it will be possible to justify differently structured sentences for different offenders who have committed similar offences on the grounds that the sentence is tailored to the offender in order to maximise effectiveness, it would be far more difficult to justify major differences in overall sentence length. We have therefore considered the extent to which guidelines of general principle can be established to ensure a consistent approach to the sentencing decision and to ensure that the overall terms of custody plus order are consistent for similar offending behaviour and for offences of similar degrees of seriousness.

59. Statute provides for the licence period of the sentence always to be proportionately longer than the custodial element - at least 2:1 and at its extremes as much as 24:1 (i.e. 2 weeks in custody followed by 49 weeks on licence); it also provides for the period of time spent complying with requirements during the licence period to be variable.<sup>53</sup> Using this as its starting point, the Panel takes the view that the courts should decide on an overall term that is for the shortest period (within the 28 to 51 week range) that is commensurate with the seriousness of the offence before deciding on the internal structure of the order. Within the order, the custodial term then also should be for the shortest term (within the 2 to 13 week range) that is commensurate with the seriousness of the offence. Although this would automatically set the length of the licence period, there is no need for an offender to be required to comply with licence requirements until the end of that period.<sup>54</sup> Thus there would still be flexibility for the nature and length of the requirements to be adjusted to suit the individual offender.

60. Restrictions relating to the way in which licence requirements can be imposed must be borne in mind when deciding on the content of the licence period and the period during which the requirements are to be complied with. For example, the maximum number of hours permitted for unpaid work imposed as a requirement within a community order is 300 hours and the offender has to complete these within 12 months. The maximum licence period for a single offence under a custody plus order is 49 weeks; consideration needs to be given to the correct approach when determining the length of an unpaid work order in these circumstances, particularly since the primary purpose of that requirement is also punishment. There are also some restrictions on length that may mean that a requirement cannot continue for the whole of a licence (or supervision) period. For example, a curfew requirement can run for a maximum of 6 months.<sup>55</sup>

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<sup>53</sup> Criminal Justice Act 2003, s.181(3)(b)

<sup>54</sup> Criminal Justice Act 2003, s.181(3)(b)

<sup>55</sup> *ibid.* s.204(3), (4)

61. A licence requirement can, be cancelled or replaced with another suitable requirement.<sup>56</sup> Although this provision, amongst other things, enables a court to vary licence requirements on the grounds that the original package of measures was inappropriate, the court will always want to ensure that the requirements imposed at the time of sentence are the most suitable in all the circumstances. The pre-sentence report, which will be based on the court's indication of the purpose of the sentence and will take into account the availability and suitability of particular requirements, will be an essential resource in deciding on the nature of the licence period.

62. In its discussion paper, the Panel drew attention to the Council guideline on suspended sentences which states that, because of the very clear deterrent threat involved in a suspended sentence, the requirements imposed should generally be less onerous than those imposed as part of a community order.<sup>57</sup> We asked whether this principle should apply to the licence requirements within the licence period of a custody plus order, on the basis that in this case an *actual* custodial period will have been served.

63. We agree with those who suggested that this would be far too restrictive. There may be circumstances in which the court wants to impose an onerous licence period with a shorter custodial sentence, on the basis that a very short custodial element would adequately fulfil the purpose of punishment and that certain licence requirements would be more likely to rehabilitate the offender and reduce the likelihood of re-offending. A guideline that generally encouraged minimal licence requirements could be seen to invite sentencers to view only the custodial period as capable of fulfilling the requirement to punish, with the licence period being regarded as primarily rehabilitative. This would overlook the fact that the whole term of the sentence is a restriction of liberty and also that punitive requirements can be imposed during the licence period if appropriate. It might also lead to courts imposing custodial periods that are longer than is commensurate with the seriousness of the offence.

### **Recommendation 6**

***Having decided to impose a custody plus order, the courts must begin by determining the overall term of the order (within the 28 to 51 week range); this must be for the shortest term commensurate with the seriousness of the offence. The next step is to determine the length of the custodial period (within the 2 to 13 week range), which should also be the shortest term commensurate with the seriousness of the offence. Once the overall term of the order and the length of the custodial period have been decided, the courts must impose suitable licence requirements and decide whether these are to be complied with during part or all of the licence period.***

64. In practice, this means that a court imposing a custody plus order for a single offence must decide on an overall term of anything between 28 and 51 weeks. The way in which the order will be structured will depend on the particular circumstances of each individual case but the choice of overall term is very wide and guidelines are needed to ensure a degree of consistency. The Panel recognises that guidelines cannot be so prescriptive as to ignore the flexibility that is written into the legislation and proposes that

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<sup>56</sup> *ibid.* sched. 10, paras. 4 and 5

<sup>57</sup> *New Sentences: Criminal Justice Act 2003*, page 25, published December 2004; [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

offences justifying a custody plus order should be divided into three categories of general seriousness - LOW, MEDIUM and HIGH and for these to correlate with the sentencing ranges set out below.

65. The requirements proposed for each of the ranges are based on those recommended for community orders in the Council guideline on New Sentences<sup>58</sup> but the suggested onerousness of the punitive requirements has been reduced to reflect that fact that the offender is also being sentenced to a period in custody. An activity requirement (which, in practice, is most likely to involve education or life management skills training) is added as an option in the LOW range and all three ranges include the option of a rehabilitative programme requirement. Examples of suitable activity and programme requirements are not given as the nature of the requirement and the period of time for which it should run will need to be determined on an individual basis according to availability and offender need. The range of options currently available is at Annex C.

66. As the sentence includes a custodial element, it may not be necessary for all packages to include a punitive requirement. It will fall to the sentencer to ensure that the sentence strikes the right balance between proportionality and suitability and that, where more than one licence requirement is imposed, the requirements are mutually compatible. When deciding on the content and onerousness of the sentence package, the courts must bear in mind that breach of a requirement will lead to executive recall and the offender will not be returned to court.

### **Recommendation 7**

- ***In all cases, the courts should ensure that licence requirements are achievable during the licence period; the nature of the requirements and the length of the licence period will vary between offenders.***
- ***The extent to which each package includes a balance of punitive, reparative and rehabilitative requirements must be guided by the offender profile in an individual case, as identified in the pre-sentence report.***
- ***The courts must always consider whether a rehabilitative package, including a programme requirement, would be more effective in reducing re-offending than a punitive package of requirements***
- ***When deciding which licence requirements to include, the courts need to bear in mind that the standard licence conditions, which will apply in every case, already include an element of supervision. Supervision is key to the successful monitoring of the licence period and it would be sensible for the courts to impose a supervision requirement in all cases.***
- ***The decision whether to impose additional or more onerous requirements should be guided by the seriousness of the offence, as set out below:***

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<sup>58</sup> *New Sentences: Criminal Justice Act 2003*, pages 9 to 10, published December 2004; [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

## LOW

- *For offences just crossing the custody threshold*
- *An overall term of 28 weeks*
- *A custodial period of 2 weeks*
- *A maximum of two requirements, one of which will normally be a supervision requirement*
- *Suitable requirements in addition to a supervision requirement might include –*
  - *40 to 60 hours of unpaid work*
  - *an activity requirement in the low range (up to 20 days)*
  - *a prohibited activity requirement*
  - *an attendance centre requirement (where available)*
  - *a programme requirement*
  - *a curfew requirement within the lowest range e.g. up to 12 hours a day for a few weeks*
  - *an exclusion requirement lasting in the region of a few weeks or until the end of the order, depending on the purpose of the exclusion*

## MEDIUM

- *For offences that obviously fall within the custody plus category*
- *An overall term of 29 to 40 weeks*
- *A custodial period of 3 to 9 weeks with a variable licence period*
- *In general no more than two licence requirements, one of which will normally be a supervision requirement*
- *The increased onerousness of the order may be satisfied by increasing the period of time for which the requirements are imposed rather than by imposing additional requirements*
- *Suitable requirements in addition to a supervision requirement might include –*
  - *a greater number of hours (e.g. 60 to 80 hours) of unpaid work*
  - *an activity requirement in the middle range (up to 30 days)*
  - *a prohibited activity requirement*
  - *a programme requirement*
  - *a curfew requirement within the middle range e.g. up to 12 hours a day for 2 to 3 months*
  - *an exclusion requirement lasting in the region of a few months or until the end of the order, depending on the purpose of the exclusion*

## HIGH

- *For offences that only just fall below the 12 months threshold*
- *An overall term of 41 to 51 weeks*
- *A custodial period of 10 to 13 weeks and a variable licence period*
- *It may be appropriate to include two or more requirements at this level, one of which will normally be a supervision requirement*
- *The increased onerousness of the order may be satisfied by increasing the period of time for which the requirements are imposed rather than by imposing additional requirements*
- *Suitable requirements in addition to a supervision requirement might include -*
  - *80 to 100 hours of unpaid work*
  - *an activity requirement up to the maximum 60 days*

- *a programme requirement*
- *a curfew requirement up to a maximum of up to 12 hours a day for 4 to 6 months*
- *an exclusion order lasting until the end of the custody plus order*

## **Multiple offences**

67. Where the court imposes two or more custody plus orders to be served consecutively, statute provides for the maximum custodial period to be increased from 13 to 26 weeks (an increase of 100%).<sup>59</sup> The overall term of the sentence, however, rises only from 51 to 65 weeks (an increase of only 27%) and the minimum length of time for which the licence period must run (26 weeks) is not changed. Thus there is potential to increase substantially the period of time spent in custody without making any significant consequential change to the length of the licence period. However, bearing in mind that the custodial period must be the shortest term that is commensurate with the seriousness of the offence, the courts may decide to increase the onerousness of the licence requirements and the period of time during which the offender must comply with them.

68. The Panel has considered whether a formula could be devised to assist the court with this decision but, for reasons already mentioned, considers this would be fraught with difficulty, especially if one offence is significantly more serious than the other. However, general principles are needed to ensure consistency of approach.

69. One approach could be for the courts to determine the appropriate length of the custodial period for each offence, remembering that this cannot exceed 13 weeks for each offence and cannot exceed 26 weeks in total. The length and nature of the licence period could then be determined in the same way as for a single offence although the court might wish to increase the length of the licence period or to impose more onerous requirements to reflect the seriousness of multiple offending and to address the fact that the offender is proportionately more likely to re-offend.

70. A significant number of seminar delegates considered that the courts should consider the offences together and impose a custodial period that reflects the totality of the offending behaviour; this would be particularly relevant if the court is considering more than two consecutive sentences because of the restrictions inherent in the legislation. They could see no reason to treat multiple offences any differently from single offences in that the first step should be to determine the overall term of the sentence to reflect the seriousness of the totality of the offending behaviour.

71. The position is complicated by the fact that the court is obliged to announce sentence for each offence; announcing an overall term for the totality of offending would not be in keeping with the normal practice of announcing consecutive sentences separately. The Panel has concluded that the courts should adopt the same approach as that for a single sentence.

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<sup>59</sup> Although some academic commentators suggest that the wording of the statute restricts the custodial period to 13 weeks even for consecutive sentences, the Panel has adopted the standard approach to the interpretation of this provision.

## **Recommendation 8**

***When imposing consecutive sentences, the court should calculate, for each individual offence, the overall term of the order that is commensurate with its seriousness. If the combined terms exceed the statutory limits, the court must reduce the combined custodial and licence elements of the sentence, taking account of the purposes of sentencing it has identified, and ensure that the length of the custodial period is commensurate with the totality of the offending behaviour. The court will then wish to consider whether the onerousness of the licence requirements adequately reflects the seriousness of the multiple offending and the likelihood of re-offending.***

72. Separate provisions govern the length of the licence period to be completed by the offender where concurrent or consecutive sentences are imposed on the same or on different occasions. Where all sentences are custody plus orders, the licence period will be the longest of the licence periods imposed.<sup>60</sup> Where at least one sentence is for 12 months or more and the sentences are concurrent, the length of the licence period will be the longest period of any of the sentences imposed.<sup>61</sup> The terms of the licence will be set by the Secretary of State without regard to the requirements of the custody plus order.<sup>62</sup> Where at least one sentence is for 12 months or more and at least two sentences are imposed consecutively, the licence period will be for the length of time from release to the end of the overall total of all the sentences in aggregate.<sup>63</sup>

73. The Council has already published a definitive guideline stating that a court imposing a custodial sentence of 12 months or more should only make specific recommendations about licence requirements when announcing relatively short sentences and where it is reasonable to anticipate their relevance at the point of release.<sup>64</sup> A court imposing a custody plus order is, however, required to specify in the order the requirements to be complied with during the licence period.

74. Where a custody plus order and a custodial sentence of 12 months or more are imposed concurrently or consecutively, it would be unreasonable to expect sentencers to specify the requirements that are likely to be most appropriate at the point of release. In such cases, the Panel takes the view that the sentencer should require the licence to be granted subject to a supervision requirement only, on the basis that the Governor and the Probation Service will be best placed to decide on a package of suitable requirements at the point of release. The court might wish to make a recommendation about the nature of the requirements it considers would be most effective in achieving its purpose in sentencing and the Probation Service should have due regard to any recommendation at the point of release. However, it will also need to take into account any interventions during the custodial period and any change in the offender's circumstances. This point must be made clear at the point of sentence.

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<sup>60</sup> Criminal Justice Act 2003, s.263(2)(c) and s.264(4),(5)

<sup>61</sup> *ibid.* s.263(2)(c)

<sup>62</sup> Criminal Justice Act 2003, s.263(3)

<sup>63</sup> *ibid.* s.264(3)

<sup>64</sup> *New Sentences: Criminal Justice Act 2003*, page 19, published December 2003, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

## Recommendation 9

***Where a court is imposing a custody plus order to be served concurrently with or consecutively to a sentence of 12 months or over, it may sensibly recommend interventions that might be useful when passing sentence but the only requirement it should impose for the licence period is a supervision requirement. The court should make it clear, when imposing sentence, that the requirements to be imposed on licence will ultimately be the responsibility of the Governor and the Probation Service and that they are entitled to review the recommendations made by the court in the light of any changed circumstances.***

### Reduction for a guilty plea

75. The Council guideline on reduction for a guilty plea<sup>65</sup> states that a reduction in sentence should be applied only to the *punitive* elements of a sentence. It also states that the application of a reduction may properly form the basis for imposing a fine or a discharge instead of a community order, or a community order instead of a custodial sentence.

76. The Panel's discussion paper questioned whether a reduction for guilty plea, when applied to a custody plus order, should reduce the overall term of the order or should be applied to one or more of its constituent elements i.e. the custodial period, the licence period or the licence requirements. Views were mixed with a key question being whether it is legitimate to argue that, because a custody plus order is a custodial sentence and therefore primarily punitive, the reduction can be applied to the order as a whole. Some people felt that this overlooked the fact that the licence period can be used to rehabilitate an offender and considered it would be wrong to reduce these non-punitive elements of the sentence.

77. As a general point of principle, a reduction for a guilty plea applied to a custodial sentence should result in a shorter sentence; when such a reduction is applied to a custody plus order the Panel considers that this should ordinarily result in a reduced overall term. However, difficulties will arise where the custody plus order that would have been imposed before applying a reduction for a guilty plea would have been for the minimum 28 weeks.

78. The Panel has considered the Council guideline which states that the reduction for a guilty plea *can* be applied to *any* of the punitive elements of a sentence. The guideline does not require sentencers to apply the reduction to all of the punitive elements of a sentence. The Panel considers that this accords a welcome degree of flexibility to the process which will be of assistance to the courts when deciding how to apply a discount for a guilty plea to a custody plus order of 28 weeks. It has also considered whether, where a reduction in sentence for a guilty plea is applied to a custody plus order, it would be legitimate for the sentence to be reduced to a community order. This is predicated on the Council guideline that states that a reduction for a guilty plea may properly form the basis for imposing a different (lesser) sentence.<sup>66</sup>

79. Bearing in mind that a guilty plea is a factor to be taken into account when assessing the likelihood of re-offending, the Panel's view is that sentencers have three

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<sup>65</sup> *Reduction in Sentence for a Guilty Plea*, page 4, published December 2004; [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>66</sup> *Reduction in Sentence for a Guilty Plea*, paragraph 2.6, published December 2004; [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

equally legitimate options that will enable them to tailor the sentence in the best way to achieve the purposes of sentencing. One option is to reflect the reduction by suspending the custody plus order that would have been imposed; another is to reduce the sentence to a top end community order with requirements suitable for the HIGH level of seriousness identified in the Council guideline.<sup>67</sup> Lastly, where the court considers that an immediate custodial sentence is still justified in all the circumstances of the case, it may apply the reduction to any or all of the punitive elements of the sentence. In all cases, but most particularly where the court applies the reduction only to certain elements of the order, it will be extremely important for the court to explain very clearly how the reduction has been applied and why.

### **Recommendation 10**

***The appropriate reduction for a guilty plea should be applied to any or all of the punitive elements of a custody plus order depending on the circumstances of the case. This may include reducing the sentence to a suspended sentence order or a community order.***

### **Time spent on remand**

80. By virtue of sections 240 to 242 of the Criminal Justice Act 2003, a defendant will normally receive credit against sentence for time spent in custody on remand as a result of a court order in connection with the offence concerned or any other offence the charge for which was founded on the same facts or evidence. This period will reduce the time spent in custody but will not affect the length of the licence period.

81. Save for a small number of situations where there is potential for duplication of reduction,<sup>68</sup> a court must direct that the time on remand is to count as time served unless the court considers it just not to give that direction.<sup>69</sup>

82. Given the relatively short period of custody that can be imposed as part of a custody plus order, there may be situations where the imposition of a custody plus order will result in the immediate release from custody of the offender. In those circumstances, a court may be tempted to consider whether it should impose a community order with its longer period of supervision. In its guideline *New Sentences: Criminal Justice Act 2003*,<sup>70</sup> the Sentencing Guidelines Council considered the equivalent position in relation to sentences of 12 months and above and stated that, in such circumstances, the court should continue to impose a custodial sentence. The Panel's view is that this should also be the position with a custody plus order. Such a sentence properly marks the seriousness of the offence.

83. Nothing in this proposal is intended to discourage sentencers from imposing a non-custodial sentence (for example a community order with a drug treatment requirement) where the court considers that, even though the offence has crossed the custody threshold, a community order is likely to be more effective in rehabilitating the offender and reducing the likelihood of re-offending.

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<sup>67</sup> *New Sentences: Criminal Justice Act 2003*, page 10, published December 2003, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>68</sup> see the Remand in Custody (Effect of Concurrent and Consecutive Sentences of Imprisonment) Rules 2005, SI 2005/2054

<sup>69</sup> Criminal Justice Act 2003, s.240(3),(4)

<sup>70</sup> at paras. 1.1.37-1.1.39

## Recommendation 11

*Where the court considers that the correct sentence is a custody plus order and, because of the period of time the offender has spent on remand in custody, he or she will be eligible for immediate release, the court must still impose the custody plus order to mark the seriousness of the offence, unless it considers that a community order is more appropriate in all the circumstances and more likely to reduce the risk of re-offending. It is not appropriate to impose a community order instead of a custody plus order simply because of the period of time spent on remand as the offender's record must reflect the true seriousness of the offending behaviour. Where an offender has spent more time in custody on remand than the custodial period of the custody plus order, the court might wish to consider whether the length or severity of the licence period should be reduced.*

### **A custody plus order or a custodial sentence?**

84. Once the relevant provisions are implemented, a magistrates' court will have the power to impose a fixed term custodial sentence of 12 months.<sup>71</sup> As this is so close in length to the maximum term of a custody plus order, it is important to be clear about the circumstances in which a court should choose one sentence rather than the other.

85. Subject to the early release provisions, a 12 month sentence would result in the offender:

- a) being in custody for 6 months and
- b) being on licence for 6 months.

The terms of the licence will be determined by the Governor and the Probation Service at the time of release.

86. A custody plus order will:

- vary in length from 28 weeks to 51 weeks;
- consist of a custodial period ranging from 2 weeks to 13 weeks for a single offence; and
- consist of a licence period of between 26 weeks and 49 weeks.

The conditions of the licence will be set primarily by the court at the time that sentence is imposed.

87. Bearing in mind that the custodial element of any sentence imposes the maximum restriction on liberty and an offender will spend a significantly longer period in custody if a 12 months sentence is imposed, it would seem sensible to suggest that this sentence should be imposed for a single offence only where the court is satisfied that the shortest element of punishment or reduction of crime required by the seriousness of the offence is 6 months in custody. This is most likely to be the case where the benefits of a longer custodial period outweigh the benefits of a longer licence period or where the offender has pleaded guilty at the first reasonable opportunity to an offence that would have warranted a sentence of 18 months following a not guilty plea.

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<sup>71</sup> Criminal Justice Act 2003, s.154(1)

88. The Panel notes that a sentence of 12 months or more triggers a statutory duty on local probation boards to take reasonable steps to find out whether a victim of a sexual or violent offence wishes to be informed and consulted about arrangements for the offender's release from custody.<sup>72</sup> One consequence of imposing a custody plus order will be that this statutory obligation will not be triggered. Bearing in mind the general sentencing principle that a sentence must be for the shortest period that is commensurate with the seriousness of an offence, the decision on sentence length cannot be influenced by trigger points for ancillary provisions. It would be unjust to sentence an offender more harshly than is justified in order to trigger other provisions and this cannot be regarded as a justifiable reason for imposing a 12 month sentence instead of a custody plus order.

### **Recommendation 12**

***A 12 month sentence should rarely be imposed in a magistrates' court but may, in general terms, be imposed where the impact of a longer custodial period outweighs the impact of a longer licence period. A 12 month custodial sentence should be imposed when a one third reduction for a guilty plea is applied to an 18 month custodial sentence.***

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<sup>72</sup> Criminal Justice and Courts Service Act 2000, s.69 and Domestic Violence Crime and Victims Act 2004, s.35

## SUMMARY OF THE PANEL'S RECOMMENDATIONS

### Recommendation 1

*It is not appropriate for sentencing guidelines to include a formulaic methodology for comparing custody plus orders with custodial sentences of less than 12 months under existing legislation.*

### Recommendation 2

*Sentencing guidelines on the custody plus order must establish the general principles to be applied when considering whether a custody plus order is the most appropriate disposal.*

### Recommendation 3

*The Council guideline should stress that a custody plus order is relatively more onerous than a custodial sentence of less than 12 months under existing legislation and that a custodial sentence must be imposed only when an offence is so serious that neither a fine alone nor a community sentence can be justified.*

### Recommendation 4

*When deciding whether to impose a community order or a custody plus order, the court's decision will be guided primarily by the seriousness of the offence. However, the purposes of sentencing identified by the court and the degree to which an individual offender is likely to benefit from longer rehabilitative requirements will be very important considerations and might suggest that a community order would be the most appropriate sentence in all the circumstances.*

### Recommendation 5

*A court should impose a suspended sentence order only where it is satisfied that a custodial sentence is necessary to mark the seriousness of an offence and that the sentence cannot be brought down to a community order by personal mitigation. Having decided that a custody plus order is the most appropriate sentence, consideration as to whether that sentence should be suspended should be guided by the extent to which the purposes of sentencing could be achieved more effectively through reparation and rehabilitation in the community and by the risk of re-offending.*

### Recommendation 6

*Having decided to impose a custody plus order, the courts must begin by determining the overall term of the order (within the 28 to 51 week range); this must be for the shortest term commensurate with the seriousness of the offence. The next step is to determine the length of the custodial period (within the 2 to 13 week range), which should also be the shortest term commensurate with the seriousness of the offence. Once the overall term of the order and the length of the custodial period have been decided, the courts must impose suitable licence*

*requirements and decide whether these are to be complied with during part or all of the licence period.*

### **Recommendation 7**

- *In all cases, the courts should ensure that licence requirements are achievable during the licence period; the nature of the requirements and the length of the licence period will vary between offenders.*
- *The extent to which each package includes a balance of punitive, reparative and rehabilitative requirements must be guided by the offender profile in an individual case, as identified in the pre-sentence report.*
- *The courts must always consider whether a rehabilitative package, including a programme requirement, would be more effective in reducing re-offending than a punitive package of requirements*
- *When deciding which licence requirements to include, the courts need to bear in mind that the standard licence conditions, which will apply in every case, already include an element of supervision. Supervision is key to the successful monitoring of the licence period and it would be sensible for the courts to impose a supervision requirement in all cases.*
- *The decision whether to impose additional or more onerous requirements should be guided by the seriousness of the offence, as set out below:*

### **LOW**

- *For offences just crossing the custody threshold*
- *An overall term of 28 weeks*
- *A custodial period of 2 weeks*
- *A maximum of two requirements, one of which will normally be a supervision requirement*
- *Suitable requirements in addition to a supervision requirement might include –*
  - *40 to 60 hours of unpaid work*
  - *an activity requirement in the low range (up to 20 days)*
  - *a prohibited activity requirement*
  - *an attendance centre requirement (where available)*
  - *a programme requirement*
  - *a curfew requirement within the lowest range e.g. up to 12 hours a day for a few weeks*
  - *an exclusion requirement lasting in the region of a few weeks or until the end of the order, depending on the purpose of the exclusion*

### **MEDIUM**

- *For offences that obviously fall within the custody plus category*
- *An overall term of 29 to 40 weeks*
- *A custodial period of 3 to 9 weeks with a variable licence period*
- *In general no more than two licence requirements, one of which will normally be a supervision requirement*

- *The increased onerousness of the order may be satisfied by increasing the period of time for which the requirements are imposed rather than by imposing additional requirements*
- *Suitable requirements in addition to a supervision requirement might include –*
  - *a greater number of hours (e.g. 60 to 80 hours) of unpaid work*
  - *an activity requirement in the middle range (up to 30 days)*
  - *a prohibited activity requirement*
  - *a programme requirement*
  - *a curfew requirement within the middle range e.g. up to 12 hours a day for 2 to 3 months*
  - *an exclusion requirement lasting in the region of a few months or until the end of the order, depending on the purpose of the exclusion*

### **HIGH**

- *For offences that only just fall below the 12 months threshold*
- *An overall term of 41 to 51 weeks*
- *A custodial period of 10 to 13 weeks and a variable licence period*
- *It may be appropriate to include two or more requirements at this level, one of which will normally be a supervision requirement*
- *The increased onerousness of the order may be satisfied by increasing the period of time for which the requirements are imposed rather than by imposing additional requirements*
- *Suitable requirements in addition to a supervision requirement might include -*
  - *80 to 100 hours of unpaid work*
  - *an activity requirement up to the maximum 60 days*
  - *a programme requirement*
  - *a curfew requirement up to a maximum of up to 12 hours a day for 4 to 6 months*
  - *an exclusion order lasting until the end of the custody plus order*

### **Recommendation 8**

*When imposing consecutive sentences, the court should calculate, for each individual offence, the overall term of the order that is commensurate with its seriousness. If the combined terms exceed the statutory limits, the court must reduce the combined custodial and licence elements of the sentence, taking account of the purposes of sentencing it has identified, and ensure that the length of the custodial period is commensurate with the totality of the offending behaviour. The court will then wish to consider whether the onerousness of the licence requirements adequately reflects the seriousness of the multiple offending and the likelihood of re-offending.*

### **Recommendation 9**

*Where a court is imposing a custody plus order to be served concurrently with or consecutively to a sentence of 12 months or over, it may sensibly recommend interventions that might be useful when passing sentence but the only requirement it should impose for the licence period is a supervision requirement. The court should make it clear, when imposing sentence, that the requirements to be imposed on licence will ultimately be the responsibility of the Governor and the*

*Probation Service and that they are entitled to review the recommendations made by the court in the light of any changed circumstances.*

#### **Recommendation 10**

*The appropriate reduction for a guilty plea should be applied to any or all of the punitive elements of a custody plus order depending on the circumstances of the case. This may include reducing the sentence to a suspended sentence order or a community order.*

#### **Recommendation 11**

*Where the court considers that the correct sentence is a custody plus order and, because of the period of time the offender has spent on remand in custody, he or she will be eligible for immediate release, the court must still impose the custody plus order to mark the seriousness of the offence, unless it considers that a community order with rehabilitative requirements is more appropriate in all the circumstances and more likely to reduce the risk of re-offending. It is not appropriate to impose a community order instead of a custody plus order simply because of the period of time spent on remand as the offender's record must reflect the true seriousness of the offending behaviour. Where an offender has spent more time in custody on remand than the custodial period of the custody plus order, the court might wish to consider whether the length or severity of the licence period should be reduced.*

#### **Recommendation 12**

*A 12 month sentence should rarely be imposed in a magistrates' court but may, in general terms, be imposed where the impact of a longer custodial period outweighs the impact of a longer licence period. A 12 month custodial sentence should be imposed when a one third reduction for a guilty plea is applied to an 18 month custodial sentence.*

## THE CONSULTATION PROCESS

In accordance with the duty imposed by section 171(3) of the Criminal Justice Act 2003, the Panel issued a discussion paper on 14 September 2005, which was published on the Panel's website and sent to the Panel's 33 regular consultees. The discussion paper set out some of the Panel's provisional views and asked a number of key questions relating to the custody plus provisions.

The paper was discussed by 8 groups of key stakeholders, drawn from across the criminal justice system, at a series of seminars on 23, 26 and 28 September. This was the Panel's primary method of consultation on this occasion, as there is a pressing need for sentencing guidelines to be ready to inform the training of sentencers next spring.

Seminar delegates were also invited to submit written comments responses and the closing date for all reponses was 30 September.

### Seminar delegates

<b>Kate Akester</b>	Secretariat, Home Affairs Committee
<b>Ruth Allan</b>	National Offender Management Service
<b>Judge Tony Ansell</b>	Sentencing Advisory Panel
<b>Chris Armstrong</b>	Justices' Clerks' Society
<b>Judge Badley</b>	Council of HM Circuit Judges
<b>Estella Baker</b>	School of Law, University of Sheffield
<b>Robert Banks</b>	Criminal Bar Association
<b>Heather Barclay</b>	Equal Opportunities Commission
<b>Cindy Barnett</b>	Magistrates' Association
<b>June Battye</b>	National Probation Directorate
<b>Meg Blumsom</b>	National Probation Directorate
<b>David Brewer</b>	Justices' Clerks' Society
<b>Judge Philip Browning</b>	District Judge
<b>Charles Bushell</b>	Prison Governors' Association
<b>Richard Chown</b>	Trial Policy and Procedure Unit, Home Office
<b>Helen Cousins</b>	Law Society
<b>Joanna Crowley</b>	Sentencing Advisory Panel
<b>Richard Crowley</b>	Crown Prosecution Service
<b>Oliver Dean</b>	National Offender Management Service
<b>Amu Devani</b>	Sentencing Advisory Panel
<b>Geoff Dobson</b>	Prison Reform Trust
<b>Michael Downes</b>	Police Federation
<b>Norman Draper</b>	Justices' Clerk, Merseyside
<b>Mohammed Farooq</b>	National Probation Directorate
<b>Judge David Fletcher</b>	Council of HM Circuit Judges
<b>Alison Foulds</b>	Sentencing Policy and Penalties Unit, Home Office
<b>Derek French</b>	Solicitor, Member of Criminal Procedure Rules Committee
<b>Lorraine Gelsthorpe</b>	Institute of Criminology, Cambridge
<b>Julia Gerrard</b>	Sentencing Policy and Penalties Unit, Home Office
<b>Alisdair Gillespie</b>	De Montfort Law School, Leicester & Society of Legal Scholars
<b>Judge Goldstone QC</b>	Council of HM Circuit Judges
<b>Sarah Goom</b>	Legal Secretariat to the Law Officers
<b>David Griffiths</b>	National Probation Directorate
<b>David Greensmith</b>	Justices' Clerks' Society
<b>Nigel Groves</b>	National Probation Service
<b>Judge Tony Hammond</b>	Council of HM Circuit Judges

<b>Heather Harker</b>	Sentencing Advisory Panel
<b>Colin Hay</b>	Custody Plus Team, National Probation Directorate
<b>Keir Hopley</b>	Sentencing Policy and Penalties Unit, Home Office
<b>Elizabeth Howe</b>	Crown Prosecution Service
<b>Dewi Hughes</b>	Magistrates' Association
<b>Sally Ireland</b>	JUSTICE
<b>Adela Kacsprzak</b>	Custody Plus Team, National Probation Directorate
<b>Kevin Kerrigan</b>	Northumbria University
<b>Paul Kiff</b>	Penal Affairs Consortium
<b>Peter King</b>	Custody Plus Team, National Probation Directorate
<b>Adele Kirkwood</b>	Police Federation
<b>Rachel Lipscomb</b>	Magistrates' Association
<b>Kathryn Lynch</b>	Sentencing Policy and Penalties Unit, Home Office
<b>Janet Males</b>	Magistrates' Association
<b>Theresa Mallabone</b>	National Probation Directorate
<b>David Mallen</b>	Sentencing Advisory Panel
<b>Richard Mason</b>	National Probation Directorate
<b>Neil Masters</b>	Crown Prosecution Service
<b>Mark May</b>	National Offender Management Service
<b>Mike McClelland</b>	NAPO
<b>Timothy McDonnell</b>	Lord Chief Justices' Office
<b>Wendy Middleton</b>	Revenue and Customs Prosecution Office
<b>Judge Fergus Mitchell</b>	Council of HM Circuit Judges
<b>Duncan Moass</b>	Legal Secretariat to the Law Officers
<b>David Murray</b>	Murray Bayliss, Solicitors
<b>Steve Murphy</b>	National Offender Management Service
<b>Nicky Padfield</b>	Fitzwilliam College, University of Cambridge
<b>Joanna Perry</b>	Victim Support
<b>John Phillipson</b>	Magistrates' Association
<b>St John Pilkington</b>	Justices' Clerks' Society
<b>Cordell Pillay</b>	NAPO
<b>Judge John Platt</b>	Council of HM Circuit Judges
<b>Philip Plowden</b>	Law Society
<b>Jonathan Price</b>	Justices' Clerks' Society
<b>Naomi Redhouse</b>	Solicitor
<b>Simon Reed</b>	Police Federation
<b>Judge Paul Richardson</b>	District Judge
<b>Justin Rivett</b>	Rodney Warren & Co., Solicitors
<b>Judge Alison Rose</b>	District Judge
<b>Judge John Samuels QC</b>	Council of HM Circuit Judges
<b>Andrea Saunders</b>	National Probation Directorate
<b>Julian Schon</b>	Trial Policy and Procedure Unit, Home Office
<b>Jackie Seaton</b>	Custody Plus Team, National Probation Directorate
<b>Nisha de Silva</b>	Research, Development and Statistics Directorate, NOMS
<b>Malathy Sitaram</b>	Sentencing Guidelines Council
<b>Judge Slinger</b>	Council of HM Circuit Judges
<b>Enver Soloman</b>	Prison Reform Trust
<b>Michael Spurr</b>	HM Prison Service
<b>Nicola Stell</b>	Magistrates' Association
<b>Zoe Stowe</b>	Roadpeace
<b>Robert Street</b>	Research, Development and Statistics Directorate, NOMS
<b>Judge Swift</b>	Council of HM Circuit Judges
<b>David Thomas</b>	Probation Managers' Association
<b>Peter Vardon</b>	HM Prison Service
<b>Tracey Wareham</b>	Crown Prosecution Service
<b>Joan Webster</b>	Sentencing Advisory Panel

**Sally Wentworth-James**  
**Andrew Wesson**

NACRO  
Justices' Clerks' Society

**Written responses were also received from:**

**Julian Fox**, Solicitor, South Yorkshire Probation Board  
**Dr. Loraine Gelsthorpe**, Institute of Criminology, Cambridge  
**Howard League for Penal Reform**  
**Justices' Clerks' Society**  
**Magistrates' Association**  
**Prison Officers' Association**  
**Professor Kiron Reid**, University of Liverpool  
**Nicola Stell**, J.P.  
**Victim Support**

## Probation Offending Behaviour Programmes

*It should be noted that some of the programmes listed are available only in prison, whilst others are available in the community. The list was updated by the National Probation Directorate in May 2005 and may not be fully up to date when definitive guidelines are published; it is also possible that some of the programmes listed may not be available across the whole country.*

### General Offending Programmes

PROGRAMME	Enhanced Thinking Skills	Think First	One to One	Cognitive Skills Booster	Women's Acquisitive Crime
<b>Description of Programme</b>	Addresses thinking and behaviour associated with offending. Employs a sequenced series of structured exercises designed to teach inter-personal problem solving skills	An offence-focused programme that addresses thinking and behaviour. Phase 1 teaches problem solving skills, phase 2 applies to offending, phase 3 rehearses self management and social skills	Teaches a range of problem solving skills in order to change behaviour and the underpinning thoughts, attitudes and values related to offending.	Designed to reinforce learning from general offending programmes, through skills rehearsal and relapse prevention	Based on MI techniques – works with women in each stage. Emphasis on emotional management and building healthy relationships
<b>Status</b>	<b>Accredited</b>	<b>Accredited</b>	<b>Accredited</b>	<b>Provisionally Accredited</b>	<b>Accredited</b>
<b>Target Group*</b>	Male & female, medium to high risk (OGRS 41 –100), but where an individual is scoring 75 and over the sentence plan should identify additional work to reflect the higher risk (the equivalent OASys range is 50-160 with offenders scoring over 100 requiring additional work).	Male & female, medium to high risk (OGRS 41–100), but where an individual is scoring 75 and over the sentence plan should identify additional work to reflect the higher risk (the equivalent OASys range is 50-160 with offenders scoring over 100 requiring additional work).	Male & female, medium to high risk of reconviction (OGRS 41 to 100), but where an individual is scoring 75 and over the sentence plan should identify additional work to reflect the higher risk (the equivalent OASys range is –0 - 160 with offenders scoring over 100 requiring additional work).	Male and female offenders who have already completed a general offending programme.	Female. Medium to high risk of reconviction (OGRS 31-100), but where an individual is scoring 75 and over the sentence plan should identify additional work to reflect the higher risk (the equivalent OASys range is 40 to 160 with offenders scoring over 100 requiring additional work).
<b>Selection Criteria</b>	Level and range of cognitive skills deficits assessed through OASys.	Level and range of cognitive skills deficits assessed through OASys.	Level and range of cognitive skills deficits assessed through OASys. Complex pattern of personal problems, personal characteristics that make group learning difficult.	Previous completion of general offender programme and evidence that they have benefited from the original GOBP.	Level and range of cognitive skills deficits assessed through OASys.
<b>Exclusion Criteria</b>	Lacks the offending related needs, serious mental health problems.	Lacks the offending related needs, serious mental health problems.	Lacks the offending related needs, serious mental health problems, inability to meet the learning outcomes in a group e.g./severe drug dependency.	Has failed to benefit sufficiently from the original programme.	Lacks the offending related needs, serious mental health problems.
<b>Programme Sessions</b>	20 sessions of 2-2.5 hours	22 sessions of –2-2.5 hours	21 sessions of 1 to 1.5 hours	10-12 x2-2.5 hour sessions depending on group size – normally 10	31 sessions of 2 hours each.
<b>Pre-programme</b>	None specified	4 pre programme sessions	1 pre programme motivational session	1 pre-programme session.	1 pre programme session held by tutors
<b>Post programme</b>	None specified	4 sessions (+2 optional sessions)	None specified	Relapse prevention work with offender manager.	Non-specified
<b>Core Programme Duration (excl. pre and post sessions)</b>	4 –10 weeks ( 40 – 50 hours total)	Once a week for 22 weeks. Twice a week for 11 weeks. Three times a week for 8 weeks. Four times a week for 6 weeks.	Up to 11 weeks @ two sessions per week (21 to 32 hours total) Suspension of up to 6 weeks – restart after individual assessment at appropriate point. Suspension 6 weeks or longer – restart at beginning.	Once a week for 10 to 12 weeks. Twice a week for 5 to 6 weeks. Three times a week for 4 weeks.	Twice a week for 16 weeks. 3 times a week for 11 weeks.

\* Although OASys equivalents are given for OGRS scores, assessors should be aware that these are based on population averages, and there will not be a perfect mapping between the two scores for each individual. This is because the scores are calculated differently. OGRS is based only on Criminal History with some allowance for gender and current age. OASys combines static (historic data) with dynamic risk factors. It is not possible to say which is the most accurate appraisal for each individual as this will vary by offence type, criminal career status and risk band. OASys is likely to provide a better assessment on first time offenders or those with few convictions, offenders with high levels of need and offenders who are reaching the end of their criminal careers.

<b>Group size</b>	Minimum 4 Maximum 12 Optimum 10	Minimum 4 Maximum 12 Optimum 10	Individual delivery	Minimum 4 Maximum 12 Optimum 8	Minimum 3 Optimum 8-10
<b>PRINTS ON 2 PAGES – CAN WE GET IT ON 1?</b>					

## Violence Programmes

<b>PROGRAMME</b>	<b>Aggression Replacement Training</b>	<b>CALM</b>	<b>Violence Booster</b>	<b>Cognitive Self Change Block 6</b>
<b>Description of Programme</b>	Aims to reduce aggressive behaviour through teaching social skills, anger management techniques and improved moral reasoning	Aims to reduce aggressive and offending behaviour which is related to poor emotional management through teaching social skills, emotional management techniques and REBT	Reinforces learning from other violence and emotional management programmes includes relapse prevention work	An integral part of a programme which starts in prisons and continues in the community. Reinforces learning from the prison-based blocks, applies it to the community setting and maintains an up to date relapse prevention plan.
<b>Status</b>	<b>Accredited</b>	<b>Accredited</b>	<b>Advice Received</b>	<b>Accredited</b>
<b>Target Group*</b>	Male & female, medium to high risk (OGRS 41 to 100), but where an individual is scoring 75 and over the sentence plan should identify additional work to reflect the higher risk. (the equivalent OASys range is 50-160 with offenders scoring over 100 requiring additional work) AND/OR medium or above risk of harm in the community (OASys). High or very high risk requires further structured work or a sequenced programme to be provided.	Male, medium to high risk (OGRS 41 to 100), but where an individual is scoring 75 and over the sentence plan should identify additional work to reflect the higher risk. (the equivalent OASys range is 50-160 with offenders scoring over 100 requiring additional work) AND/OR medium or above risk of harm in the community (OASys). High or very high risk requires further structured work or a sequenced programme to be provided.	Offenders who have successfully completed a violence or emotional management programme in prison or community.	High-risk seriously violent male offenders.
<b>Selection Criteria</b>	Current aggressive offence and/or established pattern of aggressive behaviour. Deficits measured in OASys in 2 of the following areas; social skills, emotional management, perspective taking and moral development.	Current offence of aggression or loss of emotional control and/or previous pattern of aggression or loss of emotional control. Deficits, measured by OASys, in 2 of the following areas: social skills, emotional management, perspective taking and pro-criminal attitudes.	Tutor recommendation.	Release from prison having started the programme.
<b>Exclusion criteria</b>	Offenders who are primarily instrumentally violent & domestic violence offenders.	Offenders who are primarily instrumentally violent & domestic violence offenders.	Those who have not benefited from earlier programme	Not applicable
<b>Programme Sessions</b>	18 sessions of 2 hours.	24 sessions of 2 –2.5 hours.	10 sessions individual or part of an open group	One-to-one sessions in the context of licence appointments
<b>Pre-programme</b>	5 sessions	None specified.	N/a	N/a
<b>Post programme</b>	5 sessions	None specified.	N/a	N/a
<b>Core Programme Duration (excl. pre and post sessions)</b>	6 to 12 weeks (36 hours total)	8 to 24 weeks	5 – 10 weeks	Maximum until the end of the licence or until ended by risk management decision.
<b>Group Size</b>	Minimum 3 Maximum 10	Minimum 3 Maximum 10	N/a	N/a

\* Although OASys equivalents are given for OGRS scores, assessors should be aware that these are based on population averages, and there will not be a perfect mapping between the two scores for each individual. This is because the scores are calculated differently. OGRS is based only on Criminal History with some allowance for gender and current age. OASys combines static (historic data) with dynamic risk factors. It is not possible to say which is the most accurate appraisal for each individual as this will vary by offence type, criminal career status and risk band. OASys is likely to provide a better assessment on first time offenders or those with few convictions, offenders with high levels of need and offenders who are reaching the end of their criminal careers.

## Sex Offender Programmes

PROGRAMME	C-SOGP (West Midlands)	TV-SOGP (Thames Valley Programme)	N-SOGP (Northumbria Programme)
<b>Description of Programme</b>	Aims to reduce offending by adult male sex offenders	Aims to reduce offending by adult male sex offenders and to provide support to partners of perpetrators	Rolling programme which aims to reduce offending by adult male sex offenders
<b>Status</b>	<b>Accredited</b>	<b>Accredited</b>	<b>Accredited</b>
<b>Target Group*</b>	Adult males within normal IQ range who commit any type of sexual offence. Also accept voluntary referrals e.g. from Social Services	Adult males within normal IQ range who commit any type of sexual offence. Also accept voluntary referrals e.g. from Social Services	Adult males within normal IQ range who commit any type of sexual offence. Also accept voluntary referrals e.g. from Social Services range
<b>Selection Criteria</b>	Sexual offence	Sexual offence	Sexual offence
<b>Exclusion criteria</b>	General exclusion criteria apply some discretion to take total denial of any incident	General exclusion criteria apply plus total denial of any incident	General exclusion criteria apply plus total denial of any incident
<b>Programme Sessions</b>	50 hour induction module. Low risk/low deviancy men then go directly to 50 hour Relapse Prevention Programme. High risk/high deviancy men undertake full programme (250 hours) consisting of 6 modules. Men can join at the beginning of each module. Men who have successfully completed Prison SOTP can go directly to the Relapse prevention programme.	10 consecutive day Foundation Block Victim Empathy block twice weekly sessions of 2 hours (60 hours) Life Skills block twice weekly sessions of 2 hours (40 hours) Relapse prevention weekly sessions of 2 hours (44 hours) Partners programme weekly sessions of 2 hours(36 hours) High risk/high deviancy men do whole programme, low risk, low deviancy men can miss out Life Skills block. Men who have successfully completed Prison SOTP can go directly to the Relapse prevention programme	Offenders assessed as High Risk/Deviance attend Core Programme (144 hrs min.) followed by Relapse Prevention (36hrs), giving total programme length of 180 hours. Low risk/deviance offenders will normally complete individual work with Offender Manger followed by relapse prevention module. Offenders released from prison will follow similar route depending on assessment. Sessions are normally run for 3.5 hours during the day, but can be run as two evening sessions a week. The Core Programme is a rolling group and the RP module is closed.
<b>Pre-programme</b>	Flexible sessions included in Case Managers pack	Flexible sessions included in Case Managers pack	As for other sex offender programmes
<b>Post programme</b>	Monitoring risk factors and reinforcement included in case manager's pack	Monitoring risk factors and reinforcement included in case manager's pack	Monitoring risk factors and reinforcement included in case manager's pack
<b>Core Programme Duration (excl.pre and post sessions)</b>	Either 100 hours or 260 hours depending on risk/deviancy profile	Either 196 hours for high risk/high deviancy men or 156 hours for low risk/low deviancy men	Either 180 hours for High risk/deviance or 36 hours plus individual work for low risk/deviance
<b>Group Size</b>	Optimum 8 Maximum 10	Optimum 8 Maximum 10	Optimum 8 Maximum 10

\* Although OASys equivalents are given for OGRS scores, assessors should be aware that these are based on population averages, and there will not be a perfect mapping between the two scores for each individual. This is because the scores are calculated differently. OGRS is based only on Criminal History with some allowance for gender and current age. OASys combines static (historic data) with dynamic risk factors. It is not possible to say which is the most accurate appraisal for each individual as this will vary by offence type, criminal career status and risk band. OASys is likely to provide a better assessment on first time offenders or those with few convictions, offenders with high levels of need and offenders who are reaching the end of their criminal careers.

## Substance Misuse Programmes

PROGRAMME	ASRO	Drink Impaired Drivers	OSAP	PRISM
<b>Description of Programme</b>	Aims to teach offenders the skills required to reduce or stop substance misuse.	Programme combines cognitive behavioural work and education. Aims to reduce the risk of future drink related driving offences	Aims to teach offenders the skills required to reduce or stop substance misuse.	Programme for individual delivery. Aims to teach offenders the skills required to reduce or stop substance misuse
<b>Status</b>	<b>Accredited</b>	<b>Fully accredited for males. Provisionally accredited for female offenders</b>	<b>Provisionally Accredited</b>	<b>Accredited</b>
<b>Target Group*</b>	Male & female medium to high risk (OGRS 51–100), but where an individual is scoring 75 and over the sentence plan should identify additional work to reflect the higher risk (the equivalent OASys range is 64 to 160 with offenders scoring 100 or above requiring additional work).	Male & female offenders who commit a drink drive related offence. Priority to be given to those whose offence has an aggravating factor e.g. high reading, accident or repeat offence	Male & female medium to high risk (OGRS 51–100), but where an individual is scoring 75 and over the sentence plan should identify additional work to reflect the higher risk (the equivalent OASys range is 64 to 160 with offenders scoring 100 or above requiring additional work).	Male & female medium to high risk (OGRS 51–100), but where an individual is scoring 75 and over the sentence plan should identify additional work to reflect the higher risk (the equivalent OASys range is 64 to 160 with offenders scoring 100 or above requiring additional work).
<b>Selection Criteria</b>	Offending is related to substance misuse Offenders sufficiently stable & motivated.	Drink drive related offence and relevant skills or knowledge deficits.	Offending is related to substance misuse. Offenders sufficiently stable & motivated.	Offending is related to substance misuse. Offenders sufficiently stable & motivated.
<b>Exclusion criteria</b>	As for general offending behaviour programmes	As for general offending behaviour programmes. Not suitable for problem drinkers until they are stabilised. The programme is unlikely to be suitable for offenders with more than four previous convictions who are likely to have a wider range of criminogenic needs which cannot be met by this programme.	As for general offending programmes.	As for general offending behaviour programmes.
<b>Programme Sessions</b>	20 sessions of 2.5 hours.	14 sessions of 2.5 hours to be delivered weekly	26 sessions of 2.5 hours.	20 sessions from between 45 and 120 minutes.
<b>Pre-programme</b>	Written guidance re preparatory work for offender managers	4 pre programme sessions	3 pre programme sessions	Written guidance re preparatory work for offender managers
<b>Core Programme Duration (excl.pre and post sessions)</b>	10 - 20 weeks (50 hours in total) Once per week over 20 weeks Or twice per week over 10 weeks.  Programme has modular structure. Sessions can be delivered from one to three times per week.	Once a week for 14 weeks.	12- 24 weeks Programme has modular structure. Can be delivered from one to three times per week.  <b>26 sessions that can be delivered one a week for 26 weeks twice a week for 13 weeks three times a week 9 weeks and four times a week for 8 weeks.</b>	20 sessions from between 45 and 120 minutes. Sessions recommended <ul style="list-style-type: none"> <li>• twice weekly for sessions 1 – 4</li> <li>• weekly for sessions 5-12</li> </ul> 2 x weekly or weekly for sessions 13-20
<b>Post programme</b>	None specified, other than post programme report	Written guidance for offender managers which details further optional work in 6 areas depending upon the progress which the offender made in the core programme.	Minimum 4 maintenance sessions with offender manager.	None specified, other than post programme report
<b>Group Size</b>	Min 4 Max 12 Optimum 8	Minimum 4 Maximum 12 Optimum 10	Min 4 Max 12 Optimum 8	Not applicable

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## Domestic violence

<b>PROGRAMME</b>	<b>CDVP</b>	<b>IDAP</b>
<b>Description of Programme</b>	CBT Domestic Violence Sequential programme for male perpetrators of medium to high risk of harm. Based on CSC and similar to prison dv programme. Includes interagency risk assessment/info exchange management; victim contact; proactive case management and core groupwork.	CBT Offender focussed rolling programme for male perpetrators, challenging attitudes and beliefs. Teaches non controlling behaviour strategies, and enhanced victim empathy. Includes interagency risk assessment/info exchange management; victim contact; proactive case management and core groupwork.
<b>Status</b>	<b>Accredited</b>	<b>Accredited</b>
<b>Target Group*</b>	Male offenders who were or are in heterosexual relationships with medium to high risk of harm	Male offenders who were or are in heterosexual relationships with medium to high risk of harm
<b>Selection Criteria</b>	Male, offence committed in context of DV, medium to high on the SARA tool.	Male, offence committed in context of DV, medium to high on the SARA tool.
<b>Exclusion Criteria</b>	In denial; Severe mental health issues, inability to meet learning outcomes e.g. severe drug dependency.	In denial; Serious mental health problems, inability to meet the learning outcomes e.g./ severe drug dependency
<b>Programme Sessions</b>	25 groupwork sessions of 2 hrs Sequential but flexible.	27 group sessions of 2 hours
<b>Pre-programme</b>	3 pre programme individual sessions plus one pre group	4 individual sessions plus one group orientation
<b>Post programme</b>	4 relapse prevention sessions	At least four relapse prevention session with case manager
<b>Core Programme Duration (excl.pre and post sessions)</b>	27 group sessions (including pre programme psychometrics) Twice a week for 13 weeks Or Three times a week for 9 weeks 9 individual sessions including pre and post 3 pre programme minimum of 4 post programme	27 group sessions (excluding pre programme psychometrics and orientation) Once a week for 27 weeks Or Twice a week for 14 weeks modular rolling programme; 13 individual sessions including pre and post 3 pre programme + orientation minimum of 4 post programme
<b>Group size</b>	Minimum 4 Maximum 12 Optimum 8-12	Min 4 Max 12 Optimum 8- 12

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## Research Portfolio

<b>PROGRAMME</b>	<b>Black and Asian Research</b>			
<b>Description of Programme</b>	<p>Test out the added value of supporting modules attached to a GOBP</p> <ul style="list-style-type: none"> <li>Self Development module with a GOBP delivered to a black and Asian only group and to mixed groups</li> </ul>			
<b>Status</b>	<b>Research</b>			
<b>Target Group*</b>	Male & female medium to high risk (ORGS 41-100)			
<b>Selection Criteria</b>	Meets GOBP criteria, motivated.			
<b>Exclusion Criteria</b>	As for GOBP. Excused SD not motivated after MI			
<b>Programme Sessions</b>	SD Module 4 sessions			
<b>Pre-programme</b>				
<b>Post programme</b>				
<b>Core programme Duration (excl.pre and post sessions)</b>	SD 8-10 hrs.			
<b>Group size</b>	SD 4-12			

**Last updated; 6 May 2005**

**(Provided by the National Probation Directorate) October 2005**

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